HAWAII ADMINISTRATIVE RULES
TITLE 17
DEPARTMENT OF HUMAN SERVICES
SUBTITLE 5
HAWAII HOUSING AUTHORITY
CHAPTER 534
STATE HOMELESS HALE KOKUA PROGRAM

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SUBCHAPTER 1

GENERAL PROVISIONS

§17-534-1 Purpose. This chapter governs the requirements for participation by eligible families and individuals and by housing owners in the state homeless hale kokua program as administered by the Hawaii housing authority. [Eff JAN 30 1994] (Auth: SLH 1992, Act 279, §3(12); HRS §356-10) (Imp: SLH 1992, Act 279 §2)

§17-534-2 Definitions. As used in this chapter:
"Adjusted income" means income as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter.
"Annual Income" means income as defined by 24 C.F.R. §813.106 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter.
"Applicant" means a homeless family or homeless individual who submits an application to participate as a tenant in the program.
"Assets" means the net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment.
"Authority" means the Hawaii housing authority, a public body and body corporate and politic of the State of Hawaii.
"Building" means the same as constructing.
"Chairperson" means the duly selected chair of the authority or designated representative.
§17-534-2

"Constructing" means building a new dwelling unit to be used as a rental unit.

"Coordinator" means the state homeless programs coordinator appointed by the executive director of the authority to develop and implement the program.

"Dwelling unit" means a house, apartment or group of rooms, intended for residential occupancy as separate living quarters with each unit having direct access from either the outside of the building or through a common hall and each unit being equipped with a kitchen and bathroom facilities for the exclusive use of the occupant.

"Executive director" means the executive director of the Hawaii housing authority or the designated representative.

"Fair monthly rent" means the maximum rent which may be charged by an owner for a rental unit.

"Family" means a group of persons regularly living together consisting of two or more persons related by blood, marriage, or adoption and including foster children and hanai children with at least one dependent person under eighteen years of age.

"Hanai children" means a person or persons, under eighteen years of age, for whom an applicant or tenant has provided food, nourishment, and support for a minimum period of at least a year prior to the time of application and who is acknowledged as the applicant's or tenant's child among friends, relatives, and the community.

"Homeless" means the following:

1. An individual or family who lacks a fixed, regular, and adequate nighttime residence; or

2. An individual or family who has a primary nighttime residence that is:
   (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
   (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
   (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

"Homeless assistance unit" means the same as rental unit.

"Improving" means the same as renovating.

"Monthly adjusted income" means income as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, and located at the end of this chapter.
“Owner” means the owner of a dwelling unit that is in existence or will be constructed or renovated and may include the agent of the owner of a dwelling unit. "Program" means the state homeless hale kokua program administered by the Hawaii housing authority. "Provider agency" means an organization, including the board and officers and any employees, contractor, or agents that is:

1. A profit organization incorporated under the laws of the State or a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; or

2. A nonprofit organization, with a governing board whose members have no material conflict of interest and serve without compensation with bylaws or policies that describe the manner in which business is conducted and policies that relate to nepotism and management of potential conflict of interest situations.

“Renovating” means improving an existing structure so that such structure will meet the requirements of a dwelling unit and will be used as a rental unit.

“Rent” means the monthly charge to a tenant for use of a rental unit.

“Rental unit” means a dwelling unit that is available to be rented by a tenant in the program.

“Respondent” means the party against whom a petition is filed, the party against whom relief is sought or, any party who contests or controverts a proceeding.

“State” means the State of Hawaii.


§17-534-3 Income limits. To be eligible to participate or to continue to participate in the program, an applicant's or tenant's annual income and assets shall not exceed the lower income limits as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-4 Assets. All assets held by an
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applicant or a tenant shall be determined as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff [JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-5 **Asset limits.** An applicant or a tenant having assets which are valued at more than one and one-half times the income limit set forth in section 17-534-3, shall be ineligible to participate or to continue to participate in the program. [Eff [JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-6 **Asset transfer.** (a) All assets transferred or assigned to another person, within a three month period prior to submitting an application to participate, or for the purpose of continuing to qualify for participation in the program shall be included in determining an applicant's or tenant's assets.


§17-534-7 **Occupancy standards.** Eligible applicants or tenants shall occupy the rental unit in accordance with the ordinances of the county in which the rental unit is located. [Eff [JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-8 **Verification of information.** (a) The authority shall require an applicant, tenant, or owner to provide documentation to verify information relating to participation in the program. This documentation may include, but not be limited to, employment, financial, housing status, and property information.

(b) An applicant or owner that fails to comply with the requirement to provide documentation shall be ineligible to participate in the program.

(c) A tenant that fails to comply with the requirement to provide documentation shall be ineligible to continue to participate in the program. [Eff [JUN 30 1994] (Auth: SLH 1992, Act 279,
§17-534-9  Ineligibility.  (a) Any applicant, tenant or owner that has been determined to be ineligible by the authority may request an informal hearing before the executive director to reconsider the determination of the authority. Any request for hearing for reconsideration shall be made in writing and shall be filed with the executive director within ten days of the determination of the authority. The request shall state the grounds for the request for reconsideration.

