

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
AND TOURISM

Repeal of Chapter 15-162 and  
Adoption of Chapter 15-315,  
Hawaii Administrative Rules

November 17, 2010

SUMMARY

1. Chapter 15-162, Hawaii Administrative Rules, entitled "Mortgage Credit Certificate Program" is repealed.
2. Chapter 15-315, Hawaii Administrative Rules, entitled "Mortgage Credit Certificate Program" is adopted.



HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF  
HAWAII

CHAPTER 162

MORTGAGE CREDIT CERTIFICATE PROGRAM

Repealed

§§15-162-1 to 15-162-31 Repealed. [R DEC 04 2010 ]



HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,  
AND TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 315

MORTGAGE CREDIT CERTIFICATE PROGRAM

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§15-315-1

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Historical note: Chapter 315 of Title 15, Hawaii Administrative Rules, is based substantial upon Chapter 15-162 and Chapter 6-312, Hawaii Administrative Rules.

SUBCHAPTER 1

GENERAL PROVISIONS

§15-315-1 Purpose. The mortgage credit certificate program is a federal program which the corporation is authorized and designated to carry out pursuant to §201H-16, Hawaii Revised Statutes.

These rules are adopted pursuant to chapter 91, HRS, to enable the corporation to establish one or more mortgage credit certificate program in accordance with the requirements of the Internal Revenue Code of the Internal Revenue Service, including sections 25 and 103A thereof, and the corresponding regulations promulgated thereunder. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-2 Definitions. (a) Whenever used in these rules, unless the context otherwise requires: "Annual gross household income" means an eligible borrower's gross monthly income multiplied by twelve. "Gross monthly income" is the sum of monthly gross pay, any additional income from overtime pay, part-time employment, bonuses, dividends, interest, royalties, pensions, Department of Veterans' Affairs

(VA) compensation, net rental income, etc.; and other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income from trusts, and income received from business activities or investments). Information with respect to gross monthly income may be obtained from available loan documents executed during the four month period ending on the date of the closing of the mortgage, provided that any gross monthly income not included on the loan documents must be included by the issuer in determining gross monthly income.

"Board" means the board of directors of the corporation.

"Certified credit rate" or "credit rate" means the rate specified by the corporation on the MCC. The credit rate applicable to the MCC program is twenty per cent.

"Corporation" means the Hawaii housing finance and development corporation, a public body and a body corporate and politic of the State of Hawaii.

"Executive director" means the executive director of the corporation or the executive director's designee.

"Eligible borrower" means a person who is eligible to be a holder of an MCC.

"Federal MCC program" means the mortgage credit certificate program which was established pursuant to the IRC, including section 25 thereof, and the regulations promulgated thereunder.

"HRS" means the Hawaii Revised Statutes.

"IRC" means the Internal Revenue Code of the Internal Revenue Service, and the corresponding regulations promulgated thereunder.

"IRS" means the Internal Revenue Service.

"MCC" means a mortgage credit certificate which is issued under the program.

"Mortgage lender" means a business enterprise authorized to do business in the State of Hawaii which has as one of its principal purposes, the origination or servicing of loans or both. Mortgage origination or servicing or both must customarily be part of the mortgage lender's regular, usual, and normal course of business. Organizations that originate or service such loans occasionally, or in special circumstances do not fall within this definition.

"Mortgage lender participation agreement" means a written contract between the corporation and mortgage lender which establish the terms by which mortgage lender will participate in the program.

"Program" means each and every qualified mortgage credit certificate program of the corporation which the corporation elects to authorize in accordance with the requirements of the federal MCC program.

"Rules" means these rules.

"State" means the State of Hawaii.

