

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Repeal of Chapter 15-169 and
Adoption of Chapter 15-317
Hawaii Administrative Rules

September 1, 2024

1. Chapter 15-169, Hawaii Administrative Rules, entitled "Downpayment Loan Program", is repealed.

2. Chapter 15-317, Hawaii Administrative Rules, entitled "Downpayment Loan Assistance 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 317

DOWNPAYMENT LOAN ASSISTANCE PROGRAM

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Historical note: Chapter 15-317, Hawaii Administrative Rules, is based substantially upon chapter 15-169, Hawaii Administrative Rules. [Eff October 25, 1999; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-317-1 Purpose. This chapter implements subpart F of part III, chapter 201H, HRS, the downpayment loan assistance program. Its purpose is to provide eligible borrowers with downpayment loans to facilitate greater homeownership opportunities for Hawaii residents. [Eff]
(Auth: HRS §201H-4) (Imp: HRS §201H-161)

§15-317-2 Definitions. As used in this chapter:

"Annualized gross income" means the gross monthly income of an eligible borrower (or borrowers) multiplied by twelve.

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

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

"Eligible borrower" means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State;
- (4) Will physically reside in the residential property to be purchased for the term of the loan;
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made;
- (6) Provides a portion of the downpayment that shall be equal to at least five per cent of the sales price;
- (7) Has successfully completed a homeownership counseling program provided by a housing counseling agency approved by the United States Department of Housing and Urban Development;
- (8) Will physically reside in the residential property to be purchased, as the borrower's principal residence;
- (9) Does not own in fee simple or in leasehold any other residential property within the State;

- (10) Does not have annualized gross income that exceeds the income limit set forth in this section;
- (11) 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;
- (12) Has not previously been provided a loan under this chapter or chapter 15-169, except in cases of extreme hardship, divorce, etc., as determined by the corporation; and
- (13) Has timely received recapture notices from the corporation, from the mortgage lender, or from a non-profit organization.

"Eligible loan" means any residential dwelling unit second mortgage loan made to an eligible borrower for a downpayment under this chapter.

"Escrow company" means a disinterested third party that holds money or documents, or both, until the terms and conditions of sale between the homebuyer and the seller have been satisfied.

"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.

"Income limit" means the annualized gross income limit established by the corporation based on the limits imposed by section 143(f) of the Internal Revenue Code of 1986, as amended.

"Nonprofit organization" has the meaning as defined in section 454F-1, HRS.

"Recapture notices" means the notices to an eligible borrower that meet the requirements of section 143(m) of the Internal Revenue Code of 1986, as amended. [Eff _____]
 (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §§201H-161, 201H-162)

§15-317-3 Delegated authority. The corporation delegates to the executive director the authority to implement and carry out the purposes of this chapter. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-317-4 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)

§15-317-5 Waiver. The corporation may waive or vary the provisions of this chapter, or any process or procedure established by this chapter, in order to conform to applicable federal and state laws, regulations, and requirements. [Eff] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§§15-317-6 to 15-317-9 (Reserved).

SUBCHAPTER 2

DOWNPAYMENT LOAN ASSISTANCE PROGRAM

§15-317-10 Corporation's right to contract for services of nonprofit organization. In addition to directly making loans, the corporation is authorized to enter into agreements with, or purchase services from, any nonprofit organization for services required for the purposes of this chapter. [Eff] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§15-317-11 Amount of eligible loan. The eligible loan to any one borrower shall not exceed fifteen per cent of the purchase price or appraised value of the residential property, or \$60,000, whichever is less. In no event shall the loan amount and purchase money mortgage amount exceed one hundred per cent of the combined loan-to-value. [Eff] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§15-317-12 Repayment; term of eligible loan. The corporation shall determine the repayment schedule and term for eligible loans made under this chapter. [Eff] (Auth: HRS §201H-161) (Imp: HRS §201H-161)

escrow company. [Eff _____] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§15-317-16 Funding for eligible loan. The following procedure is established for the funding of loans made under this chapter:

- (1) No funds shall be authorized for release until the mortgage lender or nonprofit organization has provided the corporation with all the required documentation which verifies the borrower's eligibility for a loan under this chapter;
- (2) The corporation shall arrange for the loan funds to be available at the designated escrow company on the eligible borrower's required loan funding date; and
- (3) Funds shall be disbursed by check made payable to the escrow company as named in the purchase contract and shall be applied toward the eligible borrower's downpayment. [Eff _____] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§15-317-17 Restrictions on the eligible borrower. An eligible borrower receiving a loan under this chapter shall be subject to the conditions prescribed in section 201H-163, HRS.

- (1) The eligible borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property;
- (2) The residential property purchased with the downpayment loan and mortgaged to the corporation to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender;
- (3) The borrower shall pay when due all taxes, liens, judgments, or assessments that may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State;
- (4) The borrower shall maintain fire and casualty insurance in amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the State. All proceeds of that insurance shall be made payable to the first mortgage lender and the corporation as their

respective interests may appear at the time of any loss or damage. Subject to the policy of the corporation, in the event of any loss or damage to the improvements or property covered by the insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State; and

- (5) The borrower shall maintain the improvements in good repair. [Eff _____] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-163)

§15-317-18 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)

§15-317-19 Security for loan; establishment of mortgage lien. The mortgage securing each eligible loan shall constitute a second lien on such residential property purchased with the eligible loan. The nonprofit organization shall promptly record or file, or both, with the bureau of conveyances of the State of Hawaii or the office of the assistant registrar of the land court of the State of Hawaii as the case may be, to ensure the creation of a valid lien on the property. A certified recorded or filed copy of the mortgage, original promissory note, and an electronic copy of all borrowers' signed documentation for the eligible loan shall be provided to the corporation within ten working days of the loan closing date. [Eff _____] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§15-317-20 Technical default of loan and acceleration of maturity of loan. The occurrence of any of the following events shall be sufficient grounds for the corporation, at its option, to accelerate the maturity of the loan:

- (1) The eligible borrower sells, transfers, or refinances the property described in the mortgage; provided, however, that a transfer of title shall be permitted if it appears to the satisfaction of the corporation that the transfer was effected for estate planning purposes and the corporation's security interest is unaffected by the transfer;
- (2) The eligible borrower rents or fails to occupy the property described in the mortgage as the eligible borrower's permanent and primary residence;
- (3) The eligible borrower fails to abide by any agreements executed by the eligible borrower for the purpose of the eligible loan;
- (4) The corporation finds that any statement made by the eligible borrower in the application for an eligible loan to be false; or
- (5) Failure to respond in writing within thirty days to the corporation's written request to verify the occupancy of the eligible borrower. [Eff _____]

(Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§15-317-21 Monetary default of loan. The corporation may consider an eligible loan in default if the eligible borrower is delinquent in payment of any installment of principal and interest of the eligible loan. [Eff _____] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-161)

§15-317-22 Corporation's rights upon default of loan. With respect to any loan made under this chapter that is in default, the corporation or mortgage lender shall take all necessary action to collect the delinquent amounts and may take all actions generally allowed holders of mortgages, including the power to foreclose. [Eff _____] (Auth: HRS §§201H-4, 201H-161) (Imp: HRS §201H-164)

§15-317-23 False information in application. By signing the application, the eligible borrower certifies that the information provided in the application is true and correct. 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-4, 201H-161) (Imp: HRS §201H-161)

3. This simultaneous repeal of chapter 15-169 and adoption of chapter 15-317, 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