(b) Upon receipt of the request, the executive director shall schedule a hearing. Notice shall be provided to all parties upon the scheduling of a hearing.

(c) The executive director shall render a decision within thirty days after the hearing. If the decision is adverse to the party requesting the hearing, then such party may request a contested case hearing pursuant to subchapter 7. The notice of a request for a contested case hearing shall be filed with the authority within ten days of the decision by the executive director.  [Eff JUN 30 1994]  (Auth: SLH 1992, Act 279, §3(12))  (Imp: SLH 1992, Act 279, §2)

§17-534-10 Exceptions. The executive director may for good cause grant an exception to any provision in this chapter to the extent permitted by law where:

1. The applicant, tenant or owner has otherwise demonstrated the necessary qualifications; and

2. Each such exception shall be in writing and shall be supported by documentation of the pertinent facts and grounds.  [Eff JUN 30 1994]  (Auth: SLH 1992, Act 279, §3(12))  (Imp: SLH 1992, Act 279, §2)

§17-534-20 Tenant application. (a) An applicant seeking to participate in the program shall submit an application form, as prescribed by the authority. The form shall be completed to the satisfaction of the authority and shall include, but not be limited to, the applicant's name, age, address, marital status, name of spouse, present housing status, employment status, income and asset information, citizenship status, and family composition information.

(b) An applicant shall submit documentation as required by the authority and shall execute a release of information form for any other information required by the authority to verify the applicant's eligibility or continued eligibility.

(c) An applicant shall execute a waiver of information disclosure form in order for the authority to release such information to an owner in the selection process. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act, 279, §3(2))

§17-534-21 Tenant eligibility for participation.
(a) To be eligible to participate or to continue to participate in the program, the applicant or tenant shall:

1. Submit a completed application;
2. Qualify as a homeless family or homeless individual;
3. Have family or individual income and assets which do not exceed the income limits and asset limits established by section 17-534-3 and section 17-534-5 respectively;
4. Have earning capabilities or have a financial situation which gives reasonable assurance of meeting the rental payments on time as they become due;
5. Not have an outstanding debt owed to the authority or to a county public housing agency;
6. Be employed at least nineteen hours per week;
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(7) Not have had a record of conduct or behavior for two years prior to the date of the application or reexamination that is harmful, destructive, or unlawful which may cause a threat to owners; and

(8) Agree to actively comply with the social services agreement established by section 17-534-61.

(b) A tenant shall be immediately ineligible to continue participation in the program upon termination of the social services agreement for such tenant. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act 279, §3(2))

§17-534-22 Tenant preference. (a) Eligible applicants shall be given preference for participation in the program in the following order:

(1) Homeless family residing in a transitional shelter subject to chapter 358D, Hawaii Revised Statutes;

(2) Homeless individuals residing in a transitional shelter subject to chapter 358D, Hawaii Revised Statutes;

(3) Homeless family whose nighttime residence is in a public area;

(4) Homeless individual whose nighttime residence is in a public area;

(5) Homeless family whose nighttime residence is other than a public area; and

(6) Homeless individual whose nighttime residence is other than a public area.

(b) In any one of the above categories, priority shall be given to eligible applicants in such category according to the length of time prior to the date of the application that such applicant was homeless in the state. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act 279, §3(2))

§17-534-23 Notification of ineligibility. An applicant or tenant determined to be ineligible for participating or continuing to participate in the program shall be notified in writing of the determination, the reasons thereof and the right to a hearing by the authority. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act 279, §3(2))
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§17-534-24 Reexamination. (a) The authority shall annually reexamine a tenant's annual income, assets, family composition, financial and employment record, conduct and behavior record, and any other matter necessary to determine a tenant's eligibility. The tenant shall be responsible for continuing to meet the eligibility requirements of section 17-534-21.

(b) The tenant shall be notified in writing by the authority of the reexamination results. [Eff JUN 3 0 1994 ] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act 279, §3(2))

§§17-534-25 to 17-534-29 (Reserved)

SUBCHAPTER 3

OWNER ELIGIBILITY AND SELECTION

§17-534-30 Owner application. (a) An owner seeking to participate in the program shall submit an application form, as prescribed by the authority. The form shall include, but not be limited to, the owner's name, address, agent's name, ownership information, property information, unit information, and rent information.

(b) An owner shall submit documentation as required by the authority and shall execute a release of information form in order for the authority to verify the owner's eligibility.

(c) An owner shall execute an agreement that any tenant information disclosed to the owner shall be held in confidence and shall not be released to anyone in any form.