(b) The definitions of other terms used in these rules shall have the meaning ascribed to such terms under the IRC, including sections 25 and 103A thereof, for the federal MCC program, and the same are hereby incorporated by reference. [Eff DEC 04 2010 ]  
(Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-3 Delegation. The board delegates to the executive director or the executive director's designee the authority to implement and carry out the purposes of these rules. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)



## SUBCHAPTER 2

## CONFORMANCE WITH FEDERAL MCC REQUIREMENTS

§15-315-10 Conformance with federal MCC program requirements. All applicable requirements of the federal MCC program, including all IRC laws, regulations and interpretations and amendments thereto which may be promulgated hereafter, will be operative with respect to the program. [Eff DEC 04 2010 ]  
(Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-11 Program requirements. The corporation shall follow the procedures for implementing the program in accordance with the requirements of the federal MCC program. The corporation may establish its own eligibility and other requirements for participation in the program by applicants for MCCs, lenders and developers to the fullest extent allowed by the federal MCC program. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-12 Waivers and variances. The board by resolution may waive or vary provisions of these rules provided that such waivers or variance are not inconsistent with the federal MCC program. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-13 Interpretation. These rules shall be construed in a manner which is consistent with the laws, regulations, and interpretations pertaining to the federal MCC program. If there is any conflict or inconsistency between these rules and the laws, regulations, and interpretations pertaining to the federal MCC program, the provisions, regulations, and interpretations of the federal MCC program will control. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

SUBCHAPTER 3

THE PROGRAM

§15-315-20 General description of the program. Under the federal MCC program, an eligible borrower is entitled to a credit against the eligible borrower's federal income tax as a percentage of the interest paid on a mortgage loan which the eligible borrower has obtained to finance the acquisition, qualified rehabilitation, or qualified home improvement of the eligible borrower's principal residence. The corporation shall determine the maximum amount of credit which shall be available to an eligible borrower in accordance with the requirements of the federal MCC program.

(b) The corporation is merely a conduit for granting the MCC. All underwriting and execution of required corporation and Federal certifications or affidavits will be performed under the mortgage lender participation agreement by the mortgage lenders participating in the program. The corporation will receive executed certifications and affidavits from participating mortgage lenders in order to determine the qualifications and eligibility of borrowers. Participating mortgage lenders may process financing, using normal procedures, with additional procedures at relevant points to satisfy MCC requirements.  
 [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-21 Election not to issued qualified mortgage bonds. To establish a program, the corporation shall take action to elect not to issue an amount of qualified mortgage bonds that the corporation might otherwise issue under section 103A of the IRC and the regulations thereunder during each calendar year and in lieu thereof to issue MCCs to eligible borrowers in accordance with the requirements of the federal MCC program. The corporation shall follow the requirements of the federal MCC program in making such election. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-22 State certification. The governor of the State or the governor's designee or the director of finance of the State shall make the State certification in accordance with the requirements of the federal MCC program.  
 [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-23 List of participating mortgage lenders. The corporation may maintain a list of mortgage lenders that are participating in the program subject to the requirements of the federal MCC program. To remain a participating mortgage lender, the mortgage lender must submit at least three (3) MCC application requests to the corporation which result in the corporation's issuance of MCCs during each calendar year. Failure to meet this requirement may

- (1) Result in the termination of the mortgage lender participation agreement and the mortgage lender being removed from the list of participating mortgage lenders; and
- (2) Make the mortgage lender ineligible to request to participate in the MCC program for a period of one year.

[Eff DEC 04 2010 ] (Auth: HRS §201H-16)  
(Imp: HRS §201H-16)

§15-315-24 Charges. (a) Subject to the requirements of the federal MCC program, the corporation hereby establishes a schedule of fees which applications for MCCs, mortgage lenders, and developers will be required to pay to participate in the program.

(b) Fees to be paid by the eligible borrower are as follows:

- (1) Upon final approval of their MCC package, the eligible borrower shall pay a fee of up to \$300 to the corporation and a fee of up to \$100 to the participating mortgage lender.
- (2) Upon final approval of a request for the reissuance of an MCC, the eligible borrower shall pay a fee of up to \$200 to the corporation and a fee of up to \$100 to the participating mortgage lender.

