

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Adoption of Chapter 15-321
Hawaii Administrative Rules

October 31, 2023

SUMMARY

Chapter 15-321, Hawaii Administrative Rules, entitled
"Affordable Homeownership Revolving Fund Program," is adopted.

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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Fund Loan Program

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SUBCHAPTER 1

GENERAL PROVISIONS

§15-321-1 Purpose. The purpose of this chapter is to implement the provisions of section 201H-206, HRS, by establishing an affordable homeownership revolving fund program. The purpose of section 201H-206, HRS, 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 NOV 27 2023] (Auth: HRS §201H-206) (Imp: HRS §201H-206)

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

"Administrator" means the executive director employed by the board or the executive director's designated representative.

"Affordable for-sale housing" means housing for persons or families whose incomes are one hundred twenty per cent or less of the area median income for each of the counties of Hawaii, Kauai, Maui, and the city and county of Honolulu, as determined by HUD from time to time, and as adjusted by family size.

"Affordable homeownership revolving fund" or "fund" means the fund that 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" means the planning, financing, acquisition of real property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Nonprofit community development financial institution" means a domestic nonprofit corporation or other nonprofit entity registered to do business in the State of Hawaii that has been certified by the United States Department of Treasury to provide

financial services in low-income communities and to people who lack access to financing.

"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 costs" means soft costs incurred while determining feasibility of a particular project including, but not limited to, the costs of preliminary financial applications, planning and feasibility studies, legal fees, architectural and engineering fees, environmental site assessments, and other exploratory work.

"Project" or "housing project" means a plan, design, or undertaking for the development of dwelling 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 housing project.

"Staff" means employees of the corporation.

[Eff **NOV 27 2023**] (Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-3 Fees and charges. (a) The corporation shall have the right to charge reasonable, 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	0.5% to 1% of loan amount
Loan extension fee	0.5% to 1% of loan amount
Loan interest rate (fixed)	1% to 2% per annum

[Eff **NOV 27 2023**] (Auth: HRS §§201H-4, 201H-206) (Imp: HRS §201H-206)

SUBCHAPTER 2

AFFORDABLE HOMEOWNERSHIP REVOLVING FUND LOAN PROGRAM

§15-321-11 Project criteria for funding; minimum requirements. Qualified housing projects funded in whole or in part through loans from the fund must meet one of the following criteria in descending order of priority:

- (1) Affordable for-sale projects or units in projects that are funded by programs of the United States Department of Housing and Urban Development, the United States Department of Agriculture Rural Development, and the 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 United States Department of Housing and Urban Development area 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 United States Department of Housing and Urban Development area 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 United States Department of Housing and Urban Development area median family income; or
- (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 United States Department of Housing and Urban Development area median family income. [Eff ^{NOV 27 2023}] (Auth: HRS §§201H-4, 201H-206) (Imp: HRS §201H-206)

§15-321-12 Affordable homeownership revolving fund; allowable uses. (a) The fund may be used to provide loans for the development of affordable for-sale projects that meet the minimum criteria for eligibility set forth in section 15-321-11. Additionally, an amount from the fund may be used to pay for administrative expenses incurred by the corporation in administering the fund.

(b) Activities and costs eligible for assistance from the fund shall include, but are not limited to:

- (1) Planning;
- (2) Design;
- (3) Land acquisition, including the costs of options, agreements of sale, and down payments;
- (5) Equity financing as matching funds to obtain other sources of private or public financing;
- (6) New construction or rehabilitation of housing units;
- (7) Acquisition of housing units for the purpose of preservation as affordable housing; and
- (8) Pre-development costs; provided that loans for pre-development costs are limited to only one loan per project. [Eff NOV 27 2023] (Auth: HRS §§201H-4, 201H-206) (Imp: HRS §201H-206)

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

A nonprofit housing development organization or nonprofit community development financial institution may apply for a loan by submitting an application, on forms prescribed by the corporation, along with any additional information that the corporation deems to be applicable. Information requested by the corporation may include, but is not limited to:

- (1) The borrower, including principals;
- (2) Organizational structure and history;
- (3) Financial statements;
- (4) Experience in the development or financing of affordable for-sale housing;
- (5) Project description;
- (6) Project status and development timetable;
- (7) Site information;
- (8) Project financing;
- (9) If a loan from the fund will be leveraged to obtain capital from the United States Department of the Treasury or other public and private sources, information on:
 - (A) The source(s) of other funding, requirements for funding, and loan terms;
 - (B) The timetable for obtaining outside capital, including how and when loan funds must be disbursed; and
 - (C) How and when loan funds will be disbursed and repaid relative to the other source(s) of funding;

(10) Any other information that the corporation deems necessary to determine the qualification of the applicant and feasibility of the project.