(d) In the event an owner does not have a dwelling unit that meets the requirements of section 17-534-31, then such owner may apply for a construction grant pursuant to subchapter 4. [Eff JUN 3 0 1994 ] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§17-534-31 Rental unit requirements. A dwelling unit approved by the authority for use as a rental unit shall meet the following requirements:

(1) Have its own sanitary facilities which are in proper-operating condition, can be used in
§17-534-33

privacy, and are adequate for personal cleanliness and the disposal of human waste;
(2) Have suitable equipment to prepare, serve, and store foods in a sanitary manner;
(3) Provide adequate space and security;
(4) Be structurally sound so as not to pose any threat to the health and safety of the occupants;
(5) Be usable and capable of being maintained without unauthorized use of other private properties, and the unit shall provide an alternate means of egress in case of fire;
(6) Be in a sanitary condition and free of vermin and rodent infestation; and

§17-534-32 Qualified owners. To qualify to participate in the program, an owner shall:
(1) Submit a completed application;
(2) Have an existing rental unit or intend to renovate or construct a rental unit;
(3) Have the rental unit located in a census tract that has less than five other rental units in such census tract;
(4) Not have an outstanding debt owed to the authority or to a county public housing agency; and
(5) Not have had a record of conduct or behavior for two years prior to the date of the application that is harmful, destructive, or unlawful which may cause a threat to tenants. [Eff JUN 30 1994 ] (Auth: SLH 1992, Act 279, §§1, 3(3), 5) (Imp: SLH 1992, Act 279, §§1, 3(3), 5)

§17-534-33 Owner preference. Qualified owners shall be given preference for participation in the program in the following order:
(1) Owners who are not applying for construction grant funds provided by the authority;
(2) Owners who are in a census tract with the least number of rental units in such census tract; and
(3) Owners whose rental units have the largest floor area. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§1, 3(3), 5) (Imp: SLH 1992, Act 279, §§1, 3(3), 5)

§17-534-34 Notification of ineligibility. An owner determined to be ineligible to participate in the program shall be notified in writing of the determination, the reasons thereof and the right to a hearing by the authority. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§§17-534-35 to 17-534-39 (Reserved)

SUBCHAPTER 4
CONSTRUCTION GRANTS

§17-534-40 Construction application. (a) An owner seeking to receive a construction grant for constructing or renovating a dwelling unit to be used as a rental unit shall submit an application form, as prescribed by the authority. The form shall include, but not be limited to, the owner's name, address, ownership information, property information, contractor information, financial cost information, county regulatory information, and dwelling information. (b) The owner shall submit documentation as required by the authority in order to verify the owner's eligibility to receive a construction grant. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-41 Grant amount. (a) The authority shall pay to the owner, or authorized agent, up to the amounts defined by and set forth in Exhibit B, dated 2/1/94, located at the end of this chapter, for the applicable rental unit size and extent of construction, who has:

(1) Submitted a completed application;
(2) Become a qualified owner; and
(3) Executed a construction grant agreement.
(b) The owner shall submit documentation that is
satisfactory to the authority that the owner has expended amounts at least equal to the construction grant amount for constructing or renovating a dwelling unit.

(c) Any construction grant funds received by the owner which are in excess of the amount expended by the owner for constructing or renovating a dwelling unit shall be reimbursed to the authority. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-42 Restriction on use of dwelling units.

(a) A dwelling unit that has been constructed or renovated using construction grant funds shall be used or available for use as a rental unit for applicants or tenants at all times during the five year period commencing on the date such unit is ready for occupancy after the construction or renovation is completed.

(b) The owner or owners of the real property on which a dwelling unit has been constructed or renovated using construction grant funds shall record in the bureau of conveyances of the State of Hawaii, or if the real property is subject to land court registration under chapter 501, Hawaii Revised Statutes, shall record in the land court, a covenant that the owner or owners, or the heirs, successors or assigns of the owner or owners shall use the dwelling unit for applicants or tenants as provided by this section. The covenant shall be recorded on a form approved by the authority and may contain such terms as the authority deems necessary to ensure its enforceability.

(c) At the end of the five year period of restriction on use of the dwelling unit, the authority shall execute a release of covenant and shall record such release with the bureau of conveyances or the land court. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-43 Construction liability exception.

An owner who receives a construction grant from the authority for constructing or renovating a dwelling unit shall not hold the authority liable for any civil damages resulting from the authority's acts or omissions relating to the grant.

(b) The owner shall defend, indemnify, and execute a waiver of liability holding the authority harmless from all claims made by third parties against
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the authority resulting from constructing or renovating the dwelling unit. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(4)) (Imp: SLH 1992, Act 279, §3(4))

§17-534-44 Termination of participation. (a) An owner who receives a construction grant from the authority for constructing or renovating a dwelling unit and terminates participation in the program prior to the end of the five year period provided in section 17-534-42(a) shall reimburse the authority for all amounts received by the owner as a construction grant within ninety days after the date of termination. Upon reimbursement of the construction grant, the authority shall release the covenant on restriction of use pursuant to section 17-534-42(c).

(b) An owner who does not reimburse the authority pursuant to this section shall pay for any attorney's fees and costs, as determined by a court of competent jurisdiction to be reasonable, that are incurred by the authority in collecting the amounts owed to the authority. The authority may file a lien upon the property where the rental unit is located, in the amount of the construction grant that has not been reimbursed to the authority.

