

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Repeal of Chapter 15-161 and
Adoption of Chapter 15-314
Hawaii Administrative Rules

September 1, 2024

1. Chapter 15-161, Hawaii Administrative Rules, entitled "Hula Mae Single Family Program", is repealed.

2. Chapter 15-314, Hawaii Administrative Rules, entitled "Hula Mae Home Mortgage Loan 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 314

HULA MAE HOME MORTGAGE LOAN PROGRAM

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Historical note: Chapter 15-314, Hawaii Administrative Rules, is based substantially upon Chapter 15-161, Hawaii Administrative Rules. [Eff October 25, 1999; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-314-1 Purpose. This chapter implements subpart B of part III, chapter 201H, Hawaii Revised Statutes, the housing loan and mortgage program. [Eff] (Auth: HRS §201H-97) (Imp: HRS §201H-98)

§15-314-2 Definitions. As used in this chapter:

"Bonds" means the revenue bonds issued to finance all or any part of the advance commitments program and the loan funding program authorized under subpart B of part III, chapter 201H, HRS.

"Corporation" means the Hawaii housing finance and development corporation established under chapter 201H, HRS.

"Dwelling unit" means any single family residence as provided by section 143(k) of the Internal Revenue Code of 1986, as amended.

"Eligible borrower" means a person or family who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is a bona fide resident of the State;
- (3) Is at least eighteen years of age;
- (4) Does not personally, or whose spouse does not if the person is married, own any interest in a principal residence within or without the State, and who has not owned a principal residence within the three years immediately prior to the application for an eligible

loan under this subpart, except this requirement shall not apply to any eligible loan that meets the requirements of section 143(d) of the Internal Revenue Code of 1986, as amended;

- (5) Is financing a property that will be the eligible borrower's principal residence;
- (6) Does not have a family income exceeding the income requirements of section 143(f) of the Internal Revenue Code of 1986, as amended; and
- (7) Who has timely received recapture notices from the corporation or from the lender.

"Eligible loan" means a loan under subpart B of part III, chapter 201H, HRS, including mortgage-backed securities backed by such a loan, to an eligible borrower for the permanent financing of a dwelling unit, including a condominium unit; including eligible improvement loans, loans to finance homebuyer assistance, and loans that provide the security or interest in a mortgage-backed security; provided that the property financed is located in the State, will be occupied as the principal residence by the eligible borrower, and meets other requirements as established under this chapter. Notwithstanding any other provision of the law, the corporation may provide homebuyer assistance in conjunction with eligible loans through loans or other means.

"Family income" means the annualized gross income of an eligible borrower (or borrowers) or non-borrower household members in compliance with section 143(f) of the Internal Revenue Code of 1986, as amended.

"Homebuyer assistance" means assistance provided to eligible borrowers in conjunction with an eligible loan to provide downpayment assistance or fund closing costs; provided that such assistance is repaid through consideration to the corporation, including borrower repayments.

"Homeownership counseling" means housing counseling related to homeownership and residential mortgage loans when provided in connection with the United States Department of Housing and Urban Development's housing counseling program.

"Lower and moderate income" means an income that meets the requirements of section 143(f) of the Internal Revenue Code of 1986, as amended.

"Mortgage-backed security" means any investment security, not including bonds of the corporation, that represents an interest in, or is secured by, one or more pools of mortgage loans, including any such security representing a direct obligation or guarantee of a federally sponsored or private entity such as the Government National Mortgage Association,

Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation.

"Mortgage lender" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, that:

- (1) Is authorized to do business in the State;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution that is an approved mortgagee for the Federal Housing Administration, an approved lender for the United States Department of Veterans Affairs or the United States Department of Agriculture, or an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

"Mortgage purchase agreement" means an agreement by and between the corporation and a mortgage lender, in the form prescribed by the corporation, by which the corporation agrees to purchase eligible loans on the terms and conditions set forth in the agreement. The form of the mortgage purchase agreement shall be available for inspection at the principal office of the corporation during normal business hours.

"Mortgage servicing agreement" means an agreement by and between the corporation and a servicer in the form as may be prescribed by the corporation to service eligible loans. The form of the mortgage servicing agreement shall be available for inspection at the principal office of the corporation during normal business hours.

"Recapture notices" means the notices to an eligible borrower that meets the requirements of section 143(m) of the Internal Revenue Code of 1986, as amended.

"Servicer" means a mortgage lender or its designee, approved by the corporation, who has executed a mortgage servicing agreement with the corporation. [Eff]
(Auth: HRS §§201H-93, 201H-97, 201H-98) (Imp: HRS §§201H-93, 201H-94, 201H-105, 201H-106)

§15-314-3 Delegation of authority. The corporation delegates to the executive director the authority to implement and carry out the purpose of this chapter.

