

AGREEMENT BETWEEN
THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII
AND THE
UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT, RURAL HOUSING SERVICE

This Memorandum of Understanding (MOU) replaces and supersedes the MOU entered on August 30, 1995 by the same parties. This MOU is entered into between the United States of America, acting through the United States Department of Agriculture (USDA), Rural Housing Service, in the Rural Development Mission Area (hereinafter referred to as “Rural Development”), and/or any successor agency or Mission Area, and the Department of Hawaiian Home Lands, State of Hawaii (DHHL) to support the guarantee of loans for the acquisition of residential housing to low- and moderate-income lessees of Hawaiian Home Lands in the State of Hawaii.

I. Purpose

This agreement defines the basic responsibilities of Rural Development, when acting as guarantor through the Single Family Housing Guarantee Loan Program, 42 U.S.C. § 1472(h), and DHHL regarding the guaranteeing of mortgages on Hawaiian Home Lands leaseholds. Pursuant to applicable statutory and regulatory standards and requirements, Rural Development will guarantee against losses on eligible loans originated and held by Rural Development-approved lenders pursuant to Title V of the Housing Act of 1949.

The guaranteeing of any loans pursuant to this MOU shall be subject to the availability of funding and to applicable lender and borrower eligibility requirements.

II. Underwriting

The Rural Development-approved lender (“Lender”) is responsible for loan origination, underwriting, and eligibility determinations for the guarantee of each mortgage in accordance with applicable regulations. This includes, but is not limited to, reviewing the planning, construction, specifications, cost estimation, valuation, and credit analysis.

III. Eligibility for Guarantee

In order for a mortgage on a Hawaiian Home Lands leasehold to be eligible for guarantee, it shall meet the following requirements:

- A. The principal purpose of the loan is housing acquisition.
- B. The mortgage to be guaranteed shall be executed by a native Hawaiian as defined by Section 247 of the National Housing Act, 12 U.S.C. {1715z-12}. DHHL will provide the native Hawaiian borrower (“Borrower”) with a Certification of Eligibility in order to ensure that this requirement is met.
- C. The property shall be located within an area designated as Hawaiian Home Lands, and DHHL shall have granted to the Borrower a homestead lease covering the property. The property shall also be located within a Rural Development eligible area, as defined by applicable regulations. At the time the loan is originated, DHHL will provide the Lender with a certification that the lease is not in default and has not been cancelled.
- D. The property is to be occupied as the principal residence of the Borrower.
- E. All other requirements set forth in 7 CFR Part 3555 and any successor regulation.

IV. Recording

DHHL agrees to record all Rural Development-guaranteed loan mortgages on Hawaiian Home Lands leaseholds in the recording system established at DHHL. DHHL agrees that in addition to the recording of Rural Development-guaranteed loan mortgages, all existing and valid homestead leases, all homestead leases issued in the future, and any changes to the status of each lease or ownership thereof are to be recorded in the same system.

V. Continued Treatment as Hawaiian Home Lands

DHHL agrees that if the land that is subject to a leasehold mortgage securing a loan guaranteed pursuant to this agreement is later determined not to have the status of Hawaiian Home Lands, DHHL will continue to treat the property in question as if it were part of the Hawaiian Home Lands for so long as the guaranteed loan is outstanding.

VI. No Lease Cancellation

DHHL agrees not to cancel any lease which is subject to a mortgage securing a Rural Development guaranteed loan without first notifying Rural Development.

VII. Default Under Loan

A. Lender may notify DHHL when a Borrower becomes thirty (30) days past due and provide status of delinquency every thirty (30) days until delinquency is cured.

- B. After the mortgage is two full payments in arrears, Lender may allow Borrower thirty (30) days to cure default and provide written notice of such action to DHHL.
- C. If a defaulted mortgage is not cured within one hundred twenty (120) days and the Lender concludes that liquidation of its Rural Development guaranteed loan is necessary, the Lender may serve a FINAL DEFAULT NOTICE to DHHL of its decision and certify that all servicing options have been explored and have been determined unworkable.

VIII. New Loan, Transfer and Assumptions

- A. Lender may consider making a new Rural Development guaranteed loan at the appraised value with loan proceeds applied to a defaulted mortgage.
- B. If Lender, Borrower, and Rural Development concur, a transfer and assumption to a new eligible borrower may be processed in accordance with applicable Rural Development regulations and instructions and this Agreement.