(c) An owner shall give the authority at least forty-five days written notice prior to the date that the owner will withdraw from the program. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §6) (Imp: SLH 1992, Act 279, §6)

§17-534-45 Construction grant agreement. A construction grant agreement shall be executed between the authority and the owner who receives a construction grant for constructing or renovating a dwelling unit to be used as a rental unit for tenants in the program. The agreement shall include, but not be limited to, the owner's name, address, ownership information, dwelling unit information, financial cost information, construction grant amounts, restriction on use of the dwelling unit, indemnification of the authority during construction, liability insurance, and the owner's and the authority's responsibilities. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)
§17-534-50 Rent assistance application. (a) An owner seeking to receive rent assistance for a rental unit shall submit an application form, as prescribed by the authority. The form shall include, but not be limited to, the owner's name, address, ownership information, property information, dwelling unit information, and rent information.

(b) The owners shall submit documentation as required by the authority in order to verify the owner's eligibility to receive rent assistance. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§ 3(5), 5) (Imp: SLH 1992, Act 279, §§3(5),5)

§17-534-51 Fair monthly rent. The fair monthly rent for the rental unit shall not be greater than ninety percent of the fair market rent for the same unit size as defined by 24 C.F.R. §888.113 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§17-534-52 Rent adjustment. The fair monthly rent for the rental unit may be adjusted by the owner as defined by 24 C.F.R. §882.108 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§17-534-53 Rent assistance payments. (a) The authority shall pay directly to the owner, or authorized agent, on behalf of a tenant, a monthly rent assistance amount that is subject to subsection (d) and is the difference between the fair monthly rent for the rental unit and the tenant's allowable share of rent as defined by 24 C.F.R. §813.107 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter.

(b) Rent assistance payments shall be made on behalf of a tenant for the period that the rental unit is occupied.
Vacated rental units will receive rent assistance payments under the following conditions:

(1) If the tenant vacates the rental unit without proper notice, rent assistance payments shall be continued to the time that the tenancy could legally be terminated or to the date that the rental unit is re-rented, or to the last day of the month that the tenant vacated the rental unit and rent assistance payment was already made, whichever comes first; or

(2) If the tenant has had his social services agreement terminated by the authority and is ineligible to participate in the program, rent assistance payments shall be continued for ninety days from the effective date of termination of the social services agreement or to the date the rental unit is re-rented, whichever comes first.

The rent assistance shall be limited up to the amounts as defined by and set forth in Exhibit B, dated 2/1/94, located at the end of this chapter.

Security deposits. No portion of the rent assistance payments by the authority shall be applied or allocated to any security deposit demanded by an owner. The authority shall not be responsible for nor be required to pay an owner for the security deposit.

Rent assistance agreement - owner. A rent assistance agreement shall be executed between the authority and owner who receives rent assistance and rents to tenants in the program. The form shall include but not be limited to, an acknowledgement of the tenancy between the owner and the eligible applicant or tenant, the amount of the fair monthly rent and the rent assistance, date that the rent assistance payment is due, to whom payment is to be made, and the owner's and authority's responsibilities.

Amendments to the rent assistance agreement shall be made in writing, by the owner or agent, and

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Rent assistance agreement - tenant.

(a) The eligible applicant shall execute a rent assistance agreement with the authority prior to participating in the program. The agreement shall include, but not be limited to, an acknowledgement of the tenancy between the owner and the eligible applicant, the amount of the fair monthly rent and the rent assistance, and the eligible applicant's and authority's responsibilities.

(b) The rent assistance agreement between the authority and eligible applicant shall set forth the conditions of participation in the program.

Authority not responsible.

Other than the agreed to rent assistance for the fair monthly rent, the authority shall not be held responsible to the owner for any portion of the tenant's allocable share of the rent, or be held responsible to the owner or tenant for any damages, breakage or losses to the rental unit or any portion thereof, or to the furnishings, fixtures, and appliances where the same may have been caused by the tenant, owner or other causes.

Rent assistance agreement termination.

(a) A tenant shall give the authority at least thirty days written notice prior to the date that the tenant will withdraw from participation in the program.

(b) The authority may terminate a tenant's participation in the program when a tenant has:

1. Submitted false or misleading information or willfully withheld important information from the authority; or
2. Violated any provision of these rules or SLH 1992, Act 279, as related to this program; or
3. Had the tenancy terminated by the owner; or
4. Had the social services agreement terminated by the authority.