[Eff
4)

] (Auth: HRS §201H-4) (Imp: HRS §201H-

§15-314-4 Compliance monitoring. The corporation may monitor the eligible borrower throughout the term of the eligible loan to ensure compliance with program requirements. [Eff] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§§15-314-5 to 15-314-19 (Reserved).

SUBCHAPTER 2

ADVANCE COMMITMENTS PROGRAM

§15-314-20 Purpose. The purpose of this program is to allow the corporation to contract with a mortgage lender for the advance commitment to purchase eligible loans for eligible borrowers. [Eff] (Auth: HRS §201H-97) (Imp: HRS §201H-105)

§15-314-21 Definitions. As used in this subchapter:

"Commitment application" means a mortgage lender's application, in such form as may be prescribed by the corporation, to sell eligible loans to the corporation pursuant to the terms of the mortgage purchase agreement. The form of the commitment application shall be available for inspection at the principal office of the corporation during normal business hours.

"Notice of acceptance" means the corporation's notice to the mortgage lender of the acceptance of its commitment application. [Eff] (Auth: HRS §201H-97) (Imp: HRS §201H-105)

§15-314-22 Process and procedure. (a) The corporation shall make available to all mortgage lenders a commitment application at least thirty days in advance of the deadline for submission to the corporation. The commitment application shall be made available on the corporation's website.

(b) To allocate available funds to meet the commitments requested by mortgage lenders, the corporation may consider, among other things:

- (1) The total amount of the commitments requested by the mortgage lenders;
- (2) The financial condition of the mortgage lenders who submit commitment applications;
- (3) The volume of residential mortgage loans made in the State by the mortgage lenders during the preceding twelve-month period;
- (4) The demonstrated ability of the mortgage lenders to act as servicers of the eligible loans to be purchased by the corporation;
- (5) The desire to achieve a reasonable geographic distribution of available funds throughout the State; and
- (6) The desire to have as many mortgage lenders as possible participate in the program.

(c) The corporation may determine the allocation between single family dwellings and condominium units by the total dollar amount of the commitment. Mortgage fund reservations for new construction projects shall be approved by the corporation prior to the making of such reservations by mortgage lenders. The method of allocation or mortgage fund reservation shall be set forth in the commitment application for the effective period. The method of allocation or mortgage fund reservation will be posted to the corporation's website and is subject to change at the discretion of the corporation.

(d) The corporation shall issue a notice of acceptance as prescribed in the commitment application on or before the date of the sale of the bonds.

(e) The purchase price of a mortgage loan to be acquired by the corporation will be negotiated between the corporation and the mortgage lender and shall not be in excess of one hundred per cent of the unpaid principal balance of the mortgage loan plus accrued interest thereon. The corporation will require the following from the accepted mortgage lender:

- (1) Commitment application;
- (2) Mortgage purchase agreement; and
- (3) Mortgage servicing agreement.

(f) It shall be a prohibited practice to utilize the eligible loan to:

- (1) Convert an agreement of sale to a permanent mortgage; or
- (2) Refinance an existing mortgage loan.

(g) The corporation shall prescribe the form of loan application that the eligible borrower shall complete.

Evaluation by the mortgage lender of each loan applicant's creditworthiness shall be done on a case-by-case basis. The following elements shall be considered in all cases when evaluating credit:

- (1) Monthly housing expense-to-income ratio;
- (2) Monthly debt payment-to-income ratio;
- (3) Stable monthly income;
- (4) Loan applicant's credit reputation; and
- (5) Ability of the eligible borrower to qualify for mortgage financing under a conventional loan.

[Eff _____] (Auth: HRS §201H-97) (Imp: HRS §§201H-98, 201H-99, 201H-100, 201H-101, 201H-105, 201H-107, 201H-108, 201H-109, 201H-110)

§§15-314-23 to 15-314-29 (Reserved).

SUBCHAPTER 3

LOAN FUNDING PROGRAM

§15-314-30 Purpose. The purpose of this program is to provide eligible loans to eligible borrowers through an alternative program to the advance commitments program. Such loans are made available at affordable interest rates, permitting the purchase of homes by eligible borrowers. The purchase of mortgage loans shall be based upon requests submitted to the corporation by mortgage lenders on a loan-by-loan basis. [Eff _____] (Auth: HRS §201H-106) (Imp: HRS §201H-106)

§15-314-31 Definitions. As used in this subchapter:

"Commitment letter" means the corporation's notice to the mortgage lender of the acceptance of its qualified request and the reservation of funds pursuant to the request.

