

105TH CONGRESS
2^D SESSION

S. 109

AN ACT

To provide Federal housing assistance to Native Hawaiians.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American
5 Housing Assistance and Self-Determination Amendments
6 of 1998”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the United States has undertaken a respon-
4 sibility to promote the general welfare of the United
5 States by—

6 (A) employing its resources to remedy the
7 unsafe and unsanitary housing conditions and
8 the acute shortage of decent, safe, and sanitary
9 dwellings for families of lower income; and

10 (B) developing effective partnerships with
11 governmental and private entities to accomplish
12 the objectives referred to in subparagraph (A);

13 (2) pursuant to the provisions of the Hawaiian
14 Homes Commission Act, 1920 (42 Stat. 108 et
15 seq.), the United States set aside 200,000 acres of
16 land in the Federal territory that later became the
17 State of Hawaii in order to establish a homeland for
18 the native people of Hawaii—Native Hawaiians;

19 (3) despite the intent of Congress in 1920 to
20 address the housing needs of Native Hawaiians
21 through the enactment of the Hawaiian Homes
22 Commission Act, 1920 (42 Stat. 108 et seq.), some
23 agencies of the Federal Government have taken the
24 legal position that subsequently enacted Federal
25 housing laws designed to address the housing needs
26 of all eligible families in the United States could not

1 be extended to address the needs for housing and in-
2 frastructure development on Hawaiian home lands
3 (as that term is defined in section 801 of the Native
4 American Housing Assistance and Self-Determina-
5 tion Act of 1996, as added by section 3 of this Act)
6 with the result that otherwise eligible Native Hawai-
7 ians residing on the Hawaiian home lands have been
8 foreclosed from participating in Federal housing as-
9 sistance programs available to all other eligible fami-
10 lies in the United States;

11 (4) although Federal housing assistance pro-
12 grams have been administered on a racially neutral
13 basis in the State of Hawaii, Native Hawaiians con-
14 tinue to have the greatest unmet need for housing
15 and the highest rates of overcrowding in the United
16 States;

17 (5) among the Native American population of
18 the United States, Native Hawaiians experience the
19 highest percentage of housing problems in the
20 United States, as the percentage—

21 (A) of housing problems in the Native Ha-
22 waiian population is 49 percent, as compared
23 to—

1 (i) 44 percent for American Indian
2 and Alaska Native households in Indian
3 country; and

4 (ii) 27 percent for all other house-
5 holds in the United States; and

6 (B) overcrowding in the Native Hawaiian
7 population is 36 percent as compared to 3 per-
8 cent for all other households in the United
9 States;

10 (6) among the Native Hawaiian population, the
11 needs of Native Hawaiians, as that term is defined
12 in section 801 of the Native American Housing As-
13 sistance and Self-Determination Act of 1996, as
14 added by section 3 of this Act, eligible to reside on
15 the Hawaiian Home Lands are the most severe,
16 as—

17 (A) the percentage of overcrowding in Na-
18 tive Hawaiian households on the Hawaiian
19 Home Lands is 36 percent; and

20 (B) approximately 13,000 Native Hawai-
21 ians, which constitute 95 percent of the Native
22 Hawaiians who are eligible to reside on the Ha-
23 waiian Home Lands, are in need of housing;

24 (7) applying the Department of Housing and
25 Urban Development guidelines—

1 (A) 70.8 percent of Native Hawaiians who
2 either reside or who are eligible to reside on the
3 Hawaiian Home Lands have incomes that fall
4 below the median family income; and

5 (B) 50 percent of Native Hawaiians who
6 either reside or who are eligible to reside on the
7 Hawaiian Home Lands have incomes below 30
8 percent of the median family income; and

9 (8) $\frac{1}{3}$ of those Native Hawaiians who are eligi-
10 ble to reside on the Hawaiian Home Lands pay
11 more than 30 percent of their income for shelter,
12 and $\frac{1}{2}$ of those Native Hawaiians face overcrowding;

13 (9) the extraordinarily severe housing needs of
14 Native Hawaiians demonstrate that Native Hawai-
15 ians who either reside on, or are eligible to reside on,
16 Hawaiian Home Lands have been denied equal ac-
17 cess to Federal low-income housing assistance pro-
18 grams available to other qualified residents of the
19 United States, and that a more effective means of
20 addressing their housing needs must be authorized;

21 (10) consistent with the recommendations of
22 the National Commission on American Indian, Alas-
23 ka Native, and Native Hawaiian Housing, and in
24 order to address the continuing prevalence of ex-
25 traordinarily severe housing needs among Native

1 Hawaiians who either reside or are eligible to reside
2 on the Hawaiian Home Lands, Congress finds it
3 necessary to extend the Federal low-income housing
4 assistance available to American Indians and Alaska
5 Natives under the Native American Housing Assist-
6 ance and Self-Determination Act of 1996 (25 U.S.C.
7 4101 et seq.) to those Native Hawaiians;

8 (11) under the treaty-making power of the
9 United States, Congress had the authority to con-
10 firm a treaty between the United States and the
11 government that represented the Hawaiian people,
12 and under clause 3 of section 8 of article I of the
13 Constitution, the authority of Congress to address
14 matters affecting the indigenous peoples of the
15 United States includes the authority to address mat-
16 ters affecting Native Hawaiians;

17 (12) through treaties, Federal statutes, and rul-
18 ings of the Federal courts, the United States has
19 recognized and reaffirmed that—

20 (A) the political status of Native Hawai-
21 ians is comparable to that of American Indians
22 and Alaska Natives; and

23 (B) the aboriginal, indigenous people of
24 the United States have—

1 (i) a continuing right to autonomy in
2 their internal affairs; and

3 (ii) an ongoing right of self-deter-
4 mination and self-governance that has
5 never been extinguished;

6 (13) the political relationship between the
7 United States and the Native Hawaiian people has
8 been recognized and reaffirmed by the United States
9 as evidenced by the inclusion of Native Hawaiians
10 in—

11 (A) the Native American Programs Act of
12 1974 (42 U.S.C. 2291 et seq.);

13 (B) the American Indian Religious Free-
14 dom Act (42 U.S.C. 1996 et seq.);

15 (C) the National Museum of the American
16 Indian Act (20 U.S.C. 80q et seq.);

17 (D) the Native American Graves Protec-
18 tion and Repatriation Act (25 U.S.C. 3001 et
19 seq.);

20 (E) the National Historic Preservation Act
21 (16 U.S.C. 470 et seq.);

22 (F) the Native American Languages Act of
23 1992 (106 Stat. 3434);

1 (G) the American Indian, Alaska Native
2 and Native Hawaiian Culture and Arts Devel-
3 opment Act (20 U.S.C. 4401 et seq.);

4 (H) the Job Training Partnership Act (29
5 U.S.C. 1501 et seq.); and

6 (I) the Older Americans Act of 1965 (42
7 U.S.C. 3001 et seq.); and

8 (14) in the area of housing, the United States
9 has recognized and reaffirmed the political relation-
10 ship with the Native Hawaiian people through—

11 (A) the enactment of the Hawaiian Homes
12 Commission Act, 1920 (42 Stat. 108 et seq.),
13 which set aside approximately 200,000 acres of
14 public lands that became known as Hawaiian
15 Home Lands in the Territory of Hawaii that
16 had been ceded to the United States for home-
17 steading by Native Hawaiians in order to reha-
18 bilitate a landless and dying people;

19 (B) the enactment of the Act entitled “An
20 Act to provide for the admission of the State of
21 Hawaii into the Union”, approved March 18,
22 1959 (73 Stat. 4)—

23 (i) by ceding to the State of Hawaii
24 title to the public lands formerly held by
25 the United States, and mandating that

1 those lands be held in public trust, for the
2 betterment of the conditions of Native Ha-
3 waiians, as that term is defined in section
4 801(15) of the Native American Housing
5 Assistance and Self-Determination Act of
6 1996, as added by section 3 of this Act;
7 and

8 (ii) by transferring what the United
9 States considered to be a trust responsibil-
10 ity for the administration of Hawaiian
11 Home Lands to the State of Hawaii, but
12 retaining the authority to enforce the
13 trust, including the exclusive right of the
14 United States to consent to any actions af-
15 fecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108 et seq.), enacted by the
19 legislature of the State of Hawaii affecting
20 the rights of beneficiaries under the Act;

21 (C) the authorization of mortgage loans in-
22 sured by the Federal Housing Administration
23 for the purchase, construction, or refinancing of
24 homes on Hawaiian Home Lands under the Act
25 of June 27, 1934 (commonly referred to as the

1 “National Housing Act” (42 Stat. 1246 et seq.,
2 chapter 847; 12 U.S.C. 1701 et seq.);

3 (D) authorizing Native Hawaiian represen-
4 tation on the National Commission on Amer-
5 ican Indian, Alaska Native, and Native Hawai-
6 ian Housing under Public Law 101–235;

7 (E) the inclusion of Native Hawaiians in
8 the definition under section 3764 of title 38,
9 United States Code, applicable to subchapter V
10 of chapter 37 of title 38, United States Code
11 (relating to a housing loan program for Native
12 American veterans); and

13 (F) the enactment of the Hawaiian Home
14 Lands Recovery Act (109 Stat. 357; 48 U.S.C.
15 491, note prec.) which establishes a process for
16 the conveyance of Federal lands to the Depart-
17 ment of Hawaiian Homes Lands that are equiv-
18 alent in value to lands acquired by the United
19 States from the Hawaiian Home Lands inven-
20 tory.

21 **SEC. 3. HOUSING ASSISTANCE.**

22 The Native American Housing Assistance and Self-
23 Determination Act of 1996 (25 U.S.C. 4101 et seq.) is
24 amended by adding at the end the following:

1 **“TITLE VIII—HOUSING ASSIST-**
2 **ANCE FOR NATIVE HAWAI-**
3 **ANS**

4 **“SEC. 801. DEFINITIONS.**

5 “In this title:

6 “(1) DEPARTMENT OF HAWAIIAN HOME LANDS;
7 DEPARTMENT.—The term ‘Department of Hawaiian
8 Home Lands’ or ‘Department’ means the agency or
9 department of the government of the State of Ha-
10 waii that is responsible for the administration of the
11 Hawaiian Homes Commission Act, 1920 (42 Stat.
12 108 et seq.).

13 “(2) DIRECTOR.—The term ‘Director’ means
14 the Director of the Department of Hawaiian Home
15 Lands.

16 “(3) ELDERLY FAMILIES; NEAR-ELDERLY FAMI-
17 LIES.—

18 “(A) IN GENERAL.—The term ‘elderly
19 family’ or ‘near-elderly family’ means a family
20 whose head (or his or her spouse), or whose sole
21 member, is—

22 “(i) for an elderly family, an elderly
23 person; or

24 “(ii) for a near-elderly family, a near-
25 elderly person.

