

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Adoption of Chapter 15-321
Hawaii Administrative Rules

[Date of adoption by agency]

1. Chapter 15-321, Hawaii Administrative Rules, entitled "Affordable Homeownership Revolving Fund Program", is adopted to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 321

AFFORDABLE HOMEOWNERSHIP REVOLVING FUND PROGRAM

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Historical note: Chapter 321 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 307 of Title 15, Hawaii Administrative Rules. [Eff 1/15/22].

SUBCHAPTER 1

GENERAL PROVISIONS

§15-321-1 Purpose. The purpose of this chapter is to implement the provisions of section 201H-206, Hawaii Revised Statutes, by establishing an affordable homeownership revolving fund program. The purpose of section 201H-206, Hawaii Revised Statutes, as set forth in Act 227, Session Laws of Hawaii 2021, is to provide funds for the development of affordable for-sale housing projects by nonprofit community development financial institutions and nonprofit housing development organizations to facilitate greater homeownership opportunities for Hawaii residents. [Eff] (Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-2 Definitions. As used in this chapter:

"Affordable homeownership revolving fund" or "fund" means the fund which was established pursuant to section 201H-206, HRS.

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

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

"Development loan" means a loan provided for the purposes set forth in section 15-321-12(a).

"HUD" means the United States Department of Housing and Urban Development.

"Median Family Income" means the Median Family Income for the county in which the project is located, as determined annually by HUD, adjusted by family size.

"Nonprofit housing development organization" means a domestic nonprofit corporation or other nonprofit entity registered to do business in the State of Hawaii whose primary purpose is to provide affordable housing.

"Pre-development loan" means a loan provided for the purposes set forth in section 15-321-12(b).

"Program funds" means funds which are from the affordable homeownership revolving fund.

"Project" means a plan, design, or undertaking for the development of affordable for-sale housing units, and includes all real and personal property, buildings and improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the project.

"Staff" means employees of the corporation.

"USDA RD" means the United States Department of Agriculture Rural Development. [[Eff]
(Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-3 Fees and charges. (a) The corporation shall have the right to charge reasonable,

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non-refundable fees for processing any instrument or taking any action provided under this chapter.

(b) The fees shall be as follows:

Purpose	Amount Charged
Application fee	\$1,000
Loan origination fee	1% of loan amount
Loan extension fee	1% of loan amount
Loan interest rate (fixed)	1% to 2% per annum

[[Eff] (Auth: HRS §§201H-4, §201H-206)
(Imp: HRS §201H-206)

SUBCHAPTER 2

AFFORDABLE HOMEOWNERSHIP REVOLVING FUND LOAN PROGRAM

§15-321-11 Affordable homeownership revolving fund; allowable uses. (a) The program funds shall be used to provide loans for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of projects that meet the minimum criteria for eligibility set forth in section 15-321-15(b). Additionally, an amount from the program funds may be used to pay for administrative expenses incurred by the corporation in administering the program funds.

(b) Activities and costs eligible for assistance from the program funds shall include, but not be limited to:

- (1) Planning;
- (2) Design;
- (3) Land acquisition including, but not limited to, the costs of options, agreements of sale, and down payments;
- (5) New construction or rehabilitation of housing units;
- (6) Acquisition of housing units for the purpose of preservation as affordable housing; and
- (7) Pre-development activity loans; provided that a nonprofit housing development

organization may be eligible to receive only one loan per project.

[Eff _____] (Auth: HRS §§201H-4, 201H-206) (Imp: HRS §201H-206)

§15-321-12 Project development and pre-development loans; allowable uses. (a) Project development loans shall be used for project-specific costs in developing a project including, but not limited to:

- (1) Planning and feasibility studies;
- (2) Financing fees and costs;
- (3) Land acquisition including, but not limited to, the costs of options, agreements of sale, and down payments;
- (4) Demolition of existing structures;
- (5) Clearing of land;
- (6) Legal, accounting, management and consulting expenses;
- (7) Construction, reconstruction, alteration, or repair of approaches, streets, sidewalks, utilities, or other site improvements;
- (8) Construction, reconstruction, repair, remodeling of buildings or other structures.

(b) Pre-development loans shall be used for project-specific pre-development costs including, but not limited to:

- (1) Planning and feasibility studies;
- (2) Engineering and architectural services;
- (3) Completion of a phase 1 environmental site assessment, including geotechnical reports, environmental surveys, archeological surveys, and other necessary environmental impact studies or assessments as may be required;
- (4) Legal, accounting, management and consulting expenses;
- (5) Preparation of permit application and permitting fees;
- (6) Insurance premiums;
- (7) Appraisals;

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- (8) Project marketing and community outreach;
- (9) Costs incurred in association with re-zoning; and
- (10) Cost of obtaining project entitlements. [Eff
] (Auth: HRS §201H-206)
(Imp: HRS §201H-206)

§15-321-13 Applications for loans. (a)

Applicants that wish to borrow program funds under this program shall submit to the corporation an application containing the information required under section 15-321-14, on a form prescribed by the corporation.