[Eff DEC 04 2010 ] (Auth: HRS §201H-16)  
(Imp: HRS §201H-16)

§15-315-25 Revocation of an election. The corporation may revoke, in whole or in part, the authority to issue MCCs under the program in accordance with the requirements of the federal MCC program. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-26 Income limits. (a) The annual gross household income limits applicable to the MCC program for the counties of Honolulu, Maui, Kauai and Hawaii, are based on family size. Income limits for families of two or less and for families of three or more, shall be determined using annual revenue procedures issued by the IRS pursuant to 26 U.S.C. §143(f) as it applies to the annual income limits published by the U.S. Department of Housing and Urban Development, and shall be rendered obsolete by the issuance of a new IRS revenue procedure.

(b) The corporation shall adjust MCC program income limits upon the issuance of new IRS revenue procedures. Because the IRS revenue procedures and annual income limits published by the U.S. Department of Housing and Urban Development are mandatory and the corporation has no discretion to amend or change the revenue procedures nor the annual income limits, new MCC program income limits shall be established without a public hearing pursuant to section 91-3, HRS. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-27 Acquisition cost limits. (a) The acquisition cost limits applicable to the MCC program for the counties of Honolulu, Maui, Kauai and Hawaii, shall be determined using revenue procedures issued by the IRS pursuant to 26 U.S.C. 143(e) and shall remain in effect until rendered obsolete by the issuance of a new IRS revenue procedure.

(b) The corporation shall adjust MCC program acquisition cost limits upon the issuance of new IRS revenue procedures. Because the IRS revenue procedures are mandatory and the corporation has no discretion to amend or change the revenue procedures, new MCC program acquisition cost limits shall be established without a public hearing pursuant to section 91-3, HRS.

(c) The above limits apply only to fee simple fully completed units. Leasehold residences and uncompleted units are subject to certain adjustments in determining their "acquisition cost" as defined by the IRS. [Eff **DEC 04 2010**] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

#### SUBCHAPTER 4

#### MISCELLANEOUS

§15-315-40 Procedural guide. The operation and implementation of each program shall be conducted in accordance with these rules and the requirements of the federal MCC program. The corporation may prepare a procedural guide which the corporation may amend or supplement from time to time in the corporation's sole discretion. A copy of all forms and guides, if any, shall at all times be kept at the principal office of the corporation in its most current form and shall be available for inspection during the corporation's normal business hours. [Eff **DEC 04 2010**] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-41 Falsification of application. All information which an applicant for an MCC is required to furnish shall be signed and verified by such applicant in accordance with the requirements of the federal MCC program. Falsification of any information contained in any application shall be subject to the criminal sanctions of the Hawaii Penal Code, part V, section 710-1063, HRS, and shall constitute a misdemeanor. [Eff DEC 04 2010 ] (Auth: HRS §201H-16) (Imp: HRS §201H-16)





DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,  
AND TOURISM

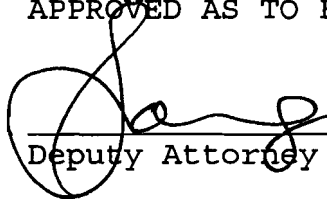
The repeal of chapter 15-162 and the adoption of chapter 15-315, Hawaii Administrative Rules, on the Summary Page dated November 17, 2010 were adopted on November 17, 2010 following public hearings held on November 16, 2010 after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today and The Hawaii Tribune-Herald on October 16, 2010.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.




David Lawrence, Chairperson  
Hawaii Housing Finance and  
Development Corporation

APPROVED AS TO FORM:

  
Deputy Attorney General

APPROVED:

  
LINDA LINGLE  
Governor  
State of Hawaii  
NOV 24 2010

Dated: \_\_\_\_\_

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Filed

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LEUTENANT GOVERNOR'S  
OFFICE