(c) A tenant found to be ineligible for continued

participation in the program shall be so notified in writing pursuant to section 17-534-23.
(d) The owner may continue to rent to the tenant notwithstanding the termination of the rent assistance agreement and the ineligibility of the tenant for continued participation in the program. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-59 (Reserved)

SUBCHAPTER 6
OPERATIONS

§17-534-60 Selection of tenant. (a) The authority shall provide a qualified owner with a list of up to five eligible applicants. The list of eligible applicants shall be taken in the order of preference as provided in section 17-534-22.
(b) The owner shall interview the eligible applicants from the list of applicants provided by the authority and may select an eligible applicant from such list to be the tenant for the rental unit. If the eligible applicants are unsatisfactory to the owner, then the owner may request a new list from the authority. The owner shall be provided a maximum of three lists by the authority and shall choose an eligible applicant from such lists. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(4)) (Imp: SLH 1992, Act 279, §3(4))

§17-534-61 Social services agreement. (a) The eligible applicant that has been selected by an owner to be a tenant for a rental unit shall enter into a social services agreement with the authority. The agreement shall include, but not be limited to, the following:

(1) An individualized assessment of the financial, health, housing, vocational, educational, and social needs of the tenant and tenant's family members, if applicable;
(2) Identification of goals and objectives to address the tenant's assessed needs;
(3) Identification of timeline, activities, and

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tasks to accomplish the tenant's goals and objectives.

(b) The authority shall monitor the tenant in order to evaluate the progress of the tenant in accomplishing the social services agreement.

(c) The authority may terminate the social services agreement of the tenant if the tenant does not comply with or meet the goals and objectives of the social services agreement as determined by the authority. [Eff JUN 30 1994 ] (Auth: SLH 1992, Act 279, §§3(2), 3(7)) (Imp: SLH 1992, Act 279, §§3(2), 3(7)).

§17-534-62 Eviction. The owner may evict a tenant provided the requirements of chapter 521, Hawaii Revised Statutes, have been complied with. The owner must notify the authority, in writing, of the commencement of procedures for termination of the tenancy at the same time that the owner gives notice to the tenant under chapter 521, Hawaii Revised Statutes. [Eff JUN 30 1994 ] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3)).

§§17-534-63 to 17-534-69 (Reserved)

SUBCHAPTER 7
CONTESTED CASES

§17-534-70 Contested cases: applicability. The right to a contested case hearing shall exist where provided for by this chapter or where required by law. The right to hearing shall only be afforded to the person affected by the action or decision of the authority, unless otherwise provided by law. [Eff JUN 30 1994 ] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-14; SLH 1992, Act 279, §2)

§17-534-71 Commencement of case. A contested case shall commence by the filing of a petition for a permitted relief with the authority. Unless otherwise provided by law, the petition shall be filed within thirty days of the action or decision for which contested case hearing is sought. Upon the filing of a
petition, the authority shall docket the petition and assign a docket number to the petition. [Eff JUN 30 1994 ] (Auth: HRS §§91-9; SLH 1992, Act 279, §2) (Imp: SLH 1992, Act 279, §2)

§17-534-72 Contents of petition. (a) The petition shall state the following:
(1) Name, address, telephone number of the petitioner and the petitioner's legal counsel, if any, which shall be updated by the petitioner at all times;
(2) A brief and concise factual statement of the petitioner's claim;
(3) The law or rule involved;
(4) The names of all respondents or identities against whom the petition is brought; and
(5) A brief statement of the relief sought by the petitioner.
(b) If the petitioner is not in substantial compliance with part (a), the authority may refuse to file the petition and may request the petitioner to submit an amended petition in compliance thereto. [Eff JUN 30 1994 ] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-2; SLH 1992, Act 279, §2)

§17-534-73 Action by authority. Upon the filing of the petition, the chairperson of the authority shall:
(1) Assign the petition for further proceedings before the authority or assign the matter to a hearings officer; and

§17-534-74 Response. Each respondent may file with the authority or hearings officer if the case has been assigned to one, a written response to the petition which shall state briefly a counter-statement of the facts, circumstances, law, rules, or reasons in defense thereof, and which shall specifically admit or deny the allegations of the petition. The response shall be filed at least five working days prior to the

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§17-534-75 Notice. The authority or hearings officer shall, as soon as possible, provide notice to all parties of the scheduled hearing in such form and manner as provided by law. [Eff JUN 30 1994 ] (Auth: SLH 1992, Act 279, §2) (Imp: SLH 1992, Act 279, §2)

§17-534-76 Burden of proof: evidence. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. [Eff JUN 30 1994 ] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-9, 91-9.5; SLH 1992, Act 279, §2)

§17-534-77 Procedure at hearing. Unless otherwise stipulated by the parties, which stipulation is approved by the authority or the hearings officer, all hearings shall proceed as follows:

(1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:
   (A) Petitioner's opening statement; and
   (B) Respondent's opening statement, unless respondent chooses to reserve same until after presentation of petitioner's evidence;

(2) The petitioner's evidence shall be presented first and shall be followed by the presentation of evidence by respondent;

(3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of their respective cases;

(4) Each witness shall first be sworn under oath and shall be examined first by the party calling the witness before cross-examination by the opposing party;
(5) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final argument. Final argument shall proceed as follows:
   (A) Petitioner's final argument;
   (B) Respondent's final argument; and
   (C) Petitioner's final argument in rebuttal which shall be limited to countering matters raised in respondent's final argument; and

