

County Council Of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 6

Resolution No. 59 -2021

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION amending the rules that implement the Settlement Downpayment Loan Program established under Title 13, Subtitle 9 of the Howard County Code; to update and add certain definitions; to remove language related to lending pools and participating lenders; to add a method of calculation to determine self-employment; to update minimum down payment requirements and qualification for certain loan types; to update loan subordination requirements; and generally relating to the Settlement Downpayment Loan Program.

Introduced and read first time _____, 2021.

By order _____
Theo Wimberly, Acting Administrator

Read for a second time at a public hearing on _____, 2021.

By order _____
Theo Wimberly, Acting Administrator

This Resolution was read the third time and was Adopted __, Adopted with amendments __, Failed __, Withdrawn __, by the County Council on _____, 2021.

Certified By _____
Theo Wimberly, Acting Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, pursuant to Title 13, Subtitle 9 of the Howard County Code, the
2 Department of Housing and Community Development administers the Homeownership
3 Assistance Program (the “Program”); and
4

5 **WHEREAS**, the purpose of the Program is to provide financial assistance to qualified
6 homebuyers who cannot otherwise finance the purchase of a home, to provide financial
7 assistance to nonprofit organizations who agree to purchase and make modifications to
8 residential properties for resale to qualified homebuyers and to increase the supply of adequate
9 affordable housing in Howard County; and
10

11 **WHEREAS**, the Program provides that the County Council will approve by resolution
12 any rules, amendments to rules, policies and procedures adopted to implement the Program; and
13

14 **WHEREAS**, by passage of Council Resolution No. 46-1992, the County Council
15 initially approved rules for the Settlement Downpayment Loan Program, established pursuant to
16 the Program; and
17

18 **WHEREAS**, the Settlement Downpayment Loan Program rules were subsequently
19 amended by the passage of Council Resolution No. 38-1996, Council Resolution No. 102-1998,
20 Council Resolution No. 152-1999, Council Resolution No. 80-2009, and Council Resolution No.
21 147-2011; and
22

23 **WHEREAS**, since adoption of Council Resolution No. 147-2011, the County’s
24 Department of Housing and Community Development proposes to make further amendments to
25 the Rules for the Settlement Downpayment Loan Program as shown in the attached Exhibit A;
26 and
27

28 **WHEREAS**, the proposed amendments make the following changes:

- 29 1) Updates definitions;
- 30 2) Adds a definition of self-employment income and a method of calculation;
- 31 3) Removes language related to lending pool and participating lenders;

- 1 4) Updates minimum down payment requirements and qualification for certain loan
2 types; and
3 5) Updates loan subordination requirements.
4

5 **WHEREAS**, the County Executive has reviewed and approved the proposed changes.
6

7 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
8 Maryland this _____day of _____, 2021 that it approves amendments to the
9 Settlement Downpayment Loan Program rules as shown in the attached as Exhibit A.

SETTLEMENT DOWNPAYMENT LOAN PROGRAM

Authority: Section 13.900 et seq., Howard County Code

01. Purpose. These rules prescribe the policies, procedures, and authorizations by which persons may receive loans under the Settlement Downpayment Loan Program.

02. Definitions.

A. The terms appearing in these rules have the meanings defined in the Act and in Section B of this rule.

B. Terms Defined.

(1) "Act" means subtitle 9 of Title 13 of the Howard County Code, as amended.

(2) "Annual HOUSEHOLD income" means

(a) gross income based on current rates of annual income received by all household members OVER THE AGE OF 18 who intend to reside at the property from all sources less:

(i) unusual or temporary income items; [[and]]

(ii) unusual expenses of a long-term nature, such as extraordinary medical, physical or mental rehabilitation expense or special education expenses;

(III) ANY PAYMENTS RECEIVED ON BEHALF OF A MINOR CHILD WHERE THERE IS LESS THAN 3 YEARS OF PAYMENT CONTINUANCE; AND

(IV) INCOME FROM HOUSEHOLD MEMBERS WHO ARE 18 YEARS OR OLDER AND ENROLLED FULL-TIME IN HIGH SCHOOL OR COLLEGE; OR

(B) BUSINESS INCOME/SELF-EMPLOYED BORROWER INCOME SHALL BE CALCULATED BY TOTALING THE NET INCOME PLUS THE DEPRECIATION AND DEPLETION FROM THE MOST RECENT TWO TAX YEARS AND, AFTER THE THREE MONTHS OF THE CURRENT YEAR, ALSO INCLUDE THE NET INCOME PLUS DEPRECIATION AND DEPLETION FROM A YEAR-TO-DATE PROFIT & LOSS (P&L) STATEMENT AND DIVIDE BY THE TOTAL NUMBER OF MONTHS COVERED BY THE TAX RETURNS AND P&L STATEMENT AND THEN MULTIPLY BY TWELVE TO ARRIVE AT ANNUAL INCOME.

