

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Amendments to and Compilation of Chapter 15-312
Hawaii Administrative Rules

December 6, 2021

SUMMARY

1. §15-312-4 is amended.
3. Chapter 15-312 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 312

HULA MAE MULTI-FAMILY RENTAL HOUSING PROGRAM

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Historical note: Chapter 312 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 163 of Title 15, Hawaii Administrative Rules, and Chapter 313 of Title 6, Hawaii Administrative Rules.

SUBCHAPTER 1

GENERAL PROVISIONS

§15-312-1 Purpose. These rules are adopted under chapter 91, HRS, and implements part III, chapter 201H, HRS, and the following objectives:

- (1) Increase the supply of affordable rental units available in the State;
- (2) Make funds available at feasible interest rates to make eligible project loans in order to permit the construction of eligible project; and

- (3) Encourage the participation of qualified sponsors in the programs authorized by part III, chapter 201H, HRS. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS \$201H-97) (Imp: HRS \$201H-98)

\$15-312-2 Definitions. As used in this chapter and the procedural handbook:

"Agreement concerning costs" means the agreement between the applicant, the corporation, and the department whereby the applicant agrees to pay the costs incurred by the corporation and the department in processing the application and structuring of the proposed bond issue.

"Applicant" means any owner or developer that submits an application for the financing of an existing or proposed multi-family rental housing project under the program.

"Board" means the board of directors of the Hawaii housing finance and development corporation.

"Bond trustee" means the national or state bank or trust company which administers the indenture of trust covering the proceeds and applies the proceeds of a bond issue to protect and enforce the rights of the bondholders.

"Bonds" means the revenue bonds issued to finance all or any part of the advance commitment program, the loans to lenders program, the purchase of existing loans program, and the eligible project loan funding program authorized under part III, chapter 201H, HRS.

"Bondholder" means the investor or investors that purchase the bonds.

"Code" means the Internal Revenue Code of 1954, as amended from time to time, or any successor statute thereto.

"Contract rent" means the monthly rent approved by the corporation and payable by an eligible tenant to a qualified sponsor under the lease for a regulated unit in an eligible project.

"Corporation" means the Hawaii housing finance and development corporation.

"Credit enhancement" means security for the bonds provided to support the promise to repay the bondholder in order to improve the credit rating on the bond issue.

"Department" means the department of budget and finance of the State of Hawaii.

"Eligible project loan" means an interim or permanent loan made to a qualified sponsor to finance an eligible project pursuant to the provisions of chapter 201H, HRS.

"Eligible tenant" means, with regard to an eligible project maintaining a minimum of twenty per cent of the units for lower income households, a person whose adjusted income, which when combined with the adjusted income of all other persons over the age of eighteen years residing in the same unit, does not exceed fifty per cent of the median income for the area adjusted for family size. With regard to an eligible project maintaining a minimum of forty per cent of the units for lower income households, "eligible tenant" means a person whose adjusted income, which when combined with the adjusted income of all other persons over the age of eighteen years residing in the same unit, does not exceed sixty per cent of the median income for the area adjusted for family size. In no event will the occupants of a unit be considered eligible tenants if all of such occupants are students as defined in section 151(e)(4) of the Code, no one of whom is entitled to file a joint return under section 6013 of the Code.

"Executive director" means the executive director of the corporation or the executive director's designated representative.

"Household income" means the adjusted income of a person, together with the adjusted income of all persons over the age of eighteen who intent to reside with such person in one residential unit, as calculated in the manner prescribed in section 1.167(k)-3(b)(3) of the Treasury regulations.

"HRS" means the Hawaii Revised Statutes.

"Inducement resolution" means the resolution adopted by the board signifying the corporation's first official action identifying the project as one within the program as required under Treasury Regulation 1.103-8(a)(5).

"Lender loan" means a loan of the bond proceeds by the bond trustee to a mortgage lender for the purpose of funding an eligible project loan.

"Median income" means the median income for the area as most recently determined by the Secretary of Housing and Urban Development under section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income for the area determined under the method used by the Secretary prior to such termination.

"Mortgage" means the mortgage and security agreement and any other security for the note evidencing the obligation of a qualified sponsor to repay an eligible project loan.

"Mortgage lender" means a mortgage lender as defined in part III, chapter 201H, HRS.