(b) All applications must be complete with all required exhibits attached. Staff will evaluate, score, and rank projects only if applicants submit complete applications. If an application is incomplete, the applicant will be notified and given ten business days to remedy any problems or deficiencies in its application. If the problem or deficiency remains unresolved after the ten-day period, staff shall send a loan denial letter to the applicant stating the reasons why the application will not be processed.

(c) The project for which a loan is requested must meet the affordability requirements and eligible use requirements set forth in this chapter. Staff will evaluate, score, and rank projects only if the proposed project meets the affordability and the eligible use requirements. If staff determine that the affordability or eligible use requirements are not met, staff shall send a loan denial letter to the applicant stating the reasons why the application will not be further processed.

(d) During the project evaluation process, staff may request additional information from the applicant to further inform the evaluation, scoring, and ranking process, even if the application was complete when submitted. In each instance where additional information is requested, the applicant shall be given ten business days to respond, which shall be separate

from and in addition to the period provided by subsection (b). [Eff _____] (Auth: §§201H-4, HRS 201H-206) (Imp: HRS §201H-206)

§15-321-14 Information required. A nonprofit housing development organization who will need funding in connection with the development of a project shall submit to the corporation an application, on forms prescribed by the corporation, along with any additional information that the corporation deems necessary to determine the applicant's qualifications. Information requested by the corporation may include, but is not limited to, the applicant's corporate history, corporate structure, project development capabilities, and financial position; the proposed project improvements; market demand for the project; and the proposed financial plan for the project. [Eff _____] (Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-15 Evaluation of requests for project loans; project benefits and impact. (a) The corporation will review and evaluate each complete application for program funds, and shall take into consideration factors such as compliance with the purposes and intent of chapter 201H, HRS, and other relevant factors.

(b) The corporation shall evaluate applications for projects meeting the following minimum criteria and award loans to projects in descending order of priority:

- (1) Projects or units in projects that are funded by programs of the United States Department of Housing and Urban Development, United States Department of Agriculture Rural Development, and United States Department of the Treasury Community Development Financial Institutions Fund, wherein:

- (A) At least fifty per cent of the available units are reserved for persons and families having incomes at or below eighty per cent of the median family income and of which at least five per cent of the available units are for persons and families having incomes at or below fifty per cent of the median family income; and
- (B) The remaining units are reserved for persons and families having incomes at or below one hundred twenty per cent of the median family income; and
- (2) Mixed-income affordable for-sale housing projects or units in a mixed-income affordable for-sale housing project wherein all of the available units are reserved for persons and families having incomes at or below one hundred per cent of the median family income.

(c) Projects shall be subject to a competitive funding round. The corporation shall commence each funding round by posting a notice of funding availability on the corporation's website advertising the availability of moneys from the program funds. The corporation may also advertise the availability of moneys from the program funds through other means as it deems appropriate.

(d) The corporation shall utilize the criteria point system attached hereto as Exhibit "A" to rate each application that has met the minimum criteria set forth in this section. [Eff _____] (Auth: HRS §201H-202) (Imp: HRS §201H-204)

§15-321-16 Corporation action. The corporation may accept or reject a request for program funds to be allocated to a project in its sole discretion. The corporation may also defer action on any request to allocate funds and request that additional information be submitted. If the corporation accepts a request to

allocate funds, it must obtain the governor's approval for program funds to be allocated to the project.

[Eff _____] (Auth: HRS §201H-206)
(Imp: HRS §201H-206)

§15-321-17 Financing requirements. (a) An applicant seeking a loan under this chapter must prove to the corporation's satisfaction that it is credit-worthy and has the ability to repay the money borrowed.

(b) The corporation, through Board action, may at any time approve or disapprove any loan provided pursuant to this chapter.

(c) The loan amount shall not exceed the actual cost of the project, including the land cost, total construction contract price, architectural and engineering fees, interest on the loan, legal and accounting expenses, construction insurance and performance bond premiums, and such other related expenses and costs as are directly attributable to the development and construction of the project; provided that in no event shall the loan amount exceed a percentage of the total value of the project as determined by the corporation for such project.

(d) Mortgage and security requirements may include the condition that the corporation will make no disbursements of the loan amount until it receives satisfactory evidence that there exists a sufficient means of repayment of the project loan based on contracts for sale of the individual dwelling units.

