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TITLE 25—INDIANS

CHAPTER 43--NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION
SUBCHAPTER VIII--HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

Sec. 4221. Definitions

In this subchapter:

(1) Department of Hawaiian Home Lands; Department

The term ``Department of Hawaiian Home Lands'' or ``Department'' means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(2) Director

The term ``Director'' means the Director of the Department of Hawaiian Home Lands.

(3) Elderly families; near-elderly families

(A) In general

The term ``elderly family'' or ``near-elderly family'' means a family whose head (or his or her spouse), or whose sole member, is—

- (i) for an elderly family, an elderly person; or
- (ii) for a near-elderly family, a near-elderly person.

(B) Certain families included

The term ``elderly family'' or ``near-elderly family'' includes—
(i) two or more elderly persons or near-elderly persons, as the case may be, living together; and
(ii) one or more persons described in clause (i) living with one or more persons determined under the housing plan to be essential to their care or well-being.

(4) Hawaiian Home Lands

The term ``Hawaiian Home Lands'' means lands that—

(A) have the status as Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 110); or

(B) are acquired pursuant to that Act.

(5) Housing area

The term ``housing area'' means an area of Hawaiian Home Lands with respect to which the Department of Hawaiian Home Lands is

authorized to provide assistance for affordable housing under this chapter.

(6) Housing entity

The term ``housing entity'' means the Department of Hawaiian Home Lands.

(7) Housing plan

The term ``housing plan'' means a plan developed by the Department of Hawaiian Home Lands.

(8) Median income

The term ``median income'' means, with respect to an area that is a Hawaiian housing area, the greater of—

- (A) the median income for the Hawaiian housing area, which shall be determined by the Secretary; or
- (B) the median income for the State of Hawaii.

(9) Native Hawaiian

The term ``Native Hawaiian'' means any individual who is—

- (A) a citizen of the United States; and
- (B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—
 - (i) genealogical records;
 - (ii) verification by kupuna (elders) or kama`aina (long-term community residents); or
 - (iii) birth records of the State of Hawaii.

(Pub. L. 104-330, title VIII, Sec. 801, as added Pub. L. 106-568, title II, Sec. 203, Dec. 27, 2000, 114 Stat. 2876, and Pub. L. 106-569, title V, Sec. 513, Dec. 27, 2000, 114 Stat. 2969.)

References in Text

The Hawaiian Homes Commission Act, 1920, referred to in pars. (1) and (4)(B), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code. This chapter, referred to in par. (5), was in the original ``this Act'', meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Codification

Pub. L. 106-568, Sec. 203, and Pub. L. 106-569, Sec. 513, enacted substantially identical sections 801 of Pub. L. 104-330. This section is based on the text of section 801 of Pub. L. 104-330, as added by Pub. L. 106-569, Sec. 513.

Effective Date

Pub. L. 104-330, title VIII, Sec. 808, as added by Pub. L. 106-569, title V, Sec. 513, Dec. 27, 2000, 114 Stat. 2979, provided that: ``Except as otherwise expressly provided in this title [enacting this subchapter], this title shall take effect on the date of the enactment of the American Homeownership and Economic Opportunity Act of 2000 [Pub. L. 106-569, approved Dec. 27, 2000].''

Pub. L. 104-330, title VIII, Sec. 808, as added by Pub. L. 106-568, title II, Sec. 203, Dec. 27, 2000, 114 Stat. 2885, provided that: ``Except as otherwise expressly provided in this title [enacting this subchapter], this title shall take effect on the date of the enactment of the Native American Housing Assistance and Self-Determination Amendments of 2000 [probably should be the Hawaiian Homelands Ownership Act of 2000, title II of Pub. L. 106-568, approved Dec. 27, 2000].''

Findings

Pub. L. 106-569, title V, Sec. 512, Dec. 27, 2000, 114 Stat. 2966, provided that: ``The Congress finds that--

``(1) the United States has undertaken a responsibility to promote the general welfare of the United States by--

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

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

``(2) the United States has a special responsibility for the welfare of the Native peoples of the United States, including Native Hawaiians;

``(3) pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) [former 48 U.S.C. 691 et seq.], the United States set aside 200,000 acres of land in the Federal territory that later became the State of Hawaii in order to establish a homeland for the native people of Hawaii--Native Hawaiians;

``(4) despite the intent of Congress in 1920 to address the housing needs of Native Hawaiians through the enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), Native Hawaiians eligible to reside on the Hawaiian home lands have been foreclosed from participating in Federal housing assistance programs available to all other eligible families in the United States;