"Owner's equity" means the sum of the capital and the market value of the assets, as confirmed by the corporation, contributed by the qualified sponsor toward the development, or the acquisition and rehabilitation of an eligible project and any subsequent infusions of cash by the qualified sponsor for capital improvements as approved by the corporation. The initial amounts contributed towards owner's equity shall be verified by a cost certification audit, or such other verification acceptable to the corporation, performed upon completion of construction.

"Program" means the corporation's hula mae multi-family program as established by chapter 201H, HRS.

"Procedural handbook" means a set of instructions, guidelines, terms, and conditions for king, funding, and servicing eligible project loans.

"Qualified project period" means the period beginning on the first day on which at least ten per cent of the dwelling units in the project are first occupied and ending on the latter of (a) the date which is fifteen years after the date upon which fifty per cent of the dwelling units in the eligible project are first occupied; (b) the first day upon which no tax-exempt private activity bond issued with respect to the project is outstanding; or (c) the date upon which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937, as amended, terminates.

"Qualified sponsor" means a qualified sponsor as defined in part III, chapter 201H, HRS, and who is determined by the corporation to have articles of incorporation or comparable documents of organization or a written agreement with the corporation which, in addition to other requirements of law, provides that if the person or entity receives an eligible project loan from the corporation as provided for in part III, chapter 201H, HRS, it shall be authorized to enter into an agreement with the corporation, providing for regulations with respect to rents, profits, dividends, and dispositions of property or franchises.

"Regulated unit" means a unit occupied by or made available for occupancy by an eligible tenant. No less than twenty per cent of the total number of dwelling units in an eligible project must be regulated units.

"Regulatory agreement" means the agreement between the corporation and a qualified sponsor that prescribes the manner in which the eligible project is to be operated, among other things, the rental rates to be charged on the regulated units.

"Rental schedule" means the schedule of rents, including the contract rents, covering all units in an eligible project.

"Reserve fund for replacements means a restricted custodial account established and maintained under the regulatory agreement, the proceeds of which are to be disbursed for the funding of extraordinary maintenance and repair and replacement of capital items. "Sale resolution" means the resolution adopted by the Board authorizing the issuance of bonds by the corporation.

"State" means the State of Hawaii.

"Underwriter" means the investment banking firm which structures the bond financing, sells the bonds and delivers the proceeds to the bond trustee.

[Eff 4/23/2010; comp 4/23/2010; comp **JAN 15 2022**]
(Auth: HRS §201H-97) (Imp: HRS §§201H-102, 201H-103, 201H-104, 201H-105, 201H-106)

§15-312-3 Delegation. The corporation delegates to the executive director the authority to implement and carry out the purposes of this chapter. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97)
(Imp: HRS §§201H-2, 201H-3)

§15-312-4 Fees. The corporation shall charge the following program fees:

- (1) Application fee: \$5,000;
- (2) Extension and modification fee: \$5,000;
- (3) Administrative fees:
 - (A) At bond issuance: 0.5 per cent or \$100,000, whichever is less; provided that the minimum bond issuance fee shall be \$50,000; and
 - (B) Annual fee: 0.125 per cent of the permanent multi-family loan amount; and
- (4) Annual compliance monitoring fee: \$35 per unit per year for all project units excluding managers units. [Eff 4/23/2010; am and comp **JAN 15 2022**] (Auth: HRS §201H-100) (Imp: HRS §201H-100)

§15-312-5 General requirements. (a) In order to qualify as an eligible project, a multi-family rental housing project must be able to meet the following criteria:

- (1) The project must be financed by an eligible project loan approved by the corporation;
- (2) The project must contain one or more similarly constructed units that are not designed to be used on a transient basis (i.e. the units must include full kitchens and bathrooms);
- (3) The project must maintain at least twenty per cent of the units as rentals for eligible tenants;
- (4) The project must be maintained as a residential rental housing project continuously throughout the qualified project period; and
- (5) The project must be subject to a regulatory agreement with the corporation.

(b) Construction of an eligible project must be completed within thirty months from the sale of the bonds to ensure that the eligible project loan can be completely funded prior to the lapse of thirty-six months from the date of the bond sale.

[Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §§201H-102, 201H-104, 201H-105, 201H-106)

§15-312-6 Compliance monitoring. The corporation shall monitor the eligible project and the qualified sponsor throughout the term of the eligible project loan to ensure compliance with program requirements. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §§201H-102, 201H-104, 201H-105, 201H-106)

SUBCHAPTER 2

ELIGIBLE PROJECT LOAN FUNDING PROGRAM

§15-312-10 Purpose. The purpose of this program is to provide eligible project loans to qualified sponsors by directly making or by contracting with eligible project loan servicers to fund eligible project loans. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §§201H-102, 201H-104, 201H-105, 201H-106)

§15-312-11 Definitions. As used in this subchapter and the procedural handbook:

"Commitment letter" means the corporation's notice to a qualified sponsor of the acceptance of the eligible project loan application subject to the acceptance and conditions of the eligible project loan servicing agreement, if applicable.

"Eligible project loan application" means an application from a qualified sponsor, in such form as prescribed by the corporation, requesting an eligible project loan.

"Eligible project loan servicer" means a mortgage lender or its designee as approved by the corporation which has executed an eligible project loan servicing agreement.

"Eligible project loan servicing agreement" means an agreement among a qualified sponsor, an eligible project loan servicer, and the corporation in a form as prescribed by the corporation to fund and service or service an eligible project loan.

"Eligible project loan servicing agreement application" means an application from an eligible project loan servicer, in such form as prescribed by the corporation, requesting a contract with the corporation and qualified sponsor to fund and service or service an eligible project loan to a qualified sponsor. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-104) (Imp: HRS §§201H-102, 201H-104, 201H-105, 201H-106)

§15-312-12 Process and procedures. (a)

Eligible project loan applications and eligible project loan servicing agreement applications shall be available at the principal office of the corporation.

(b) In order for a qualified sponsor to submit an eligible project loan application, the qualified sponsor shall also submit an eligible project loan servicing agreement application or evidence satisfactory to the corporation or other servicing arrangements and evidence that the eligible project has received a conditional commitment or site appraisal and marketing analysis letter from the Federal Housing Administration or similar commitment documents from other insuring or guaranteeing agencies of the federal government or other evidence that the eligible project loan meets the requirements specified in the procedural handbook by the corporation for eligible project loans not insured or guaranteed by the federal government.

(c) After receipt of eligible project loan applications and other documents required in subsection (b), the corporation shall, subject to terms and conditions as described in the procedural handbook, issue its commitment letter to the qualified sponsor.

(d) The corporation shall establish such restrictions, as deemed necessary, on the annual return to the qualified sponsor, as described in the:

- (1) Commitment letter;
- (2) Eligible project loan servicing agreement; and
- (3) Procedural handbook. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §§201H-102, 201H-104, 201H-105, 201H-106)

§15-312-13 Selection of projects; criteria. (a)

In considering a project application, the corporation shall determine whether the project would provide affordable rental housing as well as address the needs of lower income individuals and families. Preference shall be given, whenever practicable, to those projects that treat housing problems in the context of the total needs of the tenants and the community, recognizing that the development of isolated housing units, without regard to the neighborhood and the availability of support facilities, tends to create undesirable consequences.

(b) In addition to the program preferences referenced in this section, the corporation shall evaluate projects in the following primary areas:

- (1) Qualifications of applicant and development team;
- (2) Site evaluation and land use characteristics;
- (3) Environmental assessment; environmental impact statement;
- (4) Zoning, subdivision, and permitting requirements;
- (5) Financial, operational, and regulatory compliance evaluation;
- (6) Project design;
- (7) Tenant displacement and relocation considerations;
- (8) Energy conservation and efficiency considerations;
- (9) Target population and market conditions; and
- (10) Overall competitive position, merit, and feasibility of the project. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §§201H-102, 201H-104, 201H-105, 201H-106)

SUBCHAPTER 3

LOANS TO LENDERS PROGRAM

§15-312-20 Purpose. The purpose of this program is to provide loans to mortgage lenders to be used to make eligible project loans. The loan amount shall be based on an agreement by mortgage lenders to originate a specified principal amount of eligible project loans. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §201H-102)

§15-312-21 Definitions. As used in this subchapter and the procedural handbook:

"Lender loan application" means a mortgage lender's application, in such form as may be prescribed by the corporation, to receive a loan from the corporation for the purpose of making eligible project loans pursuant to the terms of the loan agreement.