(3) "Applicant" means an individual or individuals applying for a loan. If the property to be financed will be owned by more than one individual, each of those individuals shall apply. CO-SIGNERS AND NON-OCCUPYING CO-BORROWERS ARE NOT PERMITTED.

(4) "BMSA median income" means the median annual income as set from time to time by the United States Department of Housing and Urban Development for HOUSING

CHOICE VOUCHER [[Section 8]] housing programs in the Baltimore Metropolitan Statistical Area, adjusted for family size.

- (5) "CDA" means the Community Development Administration of the Maryland Department of Housing and Community Development, or its successor agency.
- (6) "County" means Howard County, Maryland.
- (7) "Department" means the Howard County Department of Housing and Community Development.
- (8) "Down payment" means that portion of the purchase price of the property that is not financed by any other loan.
- (9) "Homeownership revitalization area" means a residential area in Howard County in need of homeownership revitalization because of a high rate of foreclosed or abandoned and vacant homes. THE COUNTY WILL DETERMINE HOMEOWNERSHIP REVITALIZATION AREAS EACH YEAR BASED ON THE FORECLOSURE RATES IN SPECIFIC ZIP CODE AREAS THE PREVIOUS YEAR [[An area is considered a homeownership revitalization area if it is designated an "area of greatest need" by the Maryland Department of Housing and Community Development for its Neighborhood Conservation Initiative Program]].
- (10) "Howard County median income" means the median annual income of Howard County as determined by the U.S. Census Bureau, adjusted for family size.
- (11) "Liquidable assets" means cash or assets readily convertible to cash, such as checking and savings accounts, THE TOTAL BALANCE OF ANY JOINT ACCOUNTS INCLUDING MINOR ACCOUNTS, certificates of deposit, stocks, securities, or investments. Liquidable assets do not include tangible personal property OR RETIREMENT ACCOUNTS.
- (12) "Loan" means a loan of money made by the Department under the Program.
- (13) "Monthly income" means 1/12th of annual income.
- [[(14) "Participating lender" means a financial institution that has entered into a pool participation agreement in accordance with Rule 10. A participating lender need not be the primary lender.]]
- [[(15)]](14) "Primary lender" means a financial institution providing a loan that is used by the applicant to purchase a personal residence. The primary lender must be (a) in good standing with the OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION [[Maryland Office of Financial Regulation]]; and (b) an approved seller/servicer of Federal Housing Administration, Fannie Mae, Freddie Mac, or other mortgage loans made under a similar federal or State housing finance agency.

[[16]](15) "Primary loan" means the loan provided by the primary lender that is used by the applicant to purchase a personal residence. A primary loan shall provide for a fixed interest rate and equal monthly payments of principal and interest for the term of the loan. The term of the primary loan must be at least 20 years, except that a homeownership revitalization area loan may be for a term of not less than 15 years.

[[17]](16) "Program" means the Settlement Downpayment Loan Program.

[[18]](17) "Qualified homebuyer" means an applicant who:

(a) either:

(i) during the 3 years before receiving a loan:

(1) has not owned any real property used or usable as a residence; or

(2) has owned a personal residence in joint tenancy but, as a condition of the separation or divorce of the joint tenants or because of the death of one of the joint tenants, needs to purchase a personal residence without the former joint tenant and has disposed of all right, title, and interest to the former personal residence; or

(ii) is applying for either a revitalization or workforce initiative loan; and

(b) meets the eligibility requirements established under the Act and these rules.