1 “(B) CERTAIN FAMILIES INCLUDED.—The
2 term ‘elderly family’ or ‘near-elderly family’ in-
3 cludes—

4 “(i) 2 or more elderly persons or near-
5 elderly persons, as the case may be, living
6 together; and

7 “(ii) 1 or more persons described in
8 clause (i) living with 1 or more persons de-
9 termined under the housing plan to be es-
10 sential to their care or well-being.

11 “(4) HAWAIIAN HOME LANDS.—The term ‘Ha-
12 waiian Home Lands’ means lands that—

13 “(A) have the status as Hawaiian home
14 lands under section 204 of the Hawaiian
15 Homes Commission Act (42 Stat. 110); or

16 “(B) are acquired pursuant to that Act.

17 “(5) HOUSING AREA.—The term ‘housing area’
18 means an area of Hawaiian Home Lands with re-
19 spect to which the Department of Hawaiian Home
20 Lands is authorized to provide assistance for afford-
21 able housing under this Act.

22 “(6) HOUSING ENTITY.—The term ‘housing en-
23 tity’ means the Department of Hawaiian Home
24 Lands.

1 “(7) HOUSING PLAN.—The term ‘housing plan’
2 means a plan developed by the Department of Ha-
3 waiian Home Lands.

4 “(8) MEDIAN INCOME.—The term ‘median in-
5 come’ means, with respect to an area that is a Ha-
6 waiian housing area, the greater of—

7 “(A) the median income for the Hawaiian
8 housing area, which shall be determined by the
9 Secretary; or

10 “(B) the median income for the State of
11 Hawaii.

12 “(9) NATIVE HAWAIIAN.—The term ‘Native
13 Hawaiian’ has the meaning given the term ‘Native
14 Hawaiian’ in section 201 of the Hawaiian Homes
15 Commission Act, 1920 (42 Stat. 108 et seq.).

16 **“SEC. 802. BLOCK GRANTS FOR AFFORDABLE HOUSING AC-**
17 **TIVITIES.**

18 “(a) GRANT AUTHORITY.—For each fiscal year, the
19 Secretary shall (to the extent amounts are made available
20 to carry out this title) make a grant under this title to
21 the Department of Hawaiian Home Lands to carry out
22 affordable housing activities for Native Hawaiian families
23 on or near Hawaiian Home Lands.

24 “(b) PLAN REQUIREMENT.—

1 “(1) IN GENERAL.—The Secretary may make a
2 grant under this title to the Department of Hawai-
3 ian Home Lands for a fiscal year only if—

4 “(A) the Director has submitted to the
5 Secretary a housing plan for that fiscal year;
6 and

7 “(B) the Secretary has determined under
8 section 804 that the housing plan complies with
9 the requirements of section 803.

10 “(2) WAIVER.—The Secretary may waive the
11 applicability of the requirements under paragraph
12 (1), in part, if the Secretary finds that the Depart-
13 ment of Hawaiian Home Lands has not complied or
14 cannot comply with those requirements due to cir-
15 cumstances beyond the control of the Department of
16 Hawaiian Home Lands.

17 “(c) USE OF AFFORDABLE HOUSING ACTIVITIES
18 UNDER PLAN.—Except as provided in subsection (e),
19 amounts provided under a grant under this section may
20 be used only for affordable housing activities under this
21 title that are consistent with a housing plan approved
22 under section 804.

23 “(d) ADMINISTRATIVE EXPENSES.—

24 “(1) IN GENERAL.—The Secretary shall, by
25 regulation, authorize the Department of Hawaiian

1 Home Lands to use a percentage of any grant
2 amounts received under this title for any reasonable
3 administrative and planning expenses of the Depart-
4 ment relating to carrying out this title and activities
5 assisted with those amounts.

6 “(2) ADMINISTRATIVE AND PLANNING EX-
7 PENSES.—The administrative and planning expenses
8 referred to in paragraph (1) include—

9 “(A) costs for salaries of individuals en-
10 gaged in administering and managing afford-
11 able housing activities assisted with grant
12 amounts provided under this title; and

13 “(B) expenses incurred in preparing a
14 housing plan under section 803.

15 “(e) PUBLIC-PRIVATE PARTNERSHIPS.—The Direc-
16 tor shall make all reasonable efforts, consistent with the
17 purposes of this title, to maximize participation by the pri-
18 vate sector, including nonprofit organizations and for-
19 profit entities, in implementing a housing plan that has
20 been approved by the Secretary under section 803.

21 “(f) APPLICABILITY OF OTHER PROVISIONS.—

22 “(1) IN GENERAL.—The Secretary shall be
23 guided by the relevant program requirements of ti-
24 tles I, II, and IV in the implementation of housing

1 assistance programs for Native Hawaiians under
2 this title.

3 “(2) EXCEPTION.—The Secretary may make
4 exceptions to, or modifications of, program require-
5 ments for Native American housing assistance set
6 forth in titles I, II, and IV as necessary and appro-
7 priate to meet the unique situation and housing
8 needs of Native Hawaiians.

9 **“SEC. 803. HOUSING PLAN.**

10 “(a) PLAN SUBMISSION.—The Secretary shall—

11 “(1) require the Director to submit a housing
12 plan under this section for each fiscal year; and

13 “(2) provide for the review of each plan submit-
14 ted under paragraph (1).

15 “(b) 5-YEAR PLAN.—Each housing plan under this
16 section shall—

17 “(1) be in a form prescribed by the Secretary;
18 and

19 “(2) contain, with respect to the 5-year period
20 beginning with the fiscal year for which the plan is
21 submitted, the following information:

22 “(A) MISSION STATEMENT.—A general
23 statement of the mission of the Department of
24 Hawaiian Home Lands to serve the needs of

1 the low-income families to be served by the De-
2 partment.

3 “(B) GOAL AND OBJECTIVES.—A state-
4 ment of the goals and objectives of the Depart-
5 ment of Hawaiian Home Lands to enable the
6 Department to serve the needs identified in
7 subparagraph (A) during the period.

8 “(C) ACTIVITIES PLANS.—An overview of
9 the activities planned during the period includ-
10 ing an analysis of the manner in which the ac-
11 tivities will enable the Department to meet its
12 mission, goals, and objectives.

13 “(c) 1-YEAR PLAN.—A housing plan under this sec-
14 tion shall—

15 “(1) be in a form prescribed by the Secretary;
16 and

17 “(2) contain the following information relating
18 to the fiscal year for which the assistance under this
19 title is to be made available:

20 “(A) GOALS AND OBJECTIVES.—A state-
21 ment of the goals and objectives to be accom-
22 plished during the period covered by the plan.

23 “(B) STATEMENT OF NEEDS.—A state-
24 ment of the housing needs of the low-income
25 families served by the Department and the

1 means by which those needs will be addressed
2 during the period covered by the plan, includ-
3 ing—

4 “(i) a description of the estimated
5 housing needs and the need for assistance
6 for the low-income families to be served by
7 the Department, including a description of
8 the manner in which the geographical dis-
9 tribution of assistance is consistent with—

10 “(I) the geographical needs of
11 those families; and

12 “(II) needs for various categories
13 of housing assistance; and

14 “(ii) a description of the estimated
15 housing needs for all families to be served
16 by the Department.

17 “(C) FINANCIAL RESOURCES.—An operat-
18 ing budget for the Department of Hawaiian
19 Home Lands, in a form prescribed by the Sec-
20 retary, that includes—

21 “(i) an identification and a descrip-
22 tion of the financial resources reasonably
23 available to the Department to carry out
24 the purposes of this title, including an ex-
25 planation of the manner in which amounts

1 made available will be used to leverage ad-
2 ditional resources; and

3 “(ii) the uses to which the resources
4 described in clause (i) will be committed,
5 including—

6 “(I) eligible and required afford-
7 able housing activities; and

8 “(II) administrative expenses.

9 “(D) AFFORDABLE HOUSING RE-
10 SOURCES.—A statement of the affordable hous-
11 ing resources currently available at the time of
12 the submittal of the plan and to be made avail-
13 able during the period covered by the plan, in-
14 cluding—

15 “(i) a description of the significant
16 characteristics of the housing market in
17 the State of Hawaii, including the avail-
18 ability of housing from other public
19 sources, private market housing; and

20 “(ii) the manner in which the charac-
21 teristics referred to in clause (i) influence
22 the decision of the Department of Hawai-
23 ian Home Lands to use grant amounts to
24 be provided under this title for—

25 “(I) rental assistance;

1 “(II) the production of new units;

2 “(III) the acquisition of existing

3 units; or

4 “(IV) the rehabilitation of units;

5 “(iii) a description of the structure,

6 coordination, and means of cooperation be-

7 tween the Department of Hawaiian Home

8 Lands and any other governmental entities

9 in the development, submission, or imple-

10 mentation of housing plans, including a de-

11 scription of—

12 “(I) the involvement of private,

13 public, and nonprofit organizations

14 and institutions;

15 “(II) the use of loan guarantees

16 under section 184A of the Housing

17 and Community Development Act of

18 1992; and

19 “(III) other housing assistance

20 provided by the United States, includ-

21 ing loans, grants, and mortgage insur-

22 ance;

23 “(iv) a description of the manner in

24 which the plan will address the needs iden-

25 tified pursuant to subparagraph (C);

1 “(v) a description of—

2 “(I) any existing or anticipated
3 homeownership programs and rental
4 programs to be carried out during the
5 period covered by the plan; and

6 “(II) the requirements and as-
7 sistance available under the programs
8 referred to in subclause (I);

9 “(vi) a description of—

10 “(I) any existing or anticipated
11 housing rehabilitation programs nec-
12 essary to ensure the long-term viabil-
13 ity of the housing to be carried out
14 during the period covered by the plan;
15 and

16 “(II) the requirements and as-
17 sistance available under the programs
18 referred to in subclause (I);

19 “(vii) a description of—

20 “(I) all other existing or antici-
21 pated housing assistance provided by
22 the Department of Hawaiian Home
23 Lands during the period covered by
24 the plan, including—

25 “(aa) transitional housing;

- 1 “(bb) homeless housing;
- 2 “(cc) college housing; and
- 3 “(dd) supportive services
- 4 housing; and
- 5 “(II) the requirements and as-
- 6 sistance available under such pro-
- 7 grams;
- 8 “(viii)(I) a description of any housing
- 9 to be demolished or disposed of;
- 10 “(II) a timetable for that demolition
- 11 or disposition; and
- 12 “(III) any other information required
- 13 by the Secretary with respect to that dem-
- 14 olition or disposition;
- 15 “(ix) a description of the manner in
- 16 which the Department of Hawaiian Home
- 17 Lands will coordinate with welfare agencies
- 18 in the State of Hawaii to ensure that resi-
- 19 dents of the affordable housing will be pro-
- 20 vided with access to resources to assist in
- 21 obtaining employment and achieving self-
- 22 sufficiency;
- 23 “(x) a description of the requirements
- 24 established by the Department of Hawai-
- 25 ian Home Lands to—

1 “(I) promote the safety of resi-
2 dents of the affordable housing;

3 “(II) facilitate the undertaking of
4 crime prevention measures;

5 “(III) allow resident input and
6 involvement, including the establish-
7 ment of resident organizations; and

8 “(IV) allow for the coordination
9 of crime prevention activities between
10 the Department and local law enforce-
11 ment officials; and

12 “(xi) a description of the entities that
13 will carry out the activities under the plan,
14 including the organizational capacity and
15 key personnel of the entities.

