

NHHBG funds to obtain insurance sufficient to cover the replacement cost of the unit.

*Section 1006.335 Use of Nonprofit Organizations and Public-Private Partnerships*

*Comment:* Because of the limited number of experienced nonprofit developers in Hawaii, the requirement to work with nonprofits to the extent practicable may serve as an obstacle to the development of affordable housing.

*HUD response:* The DHHL is in the best position to determine the extent to which it is practicable to work with nonprofits. This requirement is not intended to hinder the DHHL's affordable housing efforts.

*Section 1006.340 Treatment of Program Income*

*Comment:* New grant funds should be accessible even if there is available program income remaining, because it may be impracticable to exhaust all program income first.

*HUD response:* The requirement to disburse program income first in § 1006.340(b)(3) merely repeats the governmentwide requirements of Office of Management and Budget (OMB) Circular A-102, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," which has been adopted by HUD at 24 CFR part 85. It is not necessary to exhaust all program income first as the comment states. Under 24 CFR 1006.340(c), if the total amount of program income received in a single year does not exceed \$25,000, then the amount is not considered program income and is not subject to the requirement that it be disbursed before disbursing additional NHHBG funds. Program income would not have to be disbursed unless and until it is determined that the \$25,000 threshold has been crossed. The requirement is intended to avoid the stockpiling and non-use of program income.

*Section 1006.345 Labor Standards*

*Comment:* DHHL partners with nonprofits that use self-help and volunteer labor to bring down housing costs for low-income families. These efforts would be hampered by a wage requirement.

*HUD response:* Volunteer labor is specifically exempted, under the conditions specified in section 805(b)(2) of the Act (25 U.S.C. 4225(b)(2)), and § 1006.345(d) of the regulations, from the wage requirement.

*Section 1007.1 Purpose*

*Comment:* The purpose section of the regulations states that HUD understands homestead leases have unique legal status; therefore, HUD is aware that homestead leases are not alienable.

*HUD response:* Section 208(6) of the Hawaiian Homes Commission Act (HHCA) provides that:

The lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the state or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

The HHCA specifically permits the lessee of a homestead lease to pledge the lessee's interest in the tract or improvements, which provides a sufficient basis for mortgage lending to proceed in the unique circumstances of the Hawaiian Home Lands. As a practical matter, the federal government's insurance or guarantee of the loan, rather than the value of the property, provides the actual financial security for a lender to an individual Native Hawaiian borrower in these transactions. Under the HHCA, general leases are clearly alienable.

HUD notes that nearly all of the comments submitted on the Section 184A program address issues of loans to individual, Native Hawaiian borrowers who hold homestead leases, the same group of borrowers directly served by the existing Federal Housing Administration (FHA) Section 247 mortgage insurance program. Because of the unique status of Hawaiian Home Lands, the Section 247 program focuses on loans to individual, Native Hawaiian borrowers. This focus is exemplified by one of the principal purposes of the HHCA, "Preventing alienation of the fee title to the lands set aside under this Act so that these lands will always be held in trust for continued use by native Hawaiians in perpetuity," HHCA § 101(b)(3)). This focus raises a number of difficulties in implementation, among them, issues concerning the security offered for a loan, and valuation of, foreclosure on, and sale after foreclosure of the security. However, the use of

Section 184A loan guarantees is not limited to individual homebuyers, and HUD wishes to emphasize the significant difference between the new Section 184A program and the Section 247 program.

The Section 184A program does not merely duplicate the Section 247 program, which focuses exclusively on loans to individual native Hawaiian families holding homestead leases. For reasons of efficiency and ease of administration, and to capitalize on familiarity in order to promote acceptance by the lending industry, HUD intends to administer both the Section 184A and Section 247 programs in a consistent manner with respect to individual, Native Hawaiian borrowers, who are eligible under either program. But to fully implement, and derive the maximum benefit from, the Section 184A program, HUD has concluded that it will emphasize and strongly encourage the use of the Section 184A program in ways that do not duplicate the Section 247 program.

The conclusion for not having the Section 184A program duplicate the Section 247 program comes from HUD's consideration of the broader range of eligible borrowers under the Section 184A program statute, the flexibility permitted for eligible collateral, and the larger scale of the activities that may be undertaken with the greater amount of guaranteed funds available to a borrower. HUD, therefore, strongly encourages the use of Section 184A loan guarantees by the institutional borrowers (DHHL, Office of Hawaiian Affairs, experienced nonprofits) specifically made eligible under the statute. These institutional borrowers may negotiate with lenders for larger loans, up to the limits HUD is authorized to guarantee, to obtain financing for large-scale, integrated infrastructure, homeownership development projects on the Hawaiian Home Lands. Section 184A allows this type of community-wide, rather than single home, development and, to the fullest extent possible, HUD encourages the use of the program for such projects.

Under such a project, for example, the DHHL could develop and pay for the cost of a number of homes and supporting infrastructure, using a combination of NHHBG funds and Section 184A guaranteed loan proceeds. The loan collateral could be any bonds or notes the DHHL is authorized to issue. The grant funds could cover the infrastructure costs, and the loan proceeds could cover the cost of the homes. If the DHHL chooses to provide direct financing to a Native Hawaiian leaseholder for one of these homes, the