[[19]](18) "Settlement expenses" means money that must be paid by the applicant at the time of the purchase of the property, including:

(a) Fees or premiums for title examination, title insurance or similar expenses;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Payments owed at the time of settlement for property taxes or hazard insurance coverage;

(d) Escrows for future payments of taxes and hazard insurance;

(e) Fees for notarizing deeds and other documents;

(f) Appraisal fees;

(g) Fees for credit reports;

(h) Transfer and recordation taxes and fees;

(i) Fees or premiums for mortgage insurance; and

(j) Loan discount points and origination fees.

03. Establishment. There is a Settlement Downpayment Loan Program administered by the Department. The Program is part of the Homeownership Assistance Program established under the Act.

04. Types of Loans. The Department will offer the following types of loans under the program:

A. “Homestarter” Loan. A “homestarter” loan is intended for households with incomes of not more than 80% of the BMSA median income.

B. “Homesteader” Loan. A “homesteader” loan is intended for households with incomes between 80% of the BMSA median income and 80% of the Howard County median income.

C. “Dreammaker” Loan. A “dreammaker” loan is intended for households with incomes between 80% and 100% of the Howard County median income.

D. “Revitalization” Loan. A “revitalization” loan is intended for homebuyers purchasing properties in foreclosure proceedings and located in homeownership revitalization areas.

E. “Workforce Initiative” Loan. A “workforce initiative” loan is intended for persons who work in Howard County.

F. Additional Requirements. The above loan types are subject to the additional requirements set forth in these rules.

05. Eligibility of Applicant.

A. General. To be eligible to receive a loan, an applicant shall be a qualified homebuyer who meets the requirements of the primary lender and of this Rule.

B. Income.

THE ANNUAL HOUSEHOLD [[An applicant's annual]] income may not exceed:

(1) for a homestarter loan, 80% of the BMSA median income;

(2) for a homesteader loan, 80% of the Howard County median income;

(3) for a dreammaker loan, 100% of the Howard County median income;

(4) for a revitalization loan or a workforce initiative loan, 110% of the Howard County

median income.

C. Assets. The total value of the applicant's liquidable assets shall not be less than an amount equal to:

(1) one monthly payment (including principal, interest, and escrows) on the primary loan, plus

(2) \$1,000.00.

D. Affordability. The applicant shall provide evidence, satisfactory to the Department, that the applicant has insufficient liquidable assets to enable the applicant to make a full down payment and pay the settlement expenses on the primary loan and retain the reserve required by Rule 05.G.

E. Credit. The applicant shall meet the minimum credit requirements of the primary lender. An applicant shall be deemed ineligible if the applicant has failed to pay any previous loan made to the applicant by the Department.

F. Debt Ratio. The applicant's total monthly debt expenses, including but not limited to mortgage payments, credit card payments, and other loan payments, will not exceed 45% of the applicant's monthly gross income.

G. Applicant's Contribution. The applicant shall contribute, as either a down payment on the primary loan or for settlement expenses, the greater of:

(1) all of the applicant's liquidable assets, except for an amount equal to two monthly payments (including principal, interest, and escrows) on the primary loan; or

(2) \$1,000.00.

H. Other Loans. The applicant may use the proceeds of a loan from FEDERAL OR STATE ASSISTANCE PROGRAMS [[CDA's Settlement Expense Loan]] as part of the applicant's downpayment or settlement expenses; however, the applicant may not use the proceeds of any other loan to pay any part of the applicant's contribution. The priority of the liens of such settlement expense loans shall be determined based upon the relative amounts of the loans.

I. Workforce Initiative Loan – Employment. To qualify for a workforce initiative loan, at least one member of the applicant's household must be employed full-time in Howard County AND NOT HAVE SUFFICIENT ASSETS FOR CLOSING COSTS.

06. Maximum Purchase Price.

A. General. Except as provided in Rule 06.B, the purchase price of a property financed with a loan shall not exceed the maximum purchase price established by CDA for its single-

family mortgage program.

- B. Adjustments to Maximum Purchase Price. The County Executive may from time to time adjust the maximum purchase price limits for the program in accordance with prevailing market conditions.