(6) The hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post-hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence, whichever is later. [Eff JUN 30 1994]

§17-534-78 Proposed findings of fact and conclusions of law. Proposed findings of fact, conclusions of law, decisions, and orders shall be filed with the authority no later than seven business days after the day the proceedings were concluded, or such other time as may be established by the authority or hearings officer. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-9, 91-10; SLH 1992, Act 279, §2)

§17-534-79 Authority's final decisions, orders, findings of fact, and conclusions of law. (a) The authority shall issue its final decision and order together with findings of fact and conclusions of law. The findings of fact, conclusions of law, final decisions, and orders shall be based upon the whole record and shall be supported by reliable, probative, and substantial evidence, including facts on which the authority properly took judicial notice.
   (b) If the proceedings were held before a hearings officer and exceptions were filed to the recommended decision, the authority shall afford the parties oral argument as to the exceptions, prior to the authority adoption of a decision and order and findings of fact and conclusions of law.
§17-534-80

(c) If any party has timely filed proposed findings of fact, the authority shall incorporate in its decision a ruling upon each proposed finding so presented, provided that a separate ruling on each proposed finding shall not be required.

(d) The authority shall cause to have a certified copy of the decision and order and accompanying findings and conclusions, delivered or mailed within a reasonable time after their adoption by the authority, to each party or the party's authorized representative.

(e) Appeal of the authority's final decision, order, ruling, or action may be made to the circuit court as provided by law. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-11, 91-12; SLH 1992, Act 279, §2)

§17-534-80 Procedure before a hearings officer; transmittal to authority. The following procedures shall apply before a hearings officer:

(a) Upon conclusion of the proceedings before the hearings officer and following the timely submittal of proposed findings of fact, conclusions of law, and decision and order, the hearings officer shall prepare a recommended decision in the matter before the authority.

(b) If the recommended decision is adverse to any party to the proceeding other than the authority, the recommended decision shall contain a statement of the reasons therefor and shall include a determination of each issue of fact or law necessary to the recommended decision, and it shall be served upon all parties. Any party adversely affected by the recommended decision may file exceptions thereto and may submit written argument in support of the exceptions to the authority, provided that the exceptions and argument shall be filed within ten days of the service of the recommended decision, or within such other time as may be designated by the hearings officer.

(c) Following the expiration of the time specified in (b) above, or if not applicable, following preparation of the recommended decision, the hearings officer shall transmit the entire record to the authority for action together with the recommended decision, any timely filed exceptions thereto, and any timely submitted written arguments in support of the exceptions. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-11; SLH 1992, Act 279, §2)
§17-534-81

SUBCHAPTER 8

MISCELLANEOUS PROVISIONS

§17-534-81 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person or transaction or other circumstances is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances shall not be affected. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12); HRS §356-10) (Imp: SLH 1992, Act 279, §3(12); HRS §356-10)

§17-534-82 Number. The use of all words used in the singular shall extend to and include the plural. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12); HRS §356-10) (Imp: SLH 1992, Act 279, §3(12); HRS §356-10)
Handicapped Person. A person having a physical or mental impairment that (a) is expected to be of a long-continued and indefinite duration, or (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

3. A person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian Housing Authority. An entity that is authorized to engage in or assist in the development or operation of lower income housing for Indians that is established either (a) by exercise of the power of self-government of an Indian tribe independent of State law; or (b) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Live-in aide. A person who resides with an Elderly, Disabled, or Handicapped Persons and who—

(a) Is determined to be essential to the care and well-being of the Person(s);

(b) Is not obligated for the support of the Person(s); and

(c) Would not be living in the unit except to provide the necessary supportive services.

(See § 813.106(d) for treatment of a Live-in Aide's income.)

Lowest Income Family. A Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary for the prevailing levels of construction costs or unusually high or low family incomes.

Medical expenses. Those medical expenses, including medical insurance premiums, that are paid during the period for which Annual Income is

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (b)(1) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(6)(1) Child care expenses; or (2) in the case of families assisted by Indian housing authorities, the greater of (i) child care expenses, or (ii) excessive travel expenses, not to exceed $25 per family per week, for employment or education related travel.

Annual Income. See § 813.106.

Child care expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member to be gainfully employed or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment of a Family member, shall not exceed the amount of income received from such employment.

Contract rent. The total amount of rent specified in the Housing Assistance Payments (HAP) Contract as payable to the owner by the Family, and by HUD or the PHA on the Family's behalf. In the case of the rental of only a manufactured home space, Contract Rent includes the monthly payment to amortize the purchase price of the manufactured home.