(b) The corporation's action on applications shall be subject to the availability of funds. [Eff NOV 27 2023]
(Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-14 Applications for loans; processing.

(a) Upon receipt of an application for a loan, staff shall time stamp the same as received and review the application for completeness and compliance with applicable rules under this chapter.

(b) If an application is incomplete, the applicant will be notified in writing and given ten business days to remedy any problems or deficiencies in the 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 for denial.

(c) If the proposed project does not meet the affordability and eligible use requirements set forth in this chapter, staff shall send a loan denial letter to the applicant stating the reasons for denial.

(d) During the project evaluation process, staff may request additional information from the applicant to further inform the evaluation 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 NOV 27 2023] (Auth: §§201H-4, HRS 201H-206) (Imp: HRS §201H-206)

§15-321-15 Evaluation of requests for project loans; project benefits and impact. (a) Staff shall review and evaluate each complete loan application, and shall take into consideration factors such as compliance with the purposes and intent of chapter 201H, HRS, and other relevant factors including, but not limited to, the following:

- (1) The organizational mission and history, and legal, business, and community standing of the applicant;
- (2) Favorable experience of the applicant and development team in the development of affordable for-sale housing;
- (3) The creditworthiness of the applicant and the applicant's ability to repay the money borrowed;

- (4) The need, market, and anticipated impact of the proposed project;
- (5) The status of the proposed project, including site control status, current zoning, and any zoning change and use permit, etc. that may be needed, development timetable, and status of obtaining other proposed sources of funds;
- (6) The extent to which loan funds will be leveraged with other funding sources; and
- (7) The reasonableness of project costs and pro forma budget. [Eff **NOV 27 2023**] (Auth: HRS §201H-202) (Imp: HRS §201H-204)

§15-321-16 Corporation action. After review of the application to assess the qualification of the applicant and the appropriateness, technical compliance, and feasibility of the proposed project, the administrator may submit the application with a recommendation for approval, contingent approval, or disapproval to the board. Any application forwarded to the board by the administrator may be rejected, accepted, deferred, or re-referred to the administrator for further review and recommendation. If the corporation accepts a request to allocate funds, it must obtain the governor's approval for funds to be allocated to the project. [Eff **NOV 27 2023**] (Auth: HRS §201H-206) (Imp: HRS §201H-206)

§15-321-17 Financing requirements. (a) The corporation may make loans to nonprofit community development financial institutions or nonprofit housing development organizations for the purposes set forth in section 15-321-12.

(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 loan-to-value ratio of one hundred per cent.

(d) Interim loans shall be funded in accordance with section 201H-43, HRS.

(e) 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 means of repayment of the project loan and, if the loan will be used to satisfy a matching fund requirement, that said financing assistance has been approved and disbursement of loan funds is required.

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

(g) The corporation may impose such requirements, including restrictions covering the sale of dwelling units set forth in section 201H-47, HRS, or such other restrictions.

(h) The corporation shall establish provisions for monitoring development milestones and, if applicable, status of obtaining funding from the United States Department of the Treasury or other public or private sources of capital.

(i) The corporation shall have the right to rescind or recapture moneys loaned if the terms of the contract are not fulfilled. [Eff NOV 27 2023] (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 with foreclosure actions in accordance with chapter 667, HRS, and pursue any other civil remedy permitted by law. [Eff NOV 27 2023] (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:

(1) The amount and purpose of the application of moneys on deposit in the program funds;

(2) The source of the moneys; and

(3) Separate accountings for earnings on moneys on deposit in the program funds and proceeds on borrowing in accordance with generally accepted accounting principles.

[Eff NOV 27 2023] (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 NOV 27 2023] (Auth: HRS §201H-206)
(Imp: HRS §201H-206)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Chapter 15-321, Hawaii Administrative Rules, on the Summary Page dated October 31, 2023, was adopted on November 01, 2023, following a public hearing held on October 31, 2023, 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 September 22, 2023.

The adoption of chapter 15-321 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Gary Mackler

GARY MACKLER, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED:

Josh Green

JOSH GREEN, M.D.
Governor
State of Hawaii

Date: 11/17/23

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LIEUTENANT GOVERNOR'S
OFFICE

APPROVED AS TO FORM:

R. K. K.

Deputy Attorney General

NOV 27 2023

Filed