07. Use of Loan.

- A. General. Except as otherwise provided or limited by this Rule, a loan may be used by a qualified homebuyer to pay the down payment or settlement expenses, or both, on a primary loan.
- B. Primary Residence. The home must be used as the qualified homebuyer's primary residence.
- C. Limits on Amount of Downpayment Financed. A loan may not be used to finance a downpayment in excess of:
 - (1) [[the minimum downpayment required by the primary loan]]3.50% FOR AN FHA LOAN, UP TO 5% FOR A CONVENTIONAL LOAN, AND 0% FOR A VA LOAN; or
 - (2) for a homestarter loan, 10% of the purchase price of the residence REGARDLESS OF LOAN TYPE.
- D. Limit on Loan Discount Points. A loan may not be used to finance loan discount fees in excess of three points.
- E. Use of Revitalization Loan. A revitalization loan may be used [[only]] for settlement expenses AND/or downpayment for the purchase of a personal residence located in a homeownership revitalization area that:
 - (1) has had mortgage or tax foreclosure proceedings initiated; OR
 - (2) IS A SHORT SALE OR BANK OWNED PROPERTY. [[has not had a mortgage or tax payment made for at least 90 days; and
 - (3) has been offered for sale by the owner to the general public.]]
- F. FHA 203K Loans. Except for a revitalization loan, a loan may not be used in conjunction with a primary loan that is an FHA 203K or similar loan.
- G. Use of Workforce Initiative Loan. A workforce initiative loan may be used only to pay up to one-half of the transfer and recordation taxes due on the purchase of a primary residence.

08. Loan Amount and Disbursement.

A. Maximum Loan Amount. A loan may not exceed:

- (1) \$40,000 for a homestarter loan;
- (2) \$25,000 for a homesteader or revitalization loan;
- (3) \$15,000 for a dreammaker loan; and
- (4) \$4,300 for a workforce initiative loan.

B. Loan Disbursements. A loan shall be disbursed in a lump sum at settlement of the primary loan. The loan shall be disbursed through a settlement agent approved by the Department, in accordance with escrow instructions prepared by the Department.

09. Repayment of Loan.

A. Loan Term.

- (1) Except as provided in (2), the term of a loan shall be coextensive with the primary loan.
- (2) The term of a workforce initiative loan shall be 10 years.

B. Interest Rate.

- (1) Except as provided in (2), a loan shall be repaid with interest at the rate that is two percentage points below the rate of interest on the primary loan.
- (2) The rate of interest on a workforce initiative loan shall be 0%.

C. Payments. Payments on a loan will be deferred in their entirety and payable in accordance with Rule 09.E.

D. Prepayments. A homebuyer may prepay a loan in whole or in part at any time.

E. Due on Sale, Default, Change in Occupancy, Refinancing or End of Term. The entire principal balance of a loan together with all accrued interest shall be immediately due and payable upon the occurrence of any of the following:

- (1) the sale or transfer of the secured property;
- (2) the refinancing of the primary loan (except as provided in Rule 09.G below);
- (3) a default under the primary loan;

- (4) the homebuyer no longer occupies the property as a principal residence; or
- (5) the end of the term of the PRIMARY MORTGAGE loan.

F. Workforce Initiative Loan – Principal Reduction.

- (1) Provided that the borrower complies with paragraph (2) of this subsection (F), the principal balance of a workforce initiative loan shall be reduced by 10% of the original loan amount on each anniversary of the loan. At the end of the full loan term, all principal and accrued interest payments shall be forgiven.
- (2) (a) In order to qualify for a principal reduction, the borrower must submit to the Department documentary evidence that at least one member of the borrower’s household has been continuously employed full-time in Howard County for the term of the loan.
 - (b) Such evidence must be submitted at least 30 days prior to the earlier of (i) a sale, refinancing, or other event listed in Rule 9.E that would otherwise result in the full or partial repayment of the loan, or (ii) the end of the term of the loan.
 - (c) Such evidence shall be in a form prescribed or approved by the Department.
 - (d) If the borrower’s household member has been employed in Howard County for only a portion, but not all, of the term of the loan, then the Department will prorate the principal reduction for that time during which the household member was employed in Howard County. The remaining principal balance will become due and owing upon any of the events listed in Rule 09.E.