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

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Handicapped Assistance Expenses that equal to the amount by which the Medical Expenses exceed three percent of Annual Income;
(a) Part 880, subpart A (Section 8 Housing Assistance Payments Program—New Construction). (b) Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation). (c) Part 882, subparts D and E (Section 8 Housing Assistance Payments Program, Moderate Rehabilitation). (d) Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies). (e) Part 884 (Section 8 Housing Assistance Payments Program—New Construction Set-Aside for Section 8 Rural Rental Housing Projects). (f) Part 885 (Loans for Housing for the Elderly or Handicapped). (g) Part 886, subpart A (Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside)); or (h) Part 886, subpart B or C (Section 8 Housing Assistance Payments Program—Special Allocations (Disposition of HUD-Owned Projects)).

(b) Request for exception. A request by a PHA or Owner for approval of admission of Lower Income Families to units described in paragraph (a) of this section must state the basis for requesting the exception and provide substantiating data for exceptions that may be considered by HUD include the following:

(1) Lower Income Families that would otherwise be displaced from Section 8 Substantial Rehabilitation, Moderate Rehabilitation, and Development projects.

(2) Lower Income Families that are displaced as a result of Rental Rehabilitation or Development activities assisted under Section 17 of the 1987 Act, or as a result of activities assisted under the Rental Rehabilitation Demonstration Program.

(3) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of applicants.

(4) Commitment of an Owner to attaining occupancy by families with a broad range of income, as evidenced in the application for development. An application citing this basis should be supported by evidence that the Owner is pursuing this goal throughout its assisted projects in the community and (5) Project and State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community.

(c) Specific projects. The request for a Certificate of Family Participation shall be submitted under Section 11(b) of the 1987 Act or under Section 103 of the Internal Revenue Code. Specific projects include:

(1) Except with the prior approval of HUD, no Certificate of Family Participation shall be granted under part 882, Existing Housing, subparts A and B or C, or under Chapter V of the Part 884, Subpart B of this chapter on or after July 1, 1984 to any lower income Family that is not a Very Low- Income Family, except a Family (1) that resided in a unit with assistance under subparts A and B or C before that date, (ii) whose participation in the Program has been continuous, and (iii) that wants to move to another dwelling unit with continued participation in the Section 8 Existing Housing Program under § 882.206(m).

(2) A request by a PHA for HUD approval to grant a Certificate of Family Participation under part 882, subparts A and B or C, of (1) Family, or (ii) Family, who has been a participant in the Program on or after July 1, 1984, to a lower income Family other than Very Low-Income Families must state the basis for requesting the exception and provide the following data:

(b) Request for exception. A request by a PHA or Owner for approval of admission of Lower Income Families other than Very Low-Income Families to units described in paragraph (a) of this section must state the basis for requesting the exception and provide substantiating data for exceptions that may be considered by HUD include the following:

(1) Lower Income Families that would otherwise be displaced from Section 8 Substantial Rehabilitation, Moderate Rehabilitation, and Development projects.

(2) Lower Income Families that are displaced as a result of Rental Rehabilitation or Development activities assisted under Section 17 of the 1987 Act, or as a result of activities assisted under the Rental Rehabilitation Demonstration Program.

(3) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of applicants.

(4) Commitment of an Owner to attaining occupancy by families with a broad range of income, as evidenced in the application for development. An application citing this basis should be supported by evidence that the Owner is pursuing this goal throughout its assisted projects in the community and (5) Project and State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community.

(d) Action on request for exception. Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication of such discretion is created that the Department will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created. The Department will seek to grant exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) Reporting. PHAs and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to:

(1) The number of dwelling units that are subject to paragraph (a) of this section.

(2) The number of dwelling units that are subject to paragraph (c) of this section for which HAP Contracts were first effective under part 882, subpart B of this chapter on or after October 1, 1981 (including new HAP Contracts for Families for whom HUD Contracts had been in effect before that date for a different unit);

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family; (4) Rent, tips, and bonuses, and other compensation for personal services;

(4) The number of Families occupying units described in paragraph (e)(1) of this section and are subject to such units on or after July 1, 1984 and were not Very Low-Income Families when admitted, and (5) The number of Families occupying units described in paragraph (e)(2) of this section and are subject to such units on or after July 1, 1984 and were not Very Low-Income Families when such Certificates were granted.

(f) Income collection requirements. The information collection requirements contained in paragraph (b) and (e)(2) approved under the Office of Management and Budget under control number 2502-0315; the requirements contained in paragraph (e)(1) approved under control number 2502-0348.

(g) Annual income. (a) Annual income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of the contract. Such income is comprised of all types of income, exclusive of certain types of income as provided in paragraph (c) of this section.

(b) Annual Income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;
§ 813.107

(a) Application of the percentages in subsection (b) of this section, and (ii) application of the changes in the definitions contained in §§ 813.102 and 813.108 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(3) So long as a Family whose initial lease was effective on or after August 1, 1982, but which was in occupancy on June 30, 1984, continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of (i) conversion, and (ii) application of the changes in the definitions contained in §§ 813.102 and 813.108 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(4) In the case of a Family receiving rental assistance under Section 8(a) of the Housing Act of 1949 on November 30, 1983, whose assistance is converted to Section 8 assistance on or after such date, the Total Tenant Payment payable by such Family shall not be increased by more than 10 percent during any 12-month period as a result of (i) such conversion, and (ii) if such Family was in occupancy on June 30, 1984, such Family's contribution to the same project, application of the changes in the definitions contained in §§ 813.102 and 813.108 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(5) This paragraph (c)(6) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, or the Section 23 Program or any other October 1, 1984, and before October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion. So long as such Family continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of such conversion.