16 “(E) CERTIFICATION OF COMPLIANCE.—
17 Evidence of compliance that shall include, as
18 appropriate—

19 “(i) a certification that the Depart-
20 ment of Hawaiian Home Lands will com-
21 ply with—

22 “(I) title VI of the Civil Rights
23 Act of 1964 (42 U.S.C. 2000d et seq.)
24 or with title VIII of the Civil Rights
25 Act of 1968 (42 U.S.C. 3601 et seq.)

1 in carrying out this title, to the extent
2 that such title is applicable; and

3 “(II) other applicable Federal
4 statutes;

5 “(ii) a certification that the Depart-
6 ment will require adequate insurance cov-
7 erage for housing units that are owned and
8 operated or assisted with grant amounts
9 provided under this title, in compliance
10 with such requirements as may be estab-
11 lished by the Secretary;

12 “(iii) a certification that policies are
13 in effect and are available for review by the
14 Secretary and the public governing the eli-
15 gibility, admission, and occupancy of fami-
16 lies for housing assisted with grant
17 amounts provided under this title;

18 “(iv) a certification that policies are
19 in effect and are available for review by the
20 Secretary and the public governing rents
21 charged, including the methods by which
22 such rents or homebuyer payments are de-
23 termined, for housing assisted with grant
24 amounts provided under this title; and

1 “(v) a certification that policies are in
2 effect and are available for review by the
3 Secretary and the public governing the
4 management and maintenance of housing
5 assisted with grant amounts provided
6 under this title.

7 “(d) APPLICABILITY OF CIVIL RIGHTS STATUTES.—

8 “(1) IN GENERAL.—To the extent that the re-
9 quirements of title VI of the Civil Rights Act of
10 1964 (42 U.S.C. 2000d et seq.) or of title VIII of
11 the Civil Rights Act of 1968 (42 U.S.C. 3601 et
12 seq.) apply to assistance provided under this title,
13 nothing in the requirements concerning discrimina-
14 tion on the basis of race shall be construed to pre-
15 vent the provision of assistance under this title—

16 “(A) to the Department of Hawaiian
17 Home Lands on the basis that the Department
18 served Native Hawaiians; or

19 “(B) to an eligible family on the basis that
20 the family is a Native Hawaiian family.

21 “(2) CIVIL RIGHTS.—Program eligibility under
22 this title may be restricted to Native Hawaiians.
23 Subject to the preceding sentence, no person may be
24 discriminated against on the basis of race, color, na-

1 tional origin, religion, sex, familial status, or disabili-
2 ty.

3 “(e) USE OF NONPROFIT ORGANIZATIONS.—As a
4 condition of receiving grant amounts under this title, the
5 Department of Hawaiian Home Lands shall, to the extent
6 practicable, provide for private nonprofit organizations ex-
7 perience in the planning and development of affordable
8 housing for Native Hawaiians to carry out affordable
9 housing activities with those grant amounts.

10 **“SEC. 804. REVIEW OF PLANS.**

11 “(a) REVIEW AND NOTICE.—

12 “(1) REVIEW.—

13 “(A) IN GENERAL.—The Secretary shall
14 conduct a review of a housing plan submitted to
15 the Secretary under section 803 to ensure that
16 the plan complies with the requirements of that
17 section.

18 “(B) LIMITATION.—The Secretary shall
19 have the discretion to review a plan referred to
20 in subparagraph (A) only to the extent that the
21 Secretary considers that the review is necessary.

22 “(2) NOTICE.—

23 “(A) IN GENERAL.—Not later than 60
24 days after receiving a plan under section 803,
25 the Secretary shall notify the Director of the

1 Department of Hawaiian Home Lands whether
2 the plan complies with the requirements under
3 that section.

4 “(B) EFFECT OF FAILURE OF SECRETARY
5 TO TAKE ACTION.—For purposes of this title, if
6 the Secretary does not notify the Director, as
7 required under this subsection and subsection
8 (b), upon the expiration of the 60-day period
9 described in subparagraph (A)—

10 “(i) the plan shall be considered to
11 have been determined to comply with the
12 requirements under section 803; and

13 “(ii) the Director shall be considered
14 to have been notified of compliance.

15 “(b) NOTICE OF REASONS FOR DETERMINATION OF
16 NONCOMPLIANCE.—If the Secretary determines that a
17 plan submitted under section 803 does not comply with
18 the requirements of that section, the Secretary shall speci-
19 fy in the notice under subsection (a)—

20 “(1) the reasons for noncompliance; and

21 “(2) any modifications necessary for the plan to
22 meet the requirements of section 803.

23 “(c) REVIEW.—

24 “(1) IN GENERAL.—After the Director of the
25 Department of Hawaiian Home Lands submits a

1 housing plan under section 803, or any amendment
2 or modification to the plan to the Secretary, to the
3 extent that the Secretary considers such action to be
4 necessary to make a determination under this sub-
5 section, the Secretary shall review the plan (includ-
6 ing any amendments or modifications thereto) to de-
7 termine whether the contents of the plan—

8 “(A) set forth the information required by
9 section 803 to be contained in the housing plan;

10 “(B) are consistent with information and
11 data available to the Secretary; and

12 “(C) are not prohibited by or inconsistent
13 with any provision of this Act or any other ap-
14 plicable law.

15 “(2) INCOMPLETE PLANS.—If the Secretary de-
16 termines under this subsection that any of the ap-
17 propriate certifications required under section
18 803(c)(2)(E) are not included in a plan, the plan
19 shall be considered to be incomplete.

20 “(d) UPDATES TO PLAN.—

21 “(1) IN GENERAL.—Subject to paragraph (2),
22 after a plan under section 803 has been submitted
23 for a fiscal year, the Director of the Department of
24 Hawaiian Home Lands may comply with the provi-
25 sions of that section for any succeeding fiscal year

1 (with respect to information included for the 5-year
 2 period under section 803(b) or for the 1-year period
 3 under section 803(c)) by submitting only such infor-
 4 mation regarding such changes as may be necessary
 5 to update the plan previously submitted.

6 “(2) COMPLETE PLANS.—The Director shall
 7 submit a complete plan under section 803 not later
 8 than 4 years after submitting an initial plan under
 9 that section, and not less frequently than every 4
 10 years thereafter.

11 “(e) EFFECTIVE DATE.—This section and section
 12 803 shall take effect on the date provided by the Secretary
 13 pursuant to section 807(a) to provide for timely submis-
 14 sion and review of the housing plan as necessary for the
 15 provision of assistance under this title for fiscal year 2000.

16 **“SEC. 805. TREATMENT OF PROGRAM INCOME AND LABOR**
 17 **STANDARDS.**

18 “(a) PROGRAM INCOME.—

19 “(1) AUTHORITY TO RETAIN.—The Department
 20 of Hawaiian Home Lands may retain any program
 21 income that is realized from any grant amounts re-
 22 ceived by the Department under this title if—

23 “(A) that income was realized after the ini-
 24 tial disbursement of the grant amounts received
 25 by the Department; and

1 “(B) the Director agrees to use the pro-
2 gram income for affordable housing activities in
3 accordance with the provisions of this title.

4 “(2) PROHIBITION OF REDUCTION OF GRANT.—
5 The Secretary may not reduce the grant amount for
6 the Department of Hawaiian Home Lands based
7 solely on—

8 “(A) whether the Department retains pro-
9 gram income under paragraph (1); or

10 “(B) the amount of any such program in-
11 come retained.

12 “(3) EXCLUSION OF AMOUNTS.—The Secretary
13 may, by regulation, exclude from consideration as
14 program income any amounts determined to be so
15 small that compliance with the requirements of this
16 subsection would create an unreasonable administra-
17 tive burden on the Department.

18 “(b) LABOR STANDARDS.—

19 “(1) IN GENERAL.—Any contract or agreement
20 for assistance, sale, or lease pursuant to this title
21 shall contain—

22 “(A) a provision requiring that an amount
23 not less than the wages prevailing in the local-
24 ity, as determined or adopted (subsequent to a
25 determination under applicable State or local

1 law) by the Secretary, shall be paid to all archi-
2 tects, technical engineers, draftsmen, techni-
3 cians employed in the development and all
4 maintenance, and laborers and mechanics em-
5 ployed in the operation, of the affordable hous-
6 ing project involved; and

7 “(B) a provision that an amount not less
8 than the wages prevailing in the locality, as pre-
9 determined by the Secretary of Labor pursuant
10 to the Act commonly known as the ‘Davis-
11 Bacon Act’ (46 Stat. 1494, chapter 411; 40
12 U.S.C. 276a et seq.) shall be paid to all labor-
13 ers and mechanics employed in the development
14 of the affordable housing involved.

15 “(2) EXCEPTIONS.—Paragraph (1) and provi-
16 sions relating to wages required under paragraph (1)
17 in any contract or agreement for assistance, sale, or
18 lease under this title, shall not apply to any individ-
19 ual who performs the services for which the individ-
20 ual volunteered and who is not otherwise employed
21 at any time in the construction work and received no
22 compensation or is paid expenses, reasonable bene-
23 fits, or a nominal fee for those services.

24 **“SEC. 806. ENVIRONMENTAL REVIEW.**

25 “(a) IN GENERAL.—

1 “(1) RELEASE OF FUNDS.—

2 “(A) IN GENERAL.—The Secretary may
3 carry out the alternative environmental protec-
4 tion procedures described in subparagraph (B)
5 in order to ensure—

6 “(i) that the policies of the National
7 Environmental Policy Act of 1969 (42
8 U.S.C. 4321 et seq.) and other provisions
9 of law that further the purposes of such
10 Act (as specified in regulations issued by
11 the Secretary) are most effectively imple-
12 mented in connection with the expenditure
13 of grant amounts provided under this title;
14 and

15 “(ii) to the public undiminished pro-
16 tection of the environment.