``(5) although Federal housing assistance programs have been administered on a racially neutral basis in the State of Hawaii, Native Hawaiians continue to have the greatest unmet need for housing and the highest rates of overcrowding in the United States;

``(6) among the Native American population of the United States, Native Hawaiians experience the highest percentage of housing problems in the United States, as the percentage--

``(A) of housing problems in the Native Hawaiian population is 49 percent, as compared to--

``(i) 44 percent for American Indian and Alaska Native households in Indian country; and

``(ii) 27 percent for all other households in the United States; and

``(B) overcrowding in the Native Hawaiian population is 36 percent as compared to 3 percent for all other households in the United States;

``(7) among the Native Hawaiian population, the needs of Native Hawaiians, as that term is defined in section 801 of the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4221] (as added by this subtitle), eligible to reside on the Hawaiian Home Lands are the most severe, as—

``(A) the percentage of overcrowding in Native Hawaiian households on the Hawaiian Home Lands is 36 percent; and

``(B) approximately 13,000 Native Hawaiians, which constitute 95 percent of the Native Hawaiians who are eligible to reside on the Hawaiian Home Lands, are in need of housing;

``(8) applying the Department of Housing and Urban Development guidelines—

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

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

``(9) one-third of those Native Hawaiians who are eligible to reside on the Hawaiian Home Lands pay more than 30 percent of their income for shelter, and one-half of those Native Hawaiians face overcrowding;

``(10) the extraordinarily severe housing needs of Native Hawaiians demonstrate that Native Hawaiians who either reside on, or are eligible to reside on, Hawaiian Home Lands have been denied equal access to Federal low-income housing assistance programs available to other qualified residents of the United States, and that a more effective means of addressing their housing needs must be authorized;

``(11) consistent with the recommendations of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing, and in order to address the continuing prevalence of extraordinarily severe housing needs among Native Hawaiians who either reside or are eligible to reside on the Hawaiian Home Lands, Congress finds it necessary to extend the Federal low-income housing assistance available to American Indians and Alaska Natives under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) to those Native Hawaiians;

``(12) under the treaty making power of the United States, Congress had the constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

``(13) the United States has recognized and reaffirmed that—

``(A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;

``(B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;

``(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii;

``(D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and

``(E) the aboriginal, indigenous people of the United States have—

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

``(ii) an ongoing right of self-determination and self-governance that has never been extinguished;

``(14) the political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States as evidenced by the inclusion of Native Hawaiians in—

``(A) the Native American Programs Act of 1974 (42 U.S.C. 2291 [2991] et seq.);

``(B) the American Indian Religious Freedom Act (42 U.S.C. 1996 et seq.);

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

``(D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

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

``(F) the Native American Languages Act of 1992 (106 Stat. 3434 [Pub. L. 102-524, see Short Title of 1992 Amendment note set out under section 2991 of Title 42, The Public Health and Welfare]);

``(G) the American Indian, Alaska Native and Native Hawaiian Culture and Arts [Art] Development Act (20 U.S.C. 4401 et seq.);

``(H) the Job Training Partnership Act ([former] 29 U.S.C. 1501 et seq.); and

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

``(15) in the area of housing, the United States has recognized and reaffirmed the political relationship with the Native Hawaiian people through—

``(A) the enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), which set aside approximately 200,000 acres of public lands that became known as Hawaiian Home Lands in the Territory of Hawaii that had been ceded to the United States for homesteading by Native Hawaiians in order to rehabilitate a landless and dying people;

``(B) the enactment of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 4) [Pub. L. 86-3, 48 U.S.C. note prec. 491]—

``(i) by ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust, for the betterment of the conditions of Native Hawaiians, as that term is defined in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.); and

``(ii) by transferring the United States responsibility for the administration of Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and

any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), enacted by the legislature of the State of Hawaii affecting the rights of beneficiaries under the Act;

``(C) the authorization of mortgage loans insured by the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act (Public Law 479; 73d Congress; 12 U.S.C. 1701 et seq.);

``(D) authorizing Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing under Public Law 101-235 [see Tables for classification];

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

``(F) the enactment of the Hawaiian Home Lands Recovery Act (109 Stat. 357; 48 U.S.C. 491, note prec.) [Pub. L. 104-42, title II] which establishes a process for the conveyance of Federal lands to the Department of Hawaiian Homes Lands that are equivalent in value to lands acquired by the United States from the Hawaiian Home Lands inventory.''

Substantially identical provisions were contained in Pub. L. 106- 568, title II, Sec. 202, Dec. 27, 2000, 114 Stat. 2872.