(6) This paragraph (c)(6) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, or the Section 23 Program on or after October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion.

§ 813.109

(a) Initial determination, verification, and certification. For the purposes of paragraphs (c)(1) through (6) of this section, the “base period” is:

(1) For the Public Housing, Section 10(c), Section 23, and Section 8 Existing Housing (Penders-Kees) and Moderate Rehabilitation Programs, units in the same program of a PHA or any remaining balance shall be the amount due to the Family. This amount may be paid to the Family, or it may be applied as a credit to the Tenant Rent due immediately after the effective date of such reexamination. If the amount of any such credit to a Family exceeds 25 percent of the Total Tenant Payment due from such Family, such credit may be applied in not more than four installments. So long as such Family continues to reside in the same project, its Total Tenant Payment for periods commencing on the effective date of the first reexamination using the 1984 revised definitions of income, shall not be increased by more than 10 percent during any 12-month period as a result of the conversion, and application of the changes in the definitions contained in §§ 813.102 and 813.108 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984. If a Family to which this paragraph (c)(6) would otherwise apply vacates a unit after November 30, 1983, and before the first reexamination using the 1984 revised definitions of income, the PHA or Owner will notify the Family of the possibility of a rent adjustment for the period commencing December 1, 1983 (or the date of conversion, if later). In order to obtain a refund, such a Family must submit (within 30 days of receiving the notices) a request therefor, including a current address to which any refund can be sent. For any Family making such a timely request, the PHA or Owner will make all calculations necessary to determine whether an adjustment is due. If such adjustment is due, and if the amount of any such adjustment will first be offset against any amounts due from the Family and any Section 8 damage and rent claims HUD has paid on the Family's behalf, and any balance will be refunded to the Family.

(b) The limitations contained in paragraphs (c)(1) through (6) of this section do not apply to portions of increases in Total Tenant Payment which are attributable to increases in income or changes in Family composition or circumstances unrelated to the

Factors referred to in paragraphs (c)(2) through (5) of this section.

(9) The limitations contained in paragraphs (c)(2) through (6) of this section do not apply to subsection (a)(3) of this section when the welfare agency includes as the housing component of the Family's grant an amount equal to the Total Tenant Payment, without reduction.

(10) In order to facilitate administration of the limitations provided in paragraphs (c)(2) through (6) of this section, upon any regular or interim reexamination of a Family which was in occupancy on June 30, 1984, the PHA or Owner shall continue to collect and verify information which would have been taken into account in calculating Annual Income and Annual Income After Allowances, as defined in regulations in effect immediately prior to July 1, 1984. If such regulations were in effect at the date of such reexamination.

(11) The limitations prescribed in paragraphs (c)(2) through (6) of this section, shall be applied in accordance with procedures prescribed by HUD.

Approved by the Office of Management and Budget under control number 2502-0054.

[49 FR 26718, June 30, 1984, as amended at 50 FR 26131, June 12, 1985]
Fair market rent applicable to the unit size being leased, for example, a four-bedroom unit if the residence contains four bedrooms.

Fair market rents for existing housing and moderate rehabilitation: Manner of publication.

Fair market rents will be published at least annually in the Federal Register. The Department will propose FMRs and provide a comment period of at least 30 days. Once the comments are considered, the Department will publish a final notice announcing FMRs. These FMRs will be effective upon publication in the Federal Register.

Revision to the automatic annual adjustment factors.

If the application of the Annual Adjustment Factors results in rents that are substantially lower than rents charged for comparable units that are receiving assistance under the U.S. Housing Act of 1937, in the area for which the factor was published or a portion thereof, and it is shown to HUD that the costs of operating comparable rental housing have increased at a substantially greater rate than the Adjustment Factors, the HUD Field Office will consider establishing separate or revised Automatic Annual Adjustment Factors for that particular area. Any request for revision of the factors must be accompanied by an identification of the area, its boundaries and evidence that the area constitutes the largest contiguous area in which substantially the same rent levels prevail. The HUD Field Office will publish appropriate notice of the establishment of any such revised Automatic Adjustment Factors. These factors will remain in effect until superseded by the subsequent publication of Automatic Annual Adjustment Factors pursuant to §888.202.
## EXHIBIT B

**OWNER ASSISTANCE AMOUNTS**

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<thead>
<tr>
<th></th>
<th>CONSTRUCTION GRANTS</th>
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<th>RENT ASSISTANCE LIMITS</th>
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<tbody>
<tr>
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<td>Constructing and</td>
<td>Improving and</td>
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<td>Building</td>
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