(e) A building loan agreement and other security agreements, as appropriate, shall be executed on approval of the loan upon such terms and conditions as the corporation may require.

[Eff _____] (Auth: HRS §201H-206)
(Imp: HRS §201H-206)

§15-321-18 Default. If any loan made under this chapter becomes delinquent or otherwise noncompliant with program requirements, the corporation may proceed

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with foreclosure actions in accordance with chapter 667, Hawaii Revised Statutes, and pursue any other civil remedy permitted by law. [Eff]
(Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-19 Books and records. The corporation shall ensure that proper records are appropriately maintained. Records shall show, at minimum, (a) the amount and purpose of the application of moneys on deposit in the program funds, (b) the source of the moneys, and (c) separate accountings for earnings on moneys on deposit in the program funds and proceeds on borrowing in accordance with generally accepted accounting principles. [Eff] (Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-20 Audit. All records of a project funded pursuant to this chapter shall be subject to audit by the corporation. [Eff]
(Auth: HRS §201H-206) (Imp: HRS §201H-206)

2. The adoption of Chapter 15-321, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

DONN MENDE, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED AS TO FORM:

Deputy Attorney General

CRITERIA POINT SYSTEM

Each application meeting the minimum criteria will be evaluated and be awarded points in accordance with the following criteria. **A minimum of 45 points (out of 60 total points) must be scored in order for the project to be considered for Affordable Homeownership Revolving Fund monies.**

I. PROJECT MANAGEMENT

- A. The applicant and/or project development team has demonstrated experience in real estate development and appears to possess the ability to successfully implement the proposed project in a timely and on-going manner. (10 points)

10 points The applicant and/or project development team has completed a previous project with affordable housing funds and/or has successfully built similar projects previously.

7 The applicant and/or project development team has not demonstrated experience in the development of affordable housing but has demonstrated the ability to complete the proposed project.

0 The applicant or the project development team have no demonstrated experience, and their ability to complete this project is questionable.

- B. The applicant presents a reasonable project cost, estimate, sources and uses statement, and pro forma operating budget. (10 points)

10 points The project cost analysis of the proposed development and proforma operating budget are considered reasonable.

- 5 Either the project cost analysis or proforma operating budget is not considered reasonable.
- 0 Both the project cost analysis and proforma operating budget are not considered reasonable.

II. PROJECT READINESS

A. The applicant's development schedule demonstrates that the proposed project will be able to begin construction, contingent upon the receipt of Affordable Homeownership Revolving Fund monies, within a specific time frame.

10 points The applicant has demonstrated that the proposed project will begin construction within 6 months upon the receipt of award. (i.e., the project has site control, proper zoning, and all funding commitments).

7 The applicant has stated that the proposed project will begin construction within 12 months upon the receipt of award. (i.e., the project still lacks one of the items listed above or other discretionary approvals).

3 The applicant has stated that the proposed project will begin construction later than 12 months after receipt of award. (i.e., the project still lacks two or other discretionary approvals).

0 The applicant is unable to determine the timeframe for construction (i.e., the project still lacks zoning, site control, funding commitments, and Negative Declaration, or the majority of these items).

EXHIBIT A

III. PROJECT LEVERAGING

- A. The proposed project provides the maximum number of units for the least amount of Affordable Homeownership Revolving Fund monies. (20 points)

20 points For all projects under consideration, each

project is ranked and awarded points based on the ratio of the number of units/amount of AHRF monies requested. The projects are ranked competitively against the other projects under consideration. 20 points are awarded to the top project, with points awarded in descending order from 20, to other projects under consideration, based on ratio of units/amount of AHRF monies requested.

- B. The applicant has secured commitments of other funding resources, including cash, public funds and grants, and private sector loans to reduce the amount of AHRF monies requested. Staff may evaluate conditional commitments on a case-by-case basis to determine if points may be awarded. (10 points)

_____ % of secured commitments of other funding resources separate from the funds applied for through the Affordable Homeownership Revolving Fund (i.e., 95% of project funds are secured through commitments of other funds sources).

10 points	100%
9	90% < 99%
8	80% < 90%
7	70% < 80%
6	60% < 70%
5	50% < 60%
4	40% < 50%
3	30% < 40%
2	20% < 30%
1	10% < 20%
0	0% < 10%

C. The proposed project has a leverage ratio of _____
when comparing Affordable Homeownership Revolving
Fund monies to other funding sources.

20 points	Less than 20%
17	20% < 33%
15	33% < 40%
10	40% < 60%
5	60% < 80%
0	Greater than or equal to 80%