17 “(B) ALTERNATIVE ENVIRONMENTAL PRO-
18 TECTION PROCEDURE.—In lieu of applying en-
19 vironmental protection procedures otherwise ap-
20 plicable, the Secretary may by regulation pro-
21 vide for the release of funds for specific projects
22 to the Department of Hawaiian Home Lands if
23 the Director of the Department assumes all of
24 the responsibilities for environmental review,
25 decisionmaking, and action under the National

1 Environmental Policy Act of 1969 (42 U.S.C.
2 4321 et seq.), and such other provisions of law
3 as the regulations of the Secretary specify, that
4 would apply to the Secretary were the Secretary
5 to undertake those projects as Federal projects.

6 “(2) REGULATIONS.—

7 “(A) IN GENERAL.—The Secretary shall
8 issue regulations to carry out this section only
9 after consultation with the Council on Environ-
10 mental Quality.

11 “(B) CONTENTS.—The regulations issued
12 under this paragraph shall—

13 “(i) provide for the monitoring of the
14 environmental reviews performed under
15 this section;

16 “(ii) in the discretion of the Secretary,
17 facilitate training for the performance of
18 such reviews; and

19 “(iii) provide for the suspension or
20 termination of the assumption of respon-
21 sibilities under this section.

22 “(3) EFFECT ON ASSUMED RESPONSIBILITY.—
23 The duty of the Secretary under paragraph (2)(B)
24 shall not be construed to limit or reduce any respon-
25 sibility assumed by the Department of Hawaiian

1 Home Lands for grant amounts with respect to any
2 specific release of funds.

3 “(b) PROCEDURE.—

4 “(1) IN GENERAL.—The Secretary shall author-
5 ize the release of funds subject to the procedures
6 under this section only if, not less than 15 days be-
7 fore that approval and before any commitment of
8 funds to such projects, the Director of the Depart-
9 ment of Hawaiian Home Lands submits to the Sec-
10 retary a request for such release accompanied by a
11 certification that meets the requirements of sub-
12 section (c).

13 “(2) EFFECT OF APPROVAL.—The approval of
14 the Secretary of a certification described in para-
15 graph (1) shall be deemed to satisfy the responsibil-
16 ities of the Secretary under the National Environ-
17 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
18 and such other provisions of law as the regulations
19 of the Secretary specify to the extent that those re-
20 sponsibilities relate to the release of funds for
21 projects that are covered by that certification.

22 “(c) CERTIFICATION.—A certification under the pro-
23 cedures under this section shall—

24 “(1) be in a form acceptable to the Secretary;

1 “(2) be executed by the Director of the Depart-
2 ment of Hawaiian Home Lands;

3 “(3) specify that the Department of Hawaiian
4 Home Lands has fully carried out its responsibilities
5 as described under subsection (a); and

6 “(4) specify that the Director—

7 “(A) consents to assume the status of a re-
8 sponsible Federal official under the National
9 Environmental Policy Act of 1969 (42 U.S.C.
10 4321 et seq.) and each provision of law speci-
11 fied in regulations issued by the Secretary to
12 the extent that those laws apply by reason of
13 subsection (a); and

14 “(B) is authorized and consents on behalf
15 of the Department of Hawaiian Home Lands
16 and the Director accepts the jurisdiction of the
17 Federal courts for the purpose of enforcement
18 of the responsibilities of the Director of the De-
19 partment of Hawaiian Home Lands as such an
20 official.

21 **“SEC. 807. REGULATIONS.**

22 “The Secretary shall issue final regulations necessary
23 to carry out this title not later than June 1, 1999.

1 **“SEC. 808. EFFECTIVE DATE.**

2 “Except as otherwise expressly provided in this title,
3 this title shall take effect on June 1, 1999.

4 **“SEC. 809. AFFORDABLE HOUSING ACTIVITIES.**

5 “(a) NATIONAL OBJECTIVES AND ELIGIBLE FAMI-
6 LIES.—

7 “(1) PRIMARY OBJECTIVE.—The national objec-
8 tives of this title are—

9 “(A) to assist and promote affordable
10 housing activities to develop, maintain, and op-
11 erate affordable housing in safe and healthy en-
12 vironments for occupancy by low-income Native
13 Hawaiian families;

14 “(B) to ensure better access to private
15 mortgage markets and to promote self-suffi-
16 ciency of low-income Native Hawaiian families;

17 “(C) to coordinate activities to provide
18 housing for low-income Native Hawaiian fami-
19 lies with Federal, State and local activities to
20 further economic and community development;

21 “(D) to plan for and integrate infrastruc-
22 ture resources on the Hawaiian Home Lands
23 with housing development; and

24 “(E) to—

25 “(i) promote the development of pri-
26 vate capital markets; and

1 “(ii) allow the markets referred to in
2 clause (i) to operate and grow, thereby
3 benefiting Native Hawaiian communities.

4 “(2) ELIGIBLE FAMILIES.—

5 “(A) IN GENERAL.—Except as provided
6 under subparagraph (B), assistance for eligible
7 housing activities under this title shall be lim-
8 ited to low-income Native Hawaiian families.

9 “(B) EXCEPTION TO LOW-INCOME RE-
10 QUIREMENT.—

11 “(i) IN GENERAL.—The Director may
12 provide assistance for homeownership ac-
13 tivities under—

14 “(I) section 810(b);

15 “(II) model activities under sec-
16 tion 810(f); or

17 “(III) loan guarantee activities
18 under section 184A of the Housing
19 and Community Development Act of
20 1992 to Native Hawaiian families who
21 are not low-income families, to the ex-
22 tent that the Secretary approves the
23 activities under that section to ad-
24 dress a need for housing for those

1 families that cannot be reasonably
2 met without that assistance.

3 “(ii) LIMITATIONS.—The Secretary
4 shall establish limitations on the amount of
5 assistance that may be provided under this
6 title for activities for families that are not
7 low-income families.

8 “(C) OTHER FAMILIES.—Notwithstanding
9 paragraph (1), the Director may provide hous-
10 ing or housing assistance provided through af-
11 fordable housing activities assisted with grant
12 amounts under this title to a family that is not
13 composed of Native Hawaiians if—

14 “(i) the Department determines that
15 the presence of the family in the housing
16 involved is essential to the well-being of
17 Native Hawaiian families; and

18 “(ii) the need for housing for the fam-
19 ily cannot be reasonably met without the
20 assistance.

21 “(D) PREFERENCE.—

22 “(i) IN GENERAL.—A housing plan
23 submitted under section 803 may authorize
24 a preference, for housing or housing assist-
25 ance provided through affordable housing

1 activities assisted with grant amounts pro-
2 vided under this title to be provided, to the
3 extent practicable, to families that are eli-
4 gible to reside on the Hawaiian Home
5 Lands.

6 “(ii) APPLICATION.—In any case in
7 which a housing plan provides for pref-
8 erence described in clause (i), the Director
9 shall ensure that housing activities that are
10 assisted with grant amounts under this
11 title are subject to that preference.

12 “(E) USE OF NONPROFIT ORGANIZA-
13 TIONS.—As a condition of receiving grant
14 amounts under this title, the Department of
15 Hawaiian Home Lands, shall to the extent
16 practicable, provide for private nonprofit orga-
17 nizations experienced in the planning and devel-
18 opment of affordable housing for Native Hawai-
19 ians to carry out affordable housing activities
20 with those grant amounts.

21 **“SEC. 810. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.**

22 “(a) IN GENERAL.—Affordable housing activities
23 under this section are activities conducted in accordance
24 with the requirements of section 811 to—

1 “(1) develop or to support affordable housing
2 for rental or homeownership; or

3 “(2) provide housing services with respect to af-
4 fordable housing, through the activities described in
5 subsection (b).

6 “(b) ACTIVITIES.—The activities described in this
7 subsection are the following:

8 “(1) DEVELOPMENT.—The acquisition, new
9 construction, reconstruction, or moderate or sub-
10 stantial rehabilitation of affordable housing, which
11 may include—

12 “(A) real property acquisition;

13 “(B) site improvement;

14 “(C) the development of utilities and util-
15 ity services;

16 “(D) conversion;

17 “(E) demolition;

18 “(F) financing;

19 “(G) administration and planning; and

20 “(H) other related activities.

21 “(2) HOUSING SERVICES.—The provision of
22 housing-related services for affordable housing, in-
23 cluding—

24 “(A) housing counseling in connection with
25 rental or homeownership assistance;

1 “(B) the establishment and support of
2 resident organizations and resident manage-
3 ment corporations;

4 “(C) energy auditing;

5 “(D) activities related to the provision of
6 self-sufficiency and other services; and

7 “(E) other services related to assisting
8 owners, tenants, contractors, and other entities
9 participating or seeking to participate in other
10 housing activities assisted pursuant to this sec-
11 tion.

12 “(3) HOUSING MANAGEMENT SERVICES.—The
13 provision of management services for affordable
14 housing, including—

15 “(A) the preparation of work specifica-
16 tions;

17 “(B) loan processing;

18 “(C) inspections;

19 “(D) tenant selection;

20 “(E) management of tenant-based rental
21 assistance; and

22 “(F) management of affordable housing
23 projects.

24 “(4) CRIME PREVENTION AND SAFETY ACTIVI-
25 TIES.—The provision of safety, security, and law en-

1 enforcement measures and activities appropriate to
2 protect residents of affordable housing from crime.

3 “(5) MODEL ACTIVITIES.—Housing activities
4 under model programs that are—

5 “(A) designed to carry out the purposes of
6 this title; and

7 “(B) specifically approved by the Secretary
8 as appropriate for the purpose referred to in
9 subparagraph (A).

10 **“SEC. 811. PROGRAM REQUIREMENTS.**

11 “(a) RENTS.—

12 “(1) ESTABLISHMENT.—Subject to paragraph
13 (2), as a condition to receiving grant amounts under
14 this title, the Director shall develop written policies
15 governing rents and homebuyer payments charged
16 for dwelling units assisted under this title, including
17 methods by which such rents and homebuyer pay-
18 ments are determined.

19 “(2) MAXIMUM RENT.—In the case of any low-
20 income family residing in a dwelling unit assisted
21 with grant amounts under this title, the monthly
22 rent or homebuyer payment (as applicable) for that
23 dwelling unit may not exceed 30 percent of the
24 monthly adjusted income of that family.

25 “(b) MAINTENANCE AND EFFICIENT OPERATION.—

1 “(1) IN GENERAL.—The Director shall, using
2 amounts of any grants received under this title, re-
3 serve and use for operating under section 810 such
4 amounts as may be necessary to provide for the con-
5 tinued maintenance and efficient operation of such
6 housing.

7 “(2) DISPOSAL OF CERTAIN HOUSING.—This
8 subsection may not be construed to prevent the Di-
9 rector, or any entity funded by the Department,
10 from demolishing or disposing of housing, pursuant
11 to regulations established by the Secretary.

12 “(c) INSURANCE COVERAGE.—As a condition to re-
13 ceiving grant amounts under this title, the Director shall
14 require adequate insurance coverage for housing units that
15 are owned or operated or assisted with grant amounts pro-
16 vided under this title.