G. Subordination. The Department may agree to subordinate an SDLP loan to allow a homebuyer to refinance the primary loan if:

[[(1) the homebuyer meets the income eligibility requirements of Rule 05.B at the time of the refinancing]]

[[(2)]] (1) the homebuyer demonstrates that:

- (i) the homebuyer does not have sufficient liquidable assets to repay the SDLP loan, and
- (ii) the homebuyer does not have sufficient income to, or is prohibited from, refinancing the SDLP loan. The homebuyer may be required to repay a portion of the SDLP loan to the extent the homebuyer has sufficient liquidable assets to repay the portion of the SDLP loan and/or has sufficient income to enable the homebuyer to refinance the portion of the SDLP Loan;

[[(3)]] (2) the refinancing of the primary loan will be amortized at a fixed interest rate;

and

[[4]](3) the homebuyer's monthly payment of principal, [[and]] interest AND ESCROWS under the primary loan will be reduced by at least 5% under the refinancing.

10. Security.

A. Real Property. A loan relating to the purchase of real property shall be secured by a mortgage lien on the property purchased with the primary loan, which mortgage lien may be subordinate to the lien of the primary loan.

B. Mobile Home. A loan relating to the purchase of a mobile home shall be secured by a security interest in the mobile home.

11. [[Participation by Lenders]]PRIMARY LENDER RESPONSIBILITIES. [[A participating]]THE primary lender shall:

[[a)] contribute funds toward a lending pool from which, together with County funds, the County may make SDLP loans; contribute funds toward a lending pool from which, together with County funds, the County may make SDLP loans;]]

[[b)](A) review and process applications for loans;

[[c)](B) certify applicant eligibility;

[[d)](C) arrange pre-purchase counseling for applicants; AND

[[e)](D) settle loans. [[; and]]

[[f)] collect repayments on loans and periodically pay to the County the amount of such repayments collected.]]

12. Application Procedures.

A. Application Form. An application shall be made to the primary lender on a form prescribed by the Department.

B. Additional Documents. Together with the application and any other information or materials required by the primary lender, an applicant shall submit to the primary lender:

(1) a contract of sale for the purchase of a property eligible for a loan, which contract shall be contingent upon financing from the program;

(2) the applicant's most recent federal income tax return; and

(3) any other information or documents the Department may require.

C. Pre-Purchase Counseling. An applicant shall attend a pre-purchase counseling session held by the Department or a counselor approved by the Department.

13. Loan Documents.

A. Real Property. A loan relating to the purchase of real property shall be evidenced by a promissory note to the County and secured by a mortgage or deed of trust to the benefit of the County.

B. Mobile Home. A loan relating to the purchase of a mobile home shall be evidenced by a promissory note to the County and secured by a security agreement to the benefit of the County.

C. Form. All loan documents shall be in a form prescribed or approved by the Department.

14. Settlement. [[A participating or]] THE primary lender may not settle a loan until the [[participating or]] primary lender has certified in a form acceptable to the Department that the loan complies in all respects with the Act and these Rules.

15. Fees Prohibited. [[A participating or]] THE primary lender may not collect from an applicant any fees, points, or other charges for the processing, review, or SUBMISSION [[servicing]] of a loan. This rule does not prohibit a primary lender from charging fees, points, or other charges for or in connection with the primary loan; provided, however, that the interest rate, fees, points, or other charges for or in connection with the primary loan are no greater than the rate or charges for similar loans made by the lender not in conjunction with an SDLP loan.

16. Nondiscrimination. [[A participating]]THE primary lender may not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, physical or mental handicap, occupation, political opinion, sexual orientation, personal appearance, familial status, source of income, or age in any aspect of the Program, and shall comply with all applicable federal, State, and County laws regarding discrimination and equal opportunity in employment, housing, and credit practices.

17. Waiver. The County Executive may waive or vary particular provisions of these rules to the extent that the waiver is consistent with the Act if, in the determination of the County Executive, the application of a rule in a specific case, or in an emergency situation, would be inequitable or contrary to the purposes of the Act.

18. Severability. The provisions of these rules are severable. A judgment by any court of competent jurisdiction finding or declaring that any provisions of these rules or the application of any provision to any person or circumstance is invalid, does not affect the validity of the remaining provisions of the rules or any other application of these rules, and the remaining rules shall have full force and effect as if no judgment has been entered.

First Adopted: April 6, 1992 (CR 46-1992)

Revised: May 6, 1996 (CR 38-1996)

Revised: July 6, 1998 (CR 102-1998)

Revised: February 7, 2000 (CR 152-1999)

Revised: October 5, 2009 (CR 80-2009)

Revised: October 3, 2011 (CR 147-2011)