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(2) *Summary of comments.* The report under this section must include a summary of any comments received by the DHHL from beneficiaries under paragraph (c)(1) of this section, regarding the program to carry out the housing plan.

(d) *HUD review.* HUD will:

(1) Review each report submitted under the Act and this part; and

(2) With respect to each such report, make recommendations as HUD considers appropriate to carry out the purposes of the Act.

§ 1006.420 Review of DHHL's performance.

(a) *Objective.* HUD will, at least annually, review DHHL's performance to determine whether the DHHL has:

(1) Carried out eligible activities in a timely manner;

(2) Carried out and made certifications in accordance with the requirements and the primary objectives of the Act and this part and with other applicable laws;

(3) A continuing capacity to carry out the eligible activities in a timely manner;

(4) Complied with its housing plan; and

(5) Submitted accurate performance reports.

(b) *Basis for review.* In reviewing DHHL's performance, HUD will consider all available evidence, which may include, but not be limited to, the following:

(1) The DHHL's housing plan and any amendments thereto;

(2) Reports prepared by the DHHL;

(3) Records maintained by the DHHL;

(4) Results of HUD's monitoring of the DHHL's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

(c) The DHHL's failure to maintain records may result in a finding that the DHHL failed to meet the applicable requirement to which the record pertains.

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§ 1006.430 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of a performance review, HUD determines that the DHHL has not:

(1) Complied with the requirements of the Act and this part and other applicable laws and regulations, including the environmental responsibilities assumed under § 1006.350;

(2) Carried out its activities substantially as described in its housing plan;

(3) Made substantial progress in carrying out its program and achieving its quantifiable goals as described in its housing plan; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Issue a letter of warning advising the DHHL of the performance problem(s), describing the corrective actions that HUD believes should be taken, establishing a completion date for corrective actions, and notifying the DHHL that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the DHHL to submit progress schedules for completing activities or complying with the requirements of the Act and this part;

(3) Recommend that the DHHL suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the DHHL redirect funds from affected activities to other eligible activities;

(5) Recommend that the DHHL reimburse its program account or line of credit under the Act in the amount improperly expended and reprogram the use of the funds; and

(6) Recommend that the DHHL obtain appropriate technical assistance using existing grant funds or other

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available resources to overcome the performance problem(s).

§ 1006.440 Remedies for noncompliance.

(a) *Remedies.* If HUD finds that the DHHL has failed to comply substantially with any provision of the Act or this part, the following actions may be taken by HUD:

(1) Terminate payments to the DHHL;

(2) Reduce payments to the DHHL by an amount equal to the amount not expended in accordance with the Act or this part;

(3) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply; or

(4) Adjust, reduce or withdraw grant amounts or take other action as appropriate in accordance with reviews and audits.

(b) *Exception.* Grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the DHHL.

(c) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(d) *Hearing requirement.* Before imposing remedies under this section, HUD will:

(1) Take at least one of the corrective or remedial actions specified under § 1006.430 and permit the DHHL to make an appropriate and timely response;

(2) Provide the DHHL with the opportunity for an informal consultation with HUD regarding the proposed action; and

(3) Provide DHHL with reasonable notice and opportunity for a hearing.

(e) *Continuance of actions.* If HUD takes an action under paragraph (a) of this section, the action will continue until HUD determines that the failure of the DHHL to comply with the provision has been remedied and the DHHL is in compliance with the provision.

(f) *Referral to the Attorney General.* In lieu of, or in addition to, any action

HUD may take under paragraph (a) of this section, if HUD has reason to believe that the DHHL has failed to comply substantially with any provision of the Act or this part, HUD may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon receiving a referral, the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under the Act that was not expended in accordance with the Act or this part or for mandatory or injunctive relief.

PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

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AUTHORITY: 12 U.S.C. 1715z-13b; 42 U.S.C. 3535(d).

SOURCE: 67 FR 40776, June 13, 2002, unless otherwise noted.

§ 1007.1 Purpose.

This part provides the requirements and procedures that apply to loan guarantees for Native Hawaiian Housing under section 184A of the Housing and Community Development Act of 1992. Section 184A permits HUD to guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan. The purpose of section 184A and this part is to provide access to sources of private financing to Native Hawaiian families