17 “(d) ELIGIBILITY FOR ADMISSION.—As a condition
18 to receiving grant amounts under this title, the Director
19 shall develop written policies governing the eligibility, ad-
20 mission, and occupancy of families for housing assisted
21 with grant amounts provided under this title.

22 “(e) MANAGEMENT AND MAINTENANCE.—As a con-
23 dition to receiving grant amounts under this title, the Di-
24 rector shall develop policies governing the management

1 and maintenance of housing assisted with grant amounts
2 under this title.

3 **“SEC. 812. TYPES OF INVESTMENTS.**

4 “(a) IN GENERAL.—Subject to section 811 and an
5 applicable housing plan approved under section 803, the
6 Director shall have—

7 “(1) the discretion to use grant amounts for af-
8 fordable housing activities through the use of—

9 “(A) equity investments;

10 “(B) interest-bearing loans or advances;

11 “(C) noninterest-bearing loans or ad-
12 vances;

13 “(D) interest subsidies;

14 “(E) the leveraging of private investments;

15 or

16 “(F) any other form of assistance that the
17 Secretary determines to be consistent with the
18 purposes of this title; and

19 “(2) the right to establish the terms of assist-
20 ance provided with funds referred to in paragraph
21 (1).

22 “(b) INVESTMENTS.—The Director of the Depart-
23 ment of Hawaiian Home Lands may invest grant amounts
24 for the purposes of carrying out affordable housing activi-

1 ties in investment securities and other obligations, as ap-
2 proved by the Secretary.

3 **“SEC. 813. LOW-INCOME REQUIREMENT AND INCOME TAR-**
4 **GETING.**

5 “(a) IN GENERAL.—Housing shall qualify for afford-
6 able housing for purposes of this title only if—

7 “(1) each dwelling unit in the housing—

8 “(A) in the case of rental housing, is made
9 available for occupancy only by a family that is
10 a low-income family at the time of the initial
11 occupancy of that family of that unit; and

12 “(B) in the case of housing for home-
13 ownership, is made available for purchase only
14 by a family that is a low-income family at the
15 time of purchase; and

16 “(2) each dwelling unit in the housing will re-
17 main affordable, according to binding commitments
18 satisfactory to the Secretary, for—

19 “(A) the remaining useful life of the prop-
20 erty (as determined by the Secretary) without
21 regard to the term of the mortgage or to trans-
22 fer of ownership; or

23 “(B) such other period as the Secretary
24 determines is the longest feasible period of time
25 consistent with sound economics and the pur-

1 poses of this title, except upon a foreclosure by
2 a lender (or upon other transfer in lieu of fore-
3 closure) if that action—

4 “(i) recognizes any contractual or
5 legal rights of any public agency, nonprofit
6 sponsor, or other person or entity to take
7 an action that would—

8 “(I) avoid termination of low-in-
9 come affordability, in the case of fore-
10 closure; or

11 “(II) transfer ownership in lieu
12 of foreclosure; and

13 “(ii) is not for the purpose of avoiding
14 low-income affordability restrictions, as de-
15 termined by the Secretary.

16 “(b) EXCEPTION.—Notwithstanding subsection (a),
17 housing assisted pursuant to section 809(a)(2)(B) shall be
18 considered affordable housing for purposes of this title.

19 **“SEC. 814. LEASE REQUIREMENTS AND TENANT SELEC-**
20 **TION.**

21 “(a) LEASES.—Except to the extent otherwise pro-
22 vided by or inconsistent with the laws of the State of Ha-
23 waii, in renting dwelling units in affordable housing as-
24 sisted with grant amounts provided under this title, the
25 Director, owner, or manager shall use leases that—

1 “(1) do not contain unreasonable terms and
2 conditions;

3 “(2) require the Director, owner, or manager to
4 maintain the housing in compliance with applicable
5 housing codes and quality standards;

6 “(3) require the Director, owner, or manager to
7 give adequate written notice of termination of the
8 lease, which shall be the period of time required
9 under applicable State or local law;

10 “(4) specify that, with respect to any notice of
11 eviction or termination, notwithstanding any State
12 or local law, a resident shall be informed of the op-
13 portunity, before any hearing or trial, to examine
14 any relevant documents, record, or regulations di-
15 rectly related to the eviction or termination;

16 “(5) require that the Director, owner, or man-
17 ager may not terminate the tenancy, during the
18 term of the lease, except for serious or repeated vio-
19 lation of the terms and conditions of the lease, viola-
20 tion of applicable Federal, State, or local law, or for
21 other good cause; and

22 “(6) provide that the Director, owner, and man-
23 ager may terminate the tenancy of a resident for
24 any activity, engaged in by the resident, any member
25 of the household of the resident, or any guest or

1 other person under the control of the resident,
2 that—

3 “(A) threatens the health or safety of, or
4 right to peaceful enjoyment of the premises by,
5 other residents or employees of the Department,
6 owner, or manager;

7 “(B) threatens the health or safety of, or
8 right to peaceful enjoyment of their premises
9 by, persons residing in the immediate vicinity of
10 the premises; or

11 “(C) is criminal activity (including drug-re-
12 lated criminal activity) on or off the premises.

13 “(b) TENANT OR HOMEBUYER SELECTION.—As a
14 condition to receiving grant amounts under this title, the
15 Director shall adopt and use written tenant and home-
16 buyer selection policies and criteria that—

17 “(1) are consistent with the purpose of provid-
18 ing housing for low-income families;

19 “(2) are reasonably related to program eligi-
20 bility and the ability of the applicant to perform the
21 obligations of the lease; and

22 “(3) provide for—

23 “(A) the selection of tenants and home-
24 buyers from a written waiting list in accordance
25 with the policies and goals set forth in an appli-

1 cable housing plan approved under section 803;
2 and

3 “(B) the prompt notification in writing to
4 any rejected applicant of the grounds for that
5 rejection.

6 **“SEC. 815. REPAYMENT.**

7 “If the Department of Hawaiian Home Lands uses
8 grant amounts to provide affordable housing under activi-
9 ties under this title and, at any time during the useful
10 life of the housing, the housing does not comply with the
11 requirement under section 813(a)(2), the Secretary
12 shall—

13 “(1) reduce future grant payments on behalf of
14 the Department by an amount equal to the grant
15 amounts used for that housing (under the authority
16 of section 818(a)(1)(B)); or

17 “(2) require repayment to the Secretary of any
18 amount equal to those grant amounts.

19 **“SEC. 816. ANNUAL ALLOCATION.**

20 “For each fiscal year, the Secretary shall allocate any
21 amounts made available for assistance under this title for
22 the fiscal year, in accordance with the formula established
23 pursuant to section 817 to the Department of Hawaiian
24 Home Lands if the Department complies with the require-
25 ments under this title for a grant under this title.

1 **“SEC. 817. ALLOCATION FORMULA.**

2 “(a) ESTABLISHMENT.—The Secretary shall, by reg-
3 ulation issued not later than the expiration of the 6-month
4 period beginning on the date of enactment of the Native
5 American Housing Assistance and Self-Determination
6 Amendments of 1998, in the manner provided under sec-
7 tion 807, establish a formula to provide for the allocation
8 of amounts available for a fiscal year for block grants
9 under this title in accordance with the requirements of this
10 section.

11 “(b) FACTORS FOR DETERMINATION OF NEED.—
12 The formula under subsection (a) shall be based on factors
13 that reflect the needs for assistance for affordable housing
14 activities, including—

15 “(1) the number of low-income dwelling units
16 owned or operated at the time pursuant to a con-
17 tract between the Director and the Secretary;

18 “(2) the extent of poverty and economic distress
19 and the number of Native Hawaiian families eligible
20 to reside on the Hawaiian Home Lands; and

21 “(3) any other objectively measurable condi-
22 tions that the Secretary and the Director may speci-
23 fy.

24 “(c) OTHER FACTORS FOR CONSIDERATION.—In es-
25 tablishing the formula under subsection (a), the Secretary
26 shall consider the relative administrative capacities of the

1 Department of Hawaiian Home Lands and other chal-
2 lenges faced by the Department, including—

3 “(1) geographic distribution within Hawaiian
4 Home Lands; and

5 “(2) technical capacity.

6 “(d) EFFECTIVE DATE.—This section shall take ef-
7 fect on the date of enactment of the Native American
8 Housing Assistance and Self-Determination Amendments
9 of 1998.

10 **“SEC. 818. REMEDIES FOR NONCOMPLIANCE.**

11 “(a) ACTIONS BY SECRETARY AFFECTING GRANT
12 AMOUNTS.—

13 “(1) IN GENERAL.—Except as provided in sub-
14 section (b), if the Secretary finds after reasonable
15 notice and opportunity for a hearing that the De-
16 partment of Hawaiian Home Lands has failed to
17 comply substantially with any provision of this title,
18 the Secretary shall—

19 “(A) terminate payments under this title
20 to the Department;

21 “(B) reduce payments under this title to
22 the Department by an amount equal to the
23 amount of such payments that were not ex-
24 pended in accordance with this title; or

1 “(C) limit the availability of payments
2 under this title to programs, projects, or activi-
3 ties not affected by such failure to comply.

4 “(2) ACTIONS.—If the Secretary takes an ac-
5 tion under subparagraph (A), (B), or (C) of para-
6 graph (1), the Secretary shall continue that action
7 until the Secretary determines that the failure by
8 the Department to comply with the provision has
9 been remedied by the Department and the Depart-
10 ment is in compliance with that provision.

11 “(b) NONCOMPLIANCE BECAUSE OF A TECHNICAL
12 INCAPACITY.—The Secretary may provide technical assist-
13 ance for the Department, either directly or indirectly, that
14 is designed to increase the capability and capacity of the
15 Director of the Department to administer assistance pro-
16 vided under this title in compliance with the requirements
17 under this title if the Secretary makes a finding under
18 subsection (a), but determines that the failure of the De-
19 partment to comply substantially with the provisions of
20 this title—

21 “(1) is not a pattern or practice of activities
22 constituting willful noncompliance; and

23 “(2) is a result of the limited capability or ca-
24 pacity of the Department of Hawaiian Home Lands.

25 “(c) REFERRAL FOR CIVIL ACTION.—

1 “(1) AUTHORITY.—In lieu of, or in addition to,
2 any action that the Secretary may take under sub-
3 section (a), if the Secretary has reason to believe
4 that the Department of Hawaiian Home Lands has
5 failed to comply substantially with any provision of
6 this title, the Secretary may refer the matter to the
7 Attorney General of the United States with a rec-
8 ommendation that an appropriate civil action be in-
9 stituted.

10 “(2) CIVIL ACTION.—Upon receiving a referral
11 under paragraph (1), the Attorney General may
12 bring a civil action in any United States district
13 court of appropriate jurisdiction for such relief as
14 may be appropriate, including an action—

15 “(A) to recover the amount of the assist-
16 ance furnished under this title that was not ex-
17 pended in accordance with this title; or

18 “(B) for mandatory or injunctive relief.