"Qualified request" means a request submitted by a mortgage lender to the corporation for the commitment of funds to a specific loan that meets all prerequisites necessary to be purchased by a federally sponsored or private entity such as the Government National Mortgage Association, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. The information in the "qualified request" must include but not be limited to, the borrowers' names, and

commitment fees. Incomplete requests will not be processed. Any mortgage lender submitting an incomplete request will be contacted within five business days to be advised of the incomplete status. The mortgage lender will have ten working days to provide the missing items. After the eleventh working day, the request is rejected. [Eff _____] (Auth: HRS §201H-97) (Imp: HRS §201H-106)

§15-314-32 Acquisition cost limitation. (a) No residence financed shall have an acquisition cost that exceeds the maximum acquisition cost based on the loan limits permitted by section 143(a) of the Internal Revenue Code of 1986, as amended.

(b) The acquisition cost shall include:

- (1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of the seller) as consideration for the residence, including the amount of any lien or assessment to which the residence is subject; and
- (2) If a residence is incomplete, the reasonable cost of completing the residence, whether the cost of completing construction is to be financed with the mortgage loan.

(c) The acquisition cost shall not include the following:

- (1) The usual and reasonable settlement or financing costs, including
 - (A) Title and transfer costs;
 - (B) Title insurance;
 - (C) Survey fees or other similar costs;
 - (D) Credit reference fees;
 - (E) Legal fees;
 - (F) Appraisal expenses;
 - (G) Points that are paid by the eligible borrower (but not the seller, even though borne by the eligible borrower through a higher purchase price); or
 - (H) Other costs of financing the residence, but only in cases to the extent that the amount does not exceed the usual and reasonable costs, which would be paid by the eligible borrower where financing is not provided through the use of tax-exempt bonds; and
- (2) The cost of land, which has been owned by the mortgagor for at least two years prior to the date that construction of the residence begins.

[Eff _____] (Auth: HRS §§201H-93, 201H-94, 201H-97)
(Imp: HRS §§201H-18, 201H-94, 201H-106)

§15-314-33 Process and procedure. (a) The corporation shall notify all mortgage lenders of its intent to issue bonds not later than thirty days in advance of the anticipated sale date of the bonds. The notification shall be posted to the corporation's website.

(b) The distribution of available funds shall be based upon the order in which the corporation receives the qualified requests. Each complete qualified request received by the corporation shall be date- and time-stamped to chronologically prioritize the allocation of funds.

(c) The corporation may determine the allocation between single family dwellings and condominium units by the total dollar amount. Mortgage fund reservations for new construction projects shall be approved by the corporation prior to the making of such reservations by mortgage lenders. The method of allocation or mortgage fund reservation shall be posted to the corporation's website and is subject to change at the discretion of the corporation.

(d) It shall be prohibited practice to utilize an eligible loan to:

- (1) Convert an agreement of sale to a permanent mortgage;
- or
- (2) Refinance an existing mortgage loan.

(e) The corporation shall prescribe the form of loan application, which the eligible borrower shall complete in accordance with the terms and conditions set forth in the guidelines published on its website. Evaluation by the mortgage lender of each loan applicant's creditworthiness shall be done on a case-by-case basis.

The following elements shall be considered in all cases when evaluating credit:

- (1) Monthly housing expense-to-income ratio;
- (2) Monthly debt payment-to-income ratio;
- (3) Stable monthly income;
- (4) Loan applicant's credit reputation; and
- (5) Ability of the eligible borrower to qualify for mortgage financing under a conventional loan.

(f) The eligible borrower shall be responsible for the payment of all fees, premiums, and charges charged by the corporation or mortgage lender, or both, in connection with the funding of loans under this chapter. Upon the closing of the loan, the fees charged by the corporation shall be as follows:

Purpose of Fee	Amount Charged
Processing	\$500
Loan origination	1% of the loan amount

[Eff] (Auth: HRS §201H-98) (Imp: HRS §201H-106)

§15-314-34 Evidence of eligible loan. (a) Each mortgage lender who participates in any housing loan program shall submit evidence, as deemed satisfactory by the corporation, that eligible loans have been made.

(b) The corporation may inspect the books and records of the mortgage lenders as may be necessary for the purposes of this section. [Eff] (Auth: HRS §201H-101) (Imp: HRS §201H-101)

§15-314-35 Management of defaulted loans. The corporation may:

- (1) Renegotiate, refinance, or foreclose any loan in default;
- (2) Waive any default or consent to the modification of the terms of any loan or security agreement;
- (3) Commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement;
- (4) Bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan; and
- (5) Operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan.

[Eff] (Auth: HRS §201H-110) (Imp: HRS §201H-110)

§§15-314-36 to 15-314-39 (Reserved).