IX. Loss Claim and Assignment to DHHL

- A. If neither a new guaranteed loan or a transfer and assumption can be processed within six (6) months from date of Lender's FINAL DEFAULT NOTICE, as set forth in Section VII: C., above, the Lender may opt to assign the defaulted loan to DHHL based on a current Cost Approach appraisal on the leasehold improvements obtained by the Lender. If the Lender opts to assign the defaulted loan to DHHL, DHHL will pay the Lender the mortgage debt or Cost Approach appraised value, whichever is less.

- B. When a deficiency exists after either a new mortgage loan or a transfer and assignment is made, the Lender may calculate any loss incurred and submit a loss claim to Rural Development in accordance with applicable regulations. The Lender should utilize the date funds were received from DHHL and the amount paid by DHHL to complete the loss claim process.
- C. After a loan has been assigned to DHHL and a final loss has been paid by Rural Development to the Lender, the guarantee will be terminated. No further actions are required of DHHL by Rural Development.

X. Reporting

Rural Development will provide semi-annual reports to DHHL of the total outstanding balances of Rural Development-guaranteed loans secured by mortgages on leasehold interests in Hawaiian Home Lands in order to enable DHHL to determine the aggregate amount of guaranteed loans outstanding.

XI. Termination

- A. At any time, Rural Development or DHHL may give the other party ninety (90) calendar days written notice of intent to terminate this agreement. After the ninety (90) days have passed, Rural Development will not issue any commitments to guarantee mortgages and will not guarantee any additional loans to be covered by this agreement except pursuant to commitments made prior to the end of the ninety (90) day period.
- B. Notwithstanding any notice given under paragraph A, the responsibilities of Rural Development or DHHL with respect to outstanding Rural Development-

guaranteed loans and the funding of costs associated with such loans shall continue as provided in this agreement unless and until the parties enter into a written amendment of this agreement, all such loans are paid in full, or all guarantees of such loans are terminated.

XII. Amendment

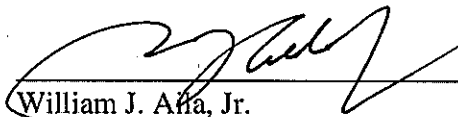
This agreement may be amended by DHHL and Rural Development in writing. Amendments, before taking effect, must be signed by authorized representatives of both DHHL and Rural Development.

XIII. Miscellaneous

- A. This agreement shall be construed in accordance with the laws of the United States.
- B. Nothing in this Agreement shall be construed to alter or limit the scope and effectiveness of the Hawaiian Homes Commission Act of 1920, as amended (HHCA), or a lessee's obligation to comply with the requirements of the HHCA.
- C. Nothing in this Agreement shall obligate either Party to take any action which conflicts with applicable law or regulation or refrain from taking any action required by applicable law or regulation, including without limitation the HHCA or the Housing Act of 1949.
- D. This agreement is neither a fiscal nor funds-obligation document. Activities contemplated or required by the agreement are subject to the availability of funds.

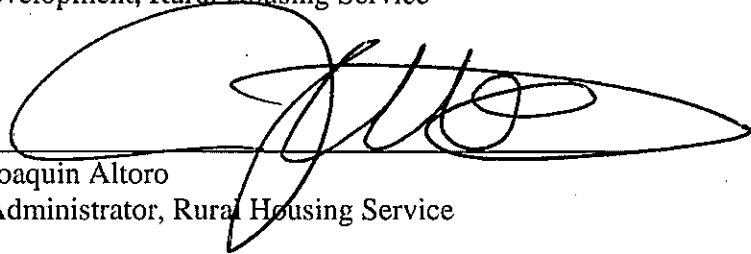
APPROVED:

State of Hawaii
Department of Hawaiian Home Lands

By: 
William J. Aha, Jr.
Chairperson, Hawaiian Homes Commission

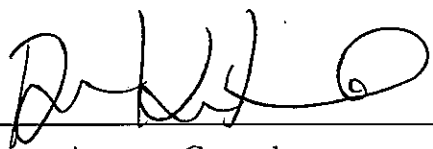
Date: 12/20/22

United States Department of Agriculture,
Rural Development, Rural Housing Service

By: 
Joaquin Altoro
Administrator, Rural Housing Service

Date: 12/20/22

APPROVED AS TO FORM


Deputy Attorney General
State of Hawaii