19 “(d) REVIEW.—

20 “(1) IN GENERAL.—If the Director receives no-
21 tice under subsection (a) of the termination, reduc-
22 tion, or limitation of payments under this Act, the
23 Director—

24 “(A) may, not later than 60 days after re-
25 ceiving such notice, file with the United States

1 Court of Appeals for the Ninth Circuit, or in
2 the United States Court of Appeals for the Dis-
3 trict of Columbia, a petition for review of the
4 action of the Secretary; and

5 “(B) upon the filing of any petition under
6 subparagraph (A), shall forthwith transmit cop-
7 ies of the petition to the Secretary and the At-
8 torney General of the United States, who shall
9 represent the Secretary in the litigation.

10 “(2) PROCEDURE.—

11 “(A) IN GENERAL.—The Secretary shall
12 file in the court a record of the proceeding on
13 which the Secretary based the action, as pro-
14 vided in section 2112 of title 28, United States
15 Code.

16 “(B) OBJECTIONS.—No objection to the
17 action of the Secretary shall be considered by
18 the court unless the Department has registered
19 the objection before the Secretary.

20 “(3) DISPOSITION.—

21 “(A) COURT PROCEEDINGS.—

22 “(i) JURISDICTION OF COURT.—The
23 court shall have jurisdiction to affirm or
24 modify the action of the Secretary or to set
25 the action aside in whole or in part.

1 “(ii) FINDINGS OF FACT.—If sup-
2 ported by substantial evidence on the
3 record considered as a whole, the findings
4 of fact by the Secretary shall be conclusive.

5 “(iii) ADDITION.—The court may
6 order evidence, in addition to the evidence
7 submitted for review under this subsection,
8 to be taken by the Secretary, and to be
9 made part of the record.

10 “(B) SECRETARY.—

11 “(i) IN GENERAL.—The Secretary, by
12 reason of the additional evidence referred
13 to in subparagraph (A) and filed with the
14 court—

15 “(I) may—

16 “(aa) modify the findings of
17 fact of the Secretary; or

18 “(bb) make new findings;
19 and

20 “(II) shall file—

21 “(aa) such modified or new
22 findings; and

23 “(bb) the recommendation
24 of the Secretary, if any, for the
25 modification or setting aside of

1 the original action of the Sec-
2 retary.

3 “(ii) FINDINGS.—The findings re-
4 ferred to in clause (i)(II)(bb) shall, with
5 respect to a question of fact, be considered
6 to be conclusive if those findings are—

7 “(I) supported by substantial evi-
8 dence on the record; and

9 “(II) considered as a whole.

10 “(4) FINALITY.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), upon the filing of the record
13 under this subsection with the court—

14 “(i) the jurisdiction of the court shall
15 be exclusive; and

16 “(ii) the judgment of the court shall
17 be final.

18 “(B) REVIEW BY SUPREME COURT.—A
19 judgment under subparagraph (A) shall be sub-
20 ject to review by the Supreme Court of the
21 United States upon writ of certiorari or certifi-
22 cation, as provided in section 1254 of title 28,
23 United States Code.

24 **“SEC. 819. MONITORING OF COMPLIANCE.**

25 “(a) ENFORCEABLE AGREEMENTS.—

1 “(1) IN GENERAL.—The Director, through
2 binding contractual agreements with owners or other
3 authorized entities, shall ensure long-term compli-
4 ance with the provisions of this title.

5 “(2) MEASURES.—The measures referred to in
6 paragraph (1) shall provide for—

7 “(A) to the extent allowable by Federal
8 and State law, the enforcement of the provi-
9 sions of this title by the Department and the
10 Secretary; and

11 “(B) remedies for breach of the provisions
12 referred to in paragraph (1).

13 “(b) PERIODIC MONITORING.—

14 “(1) IN GENERAL.—Not less frequently than
15 annually, the Director shall review the activities con-
16 ducted and housing assisted under this title to as-
17 sess compliance with the requirements of this title.

18 “(2) REVIEW.—Each review under paragraph
19 (1) shall include onsite inspection of housing to de-
20 termine compliance with applicable requirements.

21 “(3) RESULTS.—The results of each review
22 under paragraph (1) shall be—

23 “(A) included in a performance report of
24 the Director submitted to the Secretary under
25 section 820; and

1 “(B) made available to the public.

2 “(c) PERFORMANCE MEASURES.—The Secretary
3 shall establish such performance measures as may be nec-
4 essary to assess compliance with the requirements of this
5 title.

6 **“SEC. 820. PERFORMANCE REPORTS.**

7 “(a) REQUIREMENT.—For each fiscal year, the Di-
8 rector shall—

9 “(1) review the progress the Department has
10 made during that fiscal year in carrying out the
11 housing plan submitted by the Department under
12 section 803; and

13 “(2) submit a report to the Secretary (in a
14 form acceptable to the Secretary) describing the con-
15 clusions of the review.

16 “(b) CONTENT.—Each report submitted under this
17 section for a fiscal year shall—

18 “(1) describe the use of grant amounts provided
19 to the Department of Hawaiian Home Lands for
20 that fiscal year;

21 “(2) assess the relationship of the use referred
22 to in paragraph (1) to the goals identified in the
23 housing plan;

24 “(3) indicate the programmatic accomplish-
25 ments of the Department; and

1 “(4) describe the manner in which the Depart-
2 ment would change its housing plan submitted under
3 section 803 as a result of its experiences.

4 “(c) SUBMISSIONS.—The Secretary shall—

5 “(1) establish a date for submission of each re-
6 port under this section;

7 “(2) review each such report; and

8 “(3) with respect to each such report, make rec-
9 ommendations as the Secretary considers appro-
10 prium to carry out the purposes of this title.

11 “(d) PUBLIC AVAILABILITY.—

12 “(1) COMMENTS BY BENEFICIARIES.—In pre-
13 paring a report under this section, the Director shall
14 make the report publicly available to the bene-
15 ficiaries of the Hawaiian Homes Commission Act,
16 1920 (42 Stat. 108 et seq.) and give a sufficient
17 amount of time to permit those beneficiaries to com-
18 ment on that report before it is submitted to the
19 Secretary (in such manner and at such time as the
20 Director may determine).

21 “(2) SUMMARY OF COMMENTS.—The report
22 shall include a summary of any comments received
23 by the Director from beneficiaries under paragraph
24 (1) regarding the program to carry out the housing
25 plan.

1 **“SEC. 821. REVIEW AND AUDIT BY SECRETARY.**

2 “(a) ANNUAL REVIEW.—

3 “(1) IN GENERAL.—The Secretary shall, not
4 less frequently than on an annual basis, make such
5 reviews and audits as may be necessary or appro-
6 priate to determine whether—

7 “(A) the Director has—

8 “(i) carried out eligible activities
9 under this title in a timely manner;

10 “(ii) carried out and made certifi-
11 cations in accordance with the require-
12 ments and the primary objectives of this
13 title and with other applicable laws; and

14 “(iii) a continuing capacity to carry
15 out the eligible activities in a timely man-
16 ner;

17 “(B) the Director has complied with the
18 housing plan submitted by the Director under
19 section 803; and

20 “(C) the performance reports of the De-
21 partment under section 821 are accurate.

22 “(2) ONSITE VISITS.—Each review conducted
23 under this section shall, to the extent practicable, in-
24 clude onsite visits by employees of the Department
25 of Housing and Urban Development.

1 “(b) REPORT BY SECRETARY.—The Secretary shall
2 give the Department of Hawaiian Home Lands not less
3 than 30 days to review and comment on a report under
4 this subsection. After taking into consideration the com-
5 ments of the Department, the Secretary may revise the
6 report and shall make the comments of the Department
7 and the report with any revisions, readily available to the
8 public not later than 30 days after receipt of the com-
9 ments of the Department.

10 “(c) EFFECT OF REVIEWS.—The Secretary may
11 make appropriate adjustments in the amount of annual
12 grants under this title in accordance with the findings of
13 the Secretary pursuant to reviews and audits under this
14 section. The Secretary may adjust, reduce, or withdraw
15 grant amounts, or take other action as appropriate in ac-
16 cordance with the reviews and audits of the Secretary
17 under this section, except that grant amounts already ex-
18 pended on affordable housing activities may not be recap-
19 tured or deducted from future assistance provided to the
20 Department of Hawaiian Home Lands.

21 **“SEC. 822. GENERAL ACCOUNTING OFFICE AUDITS.**

22 “To the extent that the financial transactions of the
23 Department of Hawaiian Home Lands involving grant
24 amounts under this title relate to amounts provided under
25 this title, those transactions may be audited by the Comp-

1 troller General of the United States under such regula-
2 tions as may be prescribed by the Comptroller General.
3 The Comptroller General of the United States shall have
4 access to all books, accounts, records, reports, files, and
5 other papers, things, or property belonging to or in use
6 by the Department of Hawaiian Home Lands pertaining
7 to such financial transactions and necessary to facilitate
8 the audit.

9 **“SEC. 823. REPORTS TO CONGRESS.**

10 “(a) IN GENERAL.—Not later than 90 days after the
11 conclusion of each fiscal year in which assistance under
12 this title is made available, the Secretary shall submit to
13 the Congress a report that contains—

14 “(1) a description of the progress made in ac-
15 complishing the objectives of this title;

16 “(2) a summary of the use of funds available
17 under this title during the preceding fiscal year; and

18 “(3) a description of the aggregate outstanding
19 loan guarantees under section 184A of the Housing
20 and Community Development Act of 1992.

21 “(b) RELATED REPORTS.—The Secretary may re-
22 quire the Director to submit to the Secretary such reports
23 and other information as may be necessary in order for
24 the Secretary to prepare the report required under sub-
25 section (a).

1 **“SEC. 824. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to the De-
3 partment of Housing and Urban Development for grants
4 under this title such sums as may be necessary for each
5 of fiscal years 1999, 2000, 2001, 2002 and 2003.”.

6 **SEC. 4. LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUS-**
7 **ING.**

8 Subtitle E of title I of the Housing and Community
9 Development Act of 1992 is amended by inserting after
10 section 184 (12 U.S.C. 1715z–13a) the following:

11 **“SEC. 184A. LOAN GUARANTEES FOR NATIVE HAWAIIAN**
12 **HOUSING.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) DEPARTMENT OF HAWAIIAN HOME
15 LANDS.—The term ‘Department of Hawaiian Home
16 Lands’ means the agency or department of the gov-
17 ernment of the State of Hawaii that is responsible
18 for the administration of the Hawaiian Homes Com-
19 mission Act, 1920 (42 Stat. 108 set seq.).

