

the statute and regulations. Notwithstanding the fact that the housing in existing communities was not developed with NHHBG funds, NHHBG funds may be used to assist existing communities if the existing housing complies with the requirements for affordable housing. HUD notes that under both section 813(b) of the Act (25 U.S.C. 4232(b)) and, § 1006.305(d) of the regulations, housing assisted with NHHBG funds pursuant to the exception to low-income requirement at section 809(a)(2)(B) of the Act (25 U.S.C. 4228(a)(2)(B)), and § 1006.301(b) of the regulations, shall be considered affordable housing for purposes of the Act.

Section 1006.220 Crime Prevention and Safety Activities

Comment: DHHL would like to provide services within existing communities, even if there are no NAHASDA-assisted units within the communities at the present time.

HUD response: HUD's response to the comment on § 1006.201 addresses this issue.

Section 1006.225 Model Activities

Comment: DHHL would like to provide services within existing communities, even if there are no NAHASDA-assisted units within the communities at the present time.

HUD response: HUD's response to the comment on § 1006.201 addresses this issue.

Eligible Activities (Subpart C Generally)

Comment: In the case of activities such as site improvements or development of utilities that benefit the whole community, "all units in a project should be considered as Eligible Low-Income Families" if the families in the project are existing residents and any of the following:

(a) The median income of the Hawaiian Home Lands area in which the project is located is less than 80 percent of the median income of the state of Hawaii (based on the most recent U.S. Census data available); or

(b) The project has a poverty rate of at least 20 percent; or

(c) The project is located in a low-income area of the U.S. Treasury Department's Community Development Financial Institutions (CDFI) Fund Online Help Desk Maps.

There should be criteria to qualify whole communities as low-income because where there are existing residents, the effort to certify individual families as low-income becomes an imposition on the residents and burdensome to the DHHL. The rule

should not serve as a disincentive to provide affordable housing activities in existing communities.

HUD response: The authorizing statute permits exceptions to the low-income requirement and allows NHHBG funds to be used for housing activities under model programs that are designed to carry out the purposes of title VIII of the Act. The use of NHHBG funds under the low-income exception and for model activities both require HUD approval. HUD encourages the submission of specific planned model activities and requests for exemptions for review with conformity to the Act's requirements.

Comment: The rule restricts the use of funds to communities in which there are existing NAHASDA-assisted units, and prevents DHHL from strengthening or enabling existing communities with NAHASDA funds. [Note: Although the comment spoke of "NAHASDA-assisted units" and "NAHASDA funds" it is clear that NHHBG assistance is the intended subject.]

HUD response: HUD's response to the comment on § 1006.201 addresses this issue.

Comment: There may be a need to improve off-site infrastructure to access DHHL property through non-DHHL properties. The current rule appears to preclude such projects. Expanding the definition of "housing area" would allow funding of off-site infrastructure improvements.

HUD response: Under section 810(b)(1) of the Act, the development of affordable housing may include both site improvements and the development of utilities and utility services. Site improvements must be on the site of the affordable housing. The affordable housing must be located on a "housing area" which is defined by section 801(5) of the Act to mean an area of the Hawaiian Home Lands with respect to which the DHHL is authorized to provide assistance for affordable housing under the Act. Although the affordable housing must be located on the Hawaiian Home Lands, the utilities need not necessarily be located there. However, the utilities must be for the affordable housing.

Section 1006.310 Rent and Lease-Purchase Limitations

Comment: For rental and rent-to-own units, each entering family must qualify as low-income. For homeownership, only the initial family must qualify as low-income.

HUD response: The regulatory requirements reflect the statutory requirements at section 813(a) of the Act (25 U.S.C. 4232(a)).

Comment: Because the monthly maximum rent or lease-purchase payment may not exceed 30 percent of a low-income family's income, this cap may preclude the establishment of flat rents or lease-purchase payments based on operational costs or market factors.

HUD response: The 30 percent of income requirement is statutory (25 U.S.C. 4230(a)(2), section 811(a) of the Act) and applies "in the case of any low-income family." Where a family that is not low-income is assisted, if permitted under the exception discussed earlier in this preamble, the 30 percent of income requirement does not apply. (See § 1006.310(c).)

Section 1006.315 Lease Requirements

Comment: Currently DHHL will take action against the lessee only if the illegal activity is conducted on the leased premises.

HUD response: The regulation allows this flexibility, and provides, at § 1006.315(f), that "the DHHL, owner, or manager may terminate the tenancy." (Emphasis added.) Termination is discretionary, not mandatory.

Section 1006.320 Tenant or Homebuyer Selection

Comment: DHHL plans to use current state administrative rules, which govern the awarding of leases to applicants on the waiting lists for Hawaiian Home Lands with the addition of the NAHASDA income requirement for this purpose.

HUD response: The policies and criteria adopted by the DHHL as required by the Act, must be available for review by HUD, and the housing plan submitted annually by the DHHL must contain a certification that the DHHL has such policies in effect. HUD will bring any concerns it may have with respect to such policies to the DHHL's attention upon conducting such reviews.

Section 1006.330 Insurance Coverage

Comment: Would HUD be required to be named as an additional insured on homeowner units funded by the Act or does the insurance requirement apply only on rental units purchased or constructed by DHHL with NAHASDA funds and owned and managed by DHHL?

HUD response: The insurance requirement is intended to preserve the NHHBG investment in affordable housing and not to provide any compensation to HUD. HUD is not named as an additional insured on any units, but the DHHL must require the owner of any rental or homeownership unit assisted with more than \$5,000 of