"Loan agreement" means an agreement between the corporation and the mortgage lender, in such form as may be prescribed by the corporation, which outlines the terms and conditions of the loan being made to the mortgage lender for the purpose of making eligible project loans in accordance with the procedural handbook. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §201H-102)

§15-312-22 Process and procedures. (a) The corporation will advertise that lender loan applications are available to mortgage lenders at the principal office of the corporation at least thirty days prior to the deadline for submission of such applications to the corporation.

(b) The corporation may consider, among other things, in allocating the funds available for project loans:

- (1) The financial condition of the mortgage lenders who submitted lender loan applications;

- (2) The demonstrated ability of the mortgage lenders to act as makers and servicers of the eligible project loans; and
- (3) The eligible project loans to be made by the mortgage lender.
- (c) The corporation shall establish such restrictions, as deemed necessary, on the annual return to the qualified sponsor and the mortgage lender, as described in the:
 - (1) Loan agreement; and
 - (2) Procedural handbook.
- (d) The loan agreement shall contain the terms and conditions of the loan to the mortgage lender which may include, among other things, the following:
 - (1) The amount and nature of the collateral security the corporation may require;
 - (2) The maturity date of the loan;
 - (3) Prepayment penalties, if any;
 - (4) The eligible project loans to be made by the mortgage lender; and
 - (5) The qualified sponsor to whom the mortgage lender will make an eligible project loan.
- (e) The operation and implementation of the loans to lenders program shall be conducted in accordance with these rules and the procedural handbook. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §§201H-102, 201H-103)

SUBCHAPTER 4

ADVANCE COMMITMENTS PROGRAM

§15-312-30 Purpose. The purpose of this program is to allow the corporation to purchase eligible project loans from mortgage lenders. The purchase shall be based on an advance commitment by mortgage lenders to deliver a specified amount of the eligible project loans to the corporation. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §201H-105)

§§15-312-31 to 15-312-32 (Reserved).

SUBCHAPTER 5

PURCHASE OF EXISTING LOANS PROGRAM

§15-312-40 Purpose. The purpose of this program is to provide funds to mortgage lenders to be used to make eligible project loans. The funding shall be based on an agreement by mortgage lenders to deliver a specified amount of existing loans and mortgage lenders shall use the funds to originate eligible project loans. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §201H-104)

§§15-312-41 to 15-312-42 (Reserved).

SUBCHAPTER 6

MISCELLANEOUS PROVISIONS

§15-312-50 Yield on mortgage loans. Mortgage loans financed, funded or made by the corporation under this chapter shall bear interest at a rate which shall produce a yield to the corporation on the mortgage loans sufficient to:

- (1) Pay interest on the related issue of the corporation's bonds;
- (2) Provide adequate reserves, if any, for the holders of the bonds; and
- (3) Cover the operating costs of the corporation of the program;

provided the yield on the mortgage loans shall not exceed the maximum allowed pursuant to Section 103(c) of the Internal Revenue Code of 1954, as amended, or any successor statute thereto, and the applicable regulations promulgated by the United States Department of the Treasury. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS §201H-97) (Imp: HRS §§201H-98, 201H-99, 201H-100)

\$15-312-51 Waiver. The corporation, by resolution, may waive or vary provisions of these rules to conform to the requirements of applicable federal requirements. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS \$201H-97) (Imp: HRS \$201H-98)

\$15-312-52 Arbitrage. It is the intent of the corporation not to exceed the arbitrage limitation of the Internal Revenue Code and the corporation may waive any provision of these rules in any instance to comply with the arbitrage limitation. [Eff 4/23/2010; comp **JAN 15 2022**] (Auth: HRS \$201H-97) (Imp: HRS \$201H-79)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Amendments to and compilation of chapter 15-312, Hawaii Administrative Rules, on the Summary Pages dated December 6, 2021, took place on December 7, 2021 following a public hearing held on December 3, 2021, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on November 1, 2021.

The adoption and repeal shall take effect ten days after filing with the Office of the Lieutenant Governor.



DONN MENDE
Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED:



DAVID Y. IGE
Governor
State of Hawaii

Date: 1/05/2022

APPROVED AS TO FORM:



Deputy Attorney General

Filed

LEUTENANT GOVERNOR'S
OFFICE

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