20 “(2) ELIGIBLE ENTITY.—The term ‘eligible en-
21 tity’ means a Native Hawaiian family, the Depart-
22 ment of Hawaiian Home Lands, the Office of Ha-
23 waiian Affairs, or private nonprofit or for-profit or-
24 ganizations experienced in the planning and develop-
25 ment of affordable housing for Native Hawaiians.

1 “(3) FAMILY.—The term ‘family’ means 1 or
2 more persons maintaining a household, as the Sec-
3 retary shall by regulation provide.

4 “(4) GUARANTEE FUND.—The term ‘Guarantee
5 Fund’ means the Native Hawaiian Housing Loan
6 Guarantee Fund established under subsection (i) of
7 this section.

8 “(5) HAWAIIAN HOME LANDS.—The term ‘Ha-
9 waiian Home Lands’ means lands that—

10 “(A) have the status of Hawaiian Home
11 Lands under section 204 of the Hawaiian
12 Homes Commission Act (42 Stat. 110); or

13 “(B) are acquired pursuant to that Act.

14 “(6) NATIVE HAWAIIAN.—The term ‘Native
15 Hawaiian’ has the meaning given the term ‘native
16 Hawaiian’ in section 201 of the Hawaiian Homes
17 Commission Act, 1920 (42 Stat. 108 et seq.).

18 “(7) OFFICE OF HAWAIIAN AFFAIRS.—The
19 term ‘Office of Hawaiian Affairs’ means the entity
20 of that name established under the constitution of
21 the State of Hawaii.

22 “(b) AUTHORITY.—To provide access to sources of
23 private financing to Native Hawaiian families who other-
24 wise could not acquire housing financing because of the
25 unique legal status of the Hawaiian Home Lands or as

1 a result of a lack of access to private financial markets,
2 the Secretary may guarantee an amount not to exceed 100
3 percent of the unpaid principal and interest that is due
4 on an eligible loan under subsection (b).

5 “(c) ELIGIBLE LOANS.—Under this section, a loan
6 is an eligible loan if that loan meets the following require-
7 ments:

8 “(1) ELIGIBLE BORROWERS.—The loan is made
9 only to a borrower who—

10 “(A) is a Native Hawaiian family;

11 “(B) the Department of Hawaiian Home
12 Lands;

13 “(C) the Office of Hawaiian Affairs; or

14 “(D) a private nonprofit organization expe-
15 rienced in the planning and development of af-
16 fordable housing for Native Hawaiians.

17 “(2) ELIGIBLE HOUSING.—

18 “(A) IN GENERAL.—The loan will be used
19 to construct, acquire, or rehabilitate not more
20 than 4-family dwellings that are standard hous-
21 ing and are located on Hawaiian Home Lands
22 for which a housing plan described in subpara-
23 graph (B) applies.

1 “(B) HOUSING PLAN.—A housing plan de-
2 scribed in this subparagraph is a housing plan
3 that—

4 “(i) has been submitted and approved
5 by the Secretary under section 803 of the
6 Native American Housing Assistance and
7 Self-Determination Amendments of 1998;
8 and

9 “(ii) provides for the use of loan guar-
10 antees under this section to provide afford-
11 able homeownership housing on Hawaiian
12 Home Lands.

13 “(3) SECURITY.—The loan may be secured by
14 any collateral authorized under applicable Federal
15 law or State law.

16 “(4) LENDERS.—

17 “(A) IN GENERAL.—The loan shall be
18 made only by a lender approved by, and meet-
19 ing qualifications established by, the Secretary,
20 including any lender described in subparagraph
21 (B), except that a loan otherwise insured or
22 guaranteed by an agency of the Federal Gov-
23 ernment or made by the Department of Hawai-
24 ian Home Lands from amounts borrowed from

1 the United States shall not be eligible for a
2 guarantee under this section.

3 “(B) APPROVAL.—The following lenders
4 shall be considered to be lenders that have been
5 approved by the Secretary:

6 “(i) Any mortgagee approved by the
7 Secretary for participation in the single
8 family mortgage insurance program under
9 title II of the National Housing Act (12
10 U.S.C.A. 1707 et seq.).

11 “(ii) Any lender that makes housing
12 loans under chapter 37 of title 38, United
13 States Code, that are automatically guar-
14 anteed under section 3702(d) of title 38,
15 United States Code.

16 “(iii) Any lender approved by the Sec-
17 retary of Agriculture to make guaranteed
18 loans for single family housing under the
19 Housing Act of 1949 (42 U.S.C.A. 1441 et
20 seq.).

21 “(iv) Any other lender that is super-
22 vised, approved, regulated, or insured by
23 any agency of the Federal Government.

24 “(5) TERMS.—The loan shall—

1 “(A) be made for a term not exceeding 30
2 years;

3 “(B) bear interest (exclusive of the guar-
4 antee fee under subsection (d) and service
5 charges, if any) at a rate agreed upon by the
6 borrower and the lender and determined by the
7 Secretary to be reasonable, but not to exceed
8 the rate generally charged in the area (as deter-
9 mined by the Secretary) for home mortgage
10 loans not guaranteed or insured by any agency
11 or instrumentality of the Federal Government;

12 “(C) involve a principal obligation not ex-
13 ceeding—

14 “(i) 97.75 percent of the appraised
15 value of the property as of the date the
16 loan is accepted for guarantee (or 98.75
17 percent if the value of the property is
18 \$50,000 or less); or

19 “(ii) the amount approved by the Sec-
20 retary under this section; and

21 “(D) involve a payment on account of the
22 property—

23 “(i) in cash or its equivalent; or

24 “(ii) through the value of any im-
25 provements to the property made through

1 the skilled or unskilled labor of the bor-
2 rower, as the Secretary shall provide.

3 “(d) CERTIFICATE OF GUARANTEE.—

4 “(1) APPROVAL PROCESS.—

5 “(A) IN GENERAL.—Before the Secretary
6 approves any loan for guarantee under this sec-
7 tion, the lender shall submit the application for
8 the loan to the Secretary for examination.

9 “(B) APPROVAL.—If the Secretary ap-
10 proves the application submitted under sub-
11 paragraph (A), the Secretary shall issue a cer-
12 tificate under this subsection as evidence of the
13 loan guarantee approved.

14 “(2) STANDARD FOR APPROVAL.—The Sec-
15 retary may approve a loan for guarantee under this
16 section and issue a certificate under this subsection
17 only if the Secretary determines that there is a rea-
18 sonable prospect of repayment of the loan.

19 “(3) EFFECT.—

20 “(A) IN GENERAL.—A certificate of guar-
21 antee issued under this subsection by the Sec-
22 retary shall be conclusive evidence of the eligi-
23 bility of the loan for guarantee under this sec-
24 tion and the amount of that guarantee.

1 “(B) EVIDENCE.—The evidence referred to
2 in subparagraph (A) shall be incontestable in
3 the hands of the bearer.

4 “(C) FULL FAITH AND CREDIT.—The full
5 faith and credit of the United States is pledged
6 to the payment of all amounts agreed to be paid
7 by the Secretary as security for the obligations
8 made by the Secretary under this section.

9 “(4) FRAUD AND MISREPRESENTATION.—This
10 subsection may not be construed—

11 “(A) to preclude the Secretary from estab-
12 lishing defenses against the original lender
13 based on fraud or material misrepresentation;
14 or

15 “(B) to bar the Secretary from establish-
16 ing by regulations that are on the date of
17 issuance or disbursement, whichever is earlier,
18 partial defenses to the amount payable on the
19 guarantee.

20 “(e) GUARANTEE FEE.—

21 “(1) IN GENERAL.—The Secretary shall fix and
22 collect a guarantee fee for the guarantee of a loan
23 under this section, which may not exceed the amount
24 equal to 1 percent of the principal obligation of the
25 loan.

1 “(2) PAYMENT.—The fee under this subsection
2 shall—

3 “(A) be paid by the lender at time of
4 issuance of the guarantee; and

5 “(B) be adequate, in the determination of
6 the Secretary, to cover expenses and probable
7 losses.

8 “(3) DEPOSIT.—The Secretary shall deposit
9 any fees collected under this subsection in the Na-
10 tive Hawaiian Housing Loan Guarantee Fund estab-
11 lished under subsection (j).

12 “(f) LIABILITY UNDER GUARANTEE.—The liability
13 under a guarantee provided under this section shall de-
14 crease or increase on a pro rata basis according to any
15 decrease or increase in the amount of the unpaid obliga-
16 tion under the provisions of the loan agreement involved.

17 “(g) TRANSFER AND ASSUMPTION.—Notwithstand-
18 ing any other provision of law, any loan guaranteed under
19 this section, including the security given for the loan, may
20 be sold or assigned by the lender to any financial institu-
21 tion subject to examination and supervision by an agency
22 of the Federal Government or of any State or the District
23 of Columbia.

24 “(h) DISQUALIFICATION OF LENDERS AND CIVIL
25 MONEY PENALTIES.—

1 “(1) IN GENERAL.—

2 “(A) GROUNDS FOR ACTION.—If the Sec-
3 retary determines that any lender or holder of
4 a guarantee certificate under subsection (c)—

5 “(i) has failed—

6 “(I) to maintain adequate ac-
7 counting records;

8 “(II) to service adequately loans
9 guaranteed under this section; or

10 “(III) to exercise proper credit or
11 underwriting judgment; or

12 “(ii) has engaged in practices other-
13 wise detrimental to the interest of a bor-
14 rower or the United States,

15 the Secretary may take action under subpara-
16 graph (B).

17 “(B) ACTIONS.—Upon a determination by
18 the Secretary that a holder of a guarantee cer-
19 tificate under subsection (c) has failed to carry
20 out an activity described in subparagraph (A)(i)
21 or has engaged in practices described in sub-
22 paragraph (A)(ii), the Secretary may—

23 “(i) refuse, either temporarily or per-
24 manently, to guarantee any further loans
25 made by such lender or holder;

1 “(ii) bar such lender or holder from
2 acquiring additional loans guaranteed
3 under this section; and

4 “(iii) require that such lender or hold-
5 er assume not less than 10 percent of any
6 loss on further loans made or held by the
7 lender or holder that are guaranteed under
8 this section.

9 “(2) CIVIL MONEY PENALTIES FOR INTEN-
10 TIONAL VIOLATIONS.—

11 “(A) IN GENERAL.—The Secretary may
12 impose a civil monetary penalty on a lender or
13 holder of a guarantee certificate under sub-
14 section (d) if the Secretary determines that the
15 holder or lender has intentionally failed—

16 “(i) to maintain adequate accounting
17 records;

18 “(ii) to adequately service loans guar-
19 anteed under this section; or

20 “(iii) to exercise proper credit or un-
21 derwriting judgment.

