DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Amendment and Compilation of Chapter 15-317,
Hawaii Administrative Rules

[Board Adoption Date]

SUMMARY

1. §15-317-2 is amended.

2. §15-317-10 through §15-317-13 are amended.

3. §15-317-15 through §15-317-17 are amended.

4. §15-317-19 is amended.

5. §15-317-23 is amended.

6. Chapter 15-317, Hawaii Administrative Rules, is compiled.

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

Subchapter 1 General Provisions

Subchapter 2 Downpayment Loan Assistance Program

Historical note: Chapter 15-317 is based substantially upon chapter 15-169. [Eff 10/25/99; R May 23, 2025]

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.

"Bonds" means the tax-exempt or taxable single-family mortgage revenue bonds issued to finance eligible loans under this chapter.

"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 the mortgage lender is willing to lend money for the purchase of the residential property; provided that the required downpayment is made;
(6) Provides a portion of the downpayment that shall be equal to [~~at least five~~]three per cent of the sales price~~;~~ and may include any downpayment loan assistance made available by the corporation under this chapter; and
(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, if applicable.

"Eligible loan" means any residential dwelling unit second mortgage loan made to an eligible borrower 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 relating 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.

“Loan Type” means the specific regulatory framework, underwriting guidelines, and financing backing that governs how a mortgage is processed and insured.

“Maximum arbitrage limitation” means the yield restrictions outlined in United States Treasury Regulation § 1.148-2, as amended.

"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.

"Nonprofit organization" has the same 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 its 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 or mortgage lender 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. The corporation may also forgive all or a portion of the eligible loan's accrued interest, subject to the following terms and conditions:

(1) Except for eligible loans financed with proceeds from bond sales, the corporation may forgive accrued interest on eligible loans at its sole discretion and subject to the approval of the corporation's Board of Directors.

(2) Eligible loans financed with proceeds from bond sales may be subject to interest and such interest may be partially or fully forgiven at the sole discretion of the corporation.

[Eff] (Auth: HRS §201H-161)(Imp: HRS §201H-161)

§15-317-13 Interest rate on eligible loan. The corporation shall establish the interest rate for eligible loans made under this chapter, which shall be in accordance with subpart F of part III, chapter 201H, HRS. The corporation establishes the interest rate for eligible loans made under this chapter as follows:

(1) When an eligible loan is provided under this chapter in conjunction with a first mortgage loan under Chapter 15-314, and is financed with proceeds from bond sales, the corporation shall not charge interest on the eligible loan, provided that the first mortgage interest rate covers the cost of providing an eligible loan under this chapter.
(2) When an eligible loan is provided under this chapter not in conjunction with a first mortgage loan under Chapter 15-314, and is financed with proceeds from bond sales, the corporation may charge an interest rate up to the maximum allowable under the respective loan type and may adjust the interest rate charged on the loan so as to not exceed the maximum arbitrage limitation.
(3) When an eligible loan is provided under this chapter and is financed with funds other than proceeds from bond sales, the interest rate may not exceed the maximum rate permissible by the loan type.

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

§15-317-14 Fees. The eligible borrower is responsible for payment of all fees, premiums, and charges charged by the corporation, mortgage lender, or nonprofit organization, in connection with the funding of a loan under this chapter. Upon recordation, the eligible borrower shall pay the following program processing fees:

(1) $500 - $1,000 to the corporation; and
(2) $100 - $200 to the mortgage lender or nonprofit organization.

The fees, premiums, and charges shall be deposited into the housing finance revolving fund established in section 201H-80, HRS. [Eff] (Auth: HRS §§201H-4, 201H-163.5)(Imp: HRS §201H-163.5)

§15-317-15 Application for eligible loan. The following procedure is established for applying for eligible loans made under this chapter:

(1) The corporation shall publish on its website the names of all mortgage lenders and nonprofit organizations selected by the corporation to originate and service the loans made under this chapter;

(2) Application for a loan shall be made directly to the corporation, mortgage lender, or nonprofit organization;

(3) Each application shall include the eligible borrower's name, address, requested loan amount (subject to the limits set forth in section 15-317-12), credit history, income statement, statement of assets and liabilities, most recent signed federal and state income tax returns, and other information as prescribed by the corporation; and

(4) Upon the corporation's review and approval of the documents listed in paragraph (3), the corporation shall coordinate the funding of the loan with the mortgage lender or nonprofit organization and the 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 required documentation that verifies the borrower's eligibility for a loan under this chapter; and

(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, or such loan funds may be advanced by the

mortgage lender or nonprofit organization; [~~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:
(A) Make a downpayment for the purchase of a residential property; and/or
(B) Pay for closing costs, prepaids, and reserves pursuant to the purchase of the residential property for which the downpayment loan is provided;

(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 eligible 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 eligible 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 eligible 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 dwelling unit 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 dwelling unit, including the amount of any lien or assessment to which the dwelling unit is subject; and

(2) If a dwelling unit is incomplete, the reasonable cost of completing the dwelling unit, whether the cost of completing construction is to be financed with the mortgage loan.

(c) The acquisition cost shall not include:

(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 dwelling unit, 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 dwelling unit 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 or mortgage lender 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, <u>except that mortgages for eligible loans located on Hawaiian Home Lands must be recorded with the Department of Hawaiian Home Lands (DHHL),</u> 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 to be false any statement made by the eligible borrower in the application for an eligible loan ; or

(5) The eligible borrower fails to respond in

writing within thirty days to the corporation's written request to verify the occupancy of the eligible borrower. [Eff]

(6) Any dwelling unit 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.

(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~~]willfully 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)

Amendments to and compilation of Chapter 15-317, Hawaii Administrative Rules, on the Summary Page dated [new date], were adopted on [new board adoption date], following a public hearing held on [new hearing date], after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune Herald on [new notice of publication date].

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

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GRANT CHUN, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED:

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JOSH GREEN, M.D.
Governor
State of Hawaii

Date: ______________________

APPROVED AS TO FORM:

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Deputy Attorney General

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Filed