SUBCHAPTER 4

MISCELLANEOUS PROVISIONS

§15-314-40 Yield on mortgage loans. Mortgage loans sold to the corporation shall bear interest at a rate and be sold to the

corporation at a price that in the aggregate is expected to produce a yield to the corporation on the mortgage loans sufficient to:

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

provided the yield on the mortgage loans shall not exceed, as applicable, the maximum permitted by applications of the provisions of section 103A(i) or section 103(c) of the Internal Revenue Code of 1954, as amended, or section 143(g) of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated by the United States Department of the Treasury. [Eff _____] (Auth: HRS §201H-97) (Imp: HRS §§201H-98, 201H-99, 201H-100)

§15-314-41 Waiver. The corporation may waive or vary provisions of this chapter to conform to applicable federal requirements. [Eff _____] (Auth: HRS §201H-97) (Imp: HRS §201H-98)

§15-314-42 Homeownership counseling. The corporation may require the eligible borrower to successfully complete a homeownership counseling program. [Eff _____] (Auth: HRS §201H-97) (Imp: HRS §201H-8)

§15-314-43 Limitations on transfer, use, and eligibility.

(a) In the event that:

- (1) The eligible borrower conveys or transfers the property described in the mortgage to any person other than an eligible borrower; except for a transfer of title for estate planning purposes, provided that the eligible borrower remains clearly identifiable and in occupancy during the term of the mortgage loan; or
- (2) The eligible borrower rents or fails to occupy the property described in the mortgage as the eligible borrower's permanent and primary residence; or
- (3) The eligible borrower fails to abide by any agreements executed by the eligible borrower for the purpose of the eligible loan; or

- (4) Corporation finds that any statement made by the eligible borrower in the eligible loan application to be false; provided such a statement is necessary for the purchase of mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration or the Farmers Home Administration, per the published requirements of each organization, as amended.
 - (b) The corporation may:
 - (1) Increase the interest rate charged to the eligible loan up to a rate that shall not exceed the interest rate allowable for loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration or the Farmers Home Administration at the time that the original loan was made; or
 - (2) Accelerate all payments due under the eligible loan.
- [Eff _____] (Auth: HRS §§201H-94, 201H-97) (Imp: HRS §§201H-92, 201H-94)

§15-314-44 Falsification of application. By signing the application, the eligible borrower certifies that the information provided therein is complete and accurate. An eligible borrower found to have wilfully submitted false information, made misstatements, or withheld important information shall be deemed ineligible; provided that the corporation shall not waive its right to pursue any other recourse provided by law. [Eff _____] (Auth: HRS §§201H-93, 201H-97) (Imp: HRS §201H-93)

§15-314-45 Occupancy. (a) The eligible borrower shall utilize the dwelling purchased under this chapter as his or her permanent and principal residence for the life of the eligible loan. Any residence in which more than fifteen per cent of the total area is reasonably expected to be used primarily in a trade or business shall not be considered a principal residence for purposes of this chapter.

(b) From time to time, the corporation may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.

(c) For an eligible borrower in the process of selling or transferring title to their property, the corporation may grant

a waiver of the requirements of subsection (a) of this section for a period not to exceed three years and for reasons based on hardship, included but not limited to, unforeseeable job or military transfer, serious illness of the eligible borrower, or any other hardship circumstance that the corporation may determine on a case-by-case basis, at its sole discretion.
[Eff] (Auth: HRS §201H-92)(Imp: HRS §201H-92)

§15-314-46 No arbitrage bonds. It is the intent of the corporation not to exceed the arbitrage limitation of the Internal Revenue Code §1.148-2, as amended, and the corporation may waive any provision of this chapter in any instance to comply with the arbitrage limitation. [Eff]
(Auth: HRS §201H-79)(Imp: HRS §201H-79)

§15-314-47 Mortgage valid first lien. The mortgage securing each eligible loan shall constitute a first lien on such real estate evidenced by an instrument recorded in the bureau of conveyances of the state of Hawaii or filed in the office of the assistant registrar of the land court of the state of Hawaii, or both, as applicable. The enforcement of such a mortgage shall be delineated in the documented servicing requirements of each loan. Certified copies of each recorded mortgage and conveyance document, electronic copies of all loan documents, and original promissory notes shall be provided to the corporation within five working days of the recording date of the loan."
[Eff] (Auth: HRS §201H-94)(Imp: HRS §201H-94)

3. The simultaneous repeal of chapter 15-161 and adoption of 15-314, 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 Month XX, 2024, and filed with the Office of the Lieutenant Governor.

GARY MACKLER, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED AS TO FORM:

Deputy Attorney General