22 “(B) PENALTIES.—A civil monetary pen-
23 alty imposed under this paragraph shall be im-
24 posed in the manner and be in an amount pro-
25 vided under section 536 of the National Hous-

1 ing Act (12 U.S.C.A. 1735f–1) with respect to
2 mortgagees and lenders under that Act.

3 “(3) PAYMENT ON LOANS MADE IN GOOD
4 FAITH.—Notwithstanding paragraphs (1) and (2), if
5 a loan was made in good faith, the Secretary may
6 not refuse to pay a lender or holder of a valid guar-
7 antee on that loan, without regard to whether the
8 lender or holder is barred under this subsection.

9 “(i) PAYMENT UNDER GUARANTEE.—

10 “(1) LENDER OPTIONS.—

11 “(A) IN GENERAL.—

12 “(i) NOTIFICATION.—If a borrower on
13 a loan guaranteed under this section de-
14 faults on the loan, the holder of the guar-
15 antee certificate shall provide written no-
16 tice of the default to the Secretary.

17 “(ii) PAYMENT.—Upon providing the
18 notice required under clause (i), the holder
19 of the guarantee certificate shall be enti-
20 tled to payment under the guarantee (sub-
21 ject to the provisions of this section) and
22 may proceed to obtain payment in 1 of the
23 following manners:

24 “(I) FORECLOSURE.—

1 “(aa) IN GENERAL.—The
2 holder of the certificate may initi-
3 ate foreclosure proceedings (after
4 providing written notice of that
5 action to the Secretary).

6 “(bb) PAYMENT.—Upon a
7 final order by the court authoriz-
8 ing foreclosure and submission to
9 the Secretary of a claim for pay-
10 ment under the guarantee, the
11 Secretary shall pay to the holder
12 of the certificate the pro rata
13 portion of the amount guaran-
14 teed (as determined pursuant to
15 subsection (f)) plus reasonable
16 fees and expenses as approved by
17 the Secretary.

18 “(cc) SUBROGATION.—The
19 rights of the Secretary shall be
20 subrogated to the rights of the
21 holder of the guarantee. The
22 holder shall assign the obligation
23 and security to the Secretary.

24 “(II) NO FORECLOSURE.—

1 “(aa) IN GENERAL.—With-
2 out seeking foreclosure (or in any
3 case in which a foreclosure pro-
4 ceeding initiated under clause (i)
5 continues for a period in excess
6 of 1 year), the holder of the
7 guarantee may submit to the
8 Secretary a request to assign the
9 obligation and security interest to
10 the Secretary in return for pay-
11 ment of the claim under the
12 guarantee. The Secretary may
13 accept assignment of the loan if
14 the Secretary determines that the
15 assignment is in the best interest
16 of the United States.

17 “(bb) PAYMENT.—Upon as-
18 signment, the Secretary shall pay
19 to the holder of the guarantee
20 the pro rata portion of the
21 amount guaranteed (as deter-
22 mined under subsection (f)).

23 “(cc) SUBROGATION.—The
24 rights of the Secretary shall be
25 subrogated to the rights of the

1 holder of the guarantee. The
2 holder shall assign the obligation
3 and security to the Secretary.

4 “(B) REQUIREMENTS.—Before any pay-
5 ment under a guarantee is made under sub-
6 paragraph (A), the holder of the guarantee
7 shall exhaust all reasonable possibilities of col-
8 lection. Upon payment, in whole or in part, to
9 the holder, the note or judgment evidencing the
10 debt shall be assigned to the United States and
11 the holder shall have no further claim against
12 the borrower or the United States. The Sec-
13 retary shall then take such action to collect as
14 the Secretary determines to be appropriate.

15 “(2) LIMITATIONS ON LIQUIDATION.—

16 “(A) IN GENERAL.—If a borrower defaults
17 on a loan guaranteed under this section that in-
18 volves a security interest in restricted Hawaiian
19 Home Land property, the mortgagee or the
20 Secretary shall only pursue liquidation after of-
21 fering to transfer the account to another eligi-
22 ble Hawaiian family or to the Department of
23 Hawaiian Home Lands.

24 “(B) LIMITATION.—If, after action is
25 taken under subparagraph (A), the mortgagee

1 or the Secretary subsequently proceeds to liq-
2 uidate the account, the mortgagee or the Sec-
3 retary shall not sell, transfer, or otherwise dis-
4 pose of or alienate the property described in
5 subparagraph (A) except to another eligible Ha-
6 waiian family or to the Department of Hawai-
7 ian Home Lands.

8 “(j) HAWAIIAN HOUSING LOAN GUARANTEE
9 FUND.—

10 “(1) ESTABLISHMENT.—There is established in
11 the Treasury of the United States the Hawaiian
12 Housing Loan Guarantee Fund for the purpose of
13 providing loan guarantees under this section.

14 “(2) CREDITS.—The Guarantee Fund shall be
15 credited with—

16 “(A) any amount, claims, notes, mort-
17 gages, contracts, and property acquired by the
18 Secretary under this section, and any collections
19 and proceeds therefrom;

20 “(B) any amounts appropriated pursuant
21 to paragraph (7);

22 “(C) any guarantee fees collected under
23 subsection (d); and

24 “(D) any interest or earnings on amounts
25 invested under paragraph (4).

1 “(3) USE.—Amounts in the Guarantee Fund
2 shall be available, to the extent provided in appro-
3 priations Acts, for—

4 “(A) fulfilling any obligations of the Sec-
5 retary with respect to loans guaranteed under
6 this section, including the costs (as that term is
7 defined in section 502 of the Federal Credit Re-
8 form Act of 1990 (2 U.S.C. 661a)) of such
9 loans;

10 “(B) paying taxes, insurance, prior liens,
11 expenses necessary to make fiscal adjustment in
12 connection with the application and transmittal
13 of collections, and other expenses and advances
14 to protect the Secretary for loans which are
15 guaranteed under this section or held by the
16 Secretary;

17 “(C) acquiring such security property at
18 foreclosure sales or otherwise;

19 “(D) paying administrative expenses in
20 connection with this section; and

21 “(E) reasonable and necessary costs of re-
22 habilitation and repair to properties that the
23 Secretary holds or owns pursuant to this sec-
24 tion.

1 “(4) INVESTMENT.—Any amounts in the Guar-
2 antee Fund determined by the Secretary to be in ex-
3 cess of amounts currently required at the time of the
4 determination to carry out this section may be in-
5 vested in obligations of the United States.

6 “(5) LIMITATION ON COMMITMENTS TO GUAR-
7 ANTEE LOANS AND MORTGAGES.—

8 “(A) REQUIREMENT OF APPROPRIA-
9 TIONS.—The authority of the Secretary to enter
10 into commitments to guarantee loans under this
11 section shall be effective for any fiscal year to
12 the extent, or in such amounts as, are or have
13 been provided in appropriations Acts, without
14 regard to the fiscal year for which such
15 amounts were appropriated.

16 “(B) LIMITATIONS ON COSTS OF GUARAN-
17 TEES.—The authority of the Secretary to enter
18 into commitments to guarantee loans under this
19 section shall be effective for any fiscal year only
20 to the extent that amounts in the Guarantee
21 Fund are or have been made available in appro-
22 priations Acts to cover the costs (as that term
23 is defined in section 502 of the Federal Credit
24 Reform Act of 1990 (2 U.S.C. 661a)) of such
25 loan guarantees for such fiscal year. Any

1 amounts appropriated pursuant to this subpara-
2 graph shall remain available until expended.

3 “(C) LIMITATION ON OUTSTANDING AG-
4 GREGATE PRINCIPAL AMOUNT.—Subject to the
5 limitations in subparagraphs (A) and (B), the
6 Secretary may enter into commitments to guar-
7 antee loans under this section for each of fiscal
8 years 1999, 2000, 2001, 2002, and 2003 with
9 an aggregate outstanding principal amount not
10 exceeding \$100,000,000 for each such fiscal
11 year.

12 “(6) LIABILITIES.—All liabilities and obliga-
13 tions of the assets credited to the Guarantee Fund
14 under paragraph (2)(A) shall be liabilities and obli-
15 gations of the Guarantee Fund.

16 “(7) AUTHORIZATION OF APPROPRIATIONS.—
17 There are authorized to be appropriated to the
18 Guarantee Fund to carry out this section such sums
19 as may be necessary for each of fiscal years 1999,
20 2000, 2001, 2002, and 2003.

21 “(k) REQUIREMENTS FOR STANDARD HOUSING.—

22 “(1) IN GENERAL.—The Secretary shall, by
23 regulation, establish housing safety and quality
24 standards to be applied for use under this section.

1 “(2) STANDARDS.—The standards referred to
2 in paragraph (1) shall—

3 “(A) provide sufficient flexibility to permit
4 the use of various designs and materials in
5 housing acquired with loans guaranteed under
6 this section; and

7 “(B) require each dwelling unit in any
8 housing acquired in the manner described in
9 subparagraph (A) to—

10 “(i) be decent, safe, sanitary, and
11 modest in size and design;

12 “(ii) conform with applicable general
13 construction standards for the region in
14 which the housing is located;

15 “(iii) contain a plumbing system
16 that—

17 “(I) uses a properly installed sys-
18 tem of piping;

19 “(II) includes a kitchen sink and
20 a partitional bathroom with lavatory,
21 toilet, and bath or shower; and

22 “(III) uses water supply, plumb-
23 ing, and sewage disposal systems that
24 conform to any minimum standards

1 established by the applicable county or
2 State;

3 “(iv) contain an electrical system
4 using wiring and equipment properly in-
5 stalled to safely supply electrical energy for
6 adequate lighting and for operation of ap-
7 pliances that conforms to any appropriate
8 county, State, or national code;

9 “(v) be not less than the size provided
10 under the applicable locally adopted stand-
11 ards for size of dwelling units, except that
12 the Secretary, upon request of the Depart-
13 ment of Hawaiian Home Lands may waive
14 the size requirements under this para-
15 graph; and

16 “(vi) conform with the energy per-
17 formance requirements for new construc-
18 tion established by the Secretary under
19 section 526(a) of the National Housing
20 Act (12 U.S.C.A. 1735f-4), unless the Sec-
21 retary determines that the requirements
22 are not applicable.

23 “(1) APPLICABILITY OF CIVIL RIGHTS STATUTES.—
24 To the extent that the requirements of title VI of the Civil
25 Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of title

1 VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et
2 seq.) apply to a guarantee provided under this subsection,
3 nothing in the requirements concerning discrimination on
4 the basis of race shall be construed to prevent the provi-
5 sion of the guarantee to an eligible entity on the basis
6 that the entity serves Native Hawaiian families or is a Na-
7 tive Hawaiian family.”.

Passed the Senate October 16 (legislative day, Octo-
ber 2), 1998.

Attest:

Secretary.

105TH CONGRESS
2^D SESSION

S. 109

AN ACT

To provide Federal housing assistance to Native
Hawaiians.