

TITLE 15
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SUBTITLE 10
COMMUNITY-BASED DEVELOPMENT PROGRAM

CHAPTER 116
COMMUNITY-BASED DEVELOPMENT LOAN PROGRAM

§15-116-1	Purpose
§15-116-2	Definitions
§15-116-3	Community-Based Development Advisory Council
§15-116-4	Purpose of Loans
§15-116-5	Types of Loans; Policy on Direct and Participation Loans
§15-116-6	Eligibility Requirements
§15-116-7	Application Procedure
§15-116-8	Consideration and Review of Applications'
§15-116-9	Preferences and Priorities in Granting Loans
§15-116-10	Maximum Loan Amount; Loan Terms and Restrictions
§15-116-11	Inspection of Premises and Records
§15-116-12	Annual Reports Required of Borrowers; Interim Reports
§15-116-13	Default
§15-116-14	Loans to Community-Based Organizations

§15-116-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Community-Based Development Program authorized by Act 111, SLH 1990. The effective date of the program is July 1, 1990. [Eff DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp. Act 111, SLH 1990)

§15-116-2 Definitions.

§15-116-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Community-based development" means a business that can be carried on a small scale in a neighborhood and which increases a community's capacity to utilize and sustain its local resources in ways which are responsive to community needs and values. It is further characterized by local control and decision-making as well as the circulation of revenues generated within the community. Examples include but are not limited to, a cottage industry; export-oriented arts, crafts, and fashion operations; and backyard fish farming.

"Community-based organization" means an established non-profit organization that generates community-based development activities or provides support, consultation, advocacy and training to other community groups, individuals, and businesses or enterprises engaged in community-based development activities.

"Council" means the community-based development advisory council.

"Department" means the department of business, economic development, and tourism.

"Traditional industry" means an industry or enterprise traditionally carried on by communities in Hawaii, such as, but not limited to, farming and arts and crafts.

"Director" means the director of business, economic development, and tourism.

"Financial institution" includes, but is not limited to, banks and other lending institutions whose regular course of business includes making of commercial and industrial loans.

"Loan" means a direct loan made by the department, or a participation loan in which the State participates with a financial institution, including the SBA.

"Personal information" means any information provided by the applicant, financial or otherwise, which is deemed confidential as defined by Act 262, SLH 1988.

"SBA" means the Small Business Administration of the United States Government.

"State" means the State of Hawaii. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-3 Community-Based Development Advisory Council. (a) The Council shall consist of nine (9) citizens appointed by the Governor from the general public and representatives of the geographic, ethnic, and socioeconomic composition of the State of Hawaii. Each county shall be represented by at least one member who is a resident of that county, and at least one member of the council shall be a representative of the financial community. The director of the State Department of Business, Economic Development, and Tourism and the chairperson of the Board of Agriculture, or their respective designees, shall be ex-officio voting members of the Council. The Council shall be placed for administrative purposes in the Department of Business, Economic Development, and Tourism.

(b) The Council shall review proposals and make written recommendations on the awarding of grants and loans, subject to the final approval of the department. The Council shall also advise the department on matters related to program implementation.

(c) All meetings of the Council shall be subject to the provisions of Chapter 92 of the Hawaii Revised Statutes, as amended. [Eff DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-4 Purpose of loans. (a) The department may make loans to community-based organizations or businesses for the purpose of financing plant construction, conversion, expansion, acquisition of land, equipment, machinery, supplies, or materials, or for working capital.

(b) Loans shall not be made where the direct or indirect purpose or result would be to:

- (1) Pay off a creditor or creditors of the applicant who are inadequately secured and are in a position to sustain a loss; or
- (2) Provide funds, directly or indirectly, for payment, distribution, or as a loan to owners, partners, or shareholders of the applicant's business, except as ordinary compensation for services rendered; or
- (3) Effect a change in ownership of a business, unless the change will promote the sound development or preserve the existence of the business;
- (4) Provide or free funds for speculation in any kind of property, real or personal, tangible or intangible;
- (5) Provide funds to an applicant to engage in the business of lending or investing money;
- (6) Finance the acquisition, construction, improvement, or operation of real property which is to be held primarily for sale or investment; provided that this prohibition shall not apply to a loan for the remodeling, maintenance, or improvement (including expansion) of existing commercial or industrial structures already held by the applicant for rental or for use as an essential part of an ongoing business;
- (7) Encourage monopoly or be inconsistent with generally accepted practices of the American system of free enterprise. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-5 Types of loans; policy on direct and participation loans. (a) The department may make two types of loans:

- (1) Direct loans; and
- (2) Participation loans made in conjunction with loans made by other financial institutions, including private and/or public financial loan programs.

(b) Direct loans may be made by the department when a participation loan is not available to the applicant.

(c) Participation loans may be made if the applicant is unable to obtain the entire loan from any other private and/or public financial loan program.

(d) The department's policy shall be to encourage participation by financial institutions including private and/or other public loan programs . [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-6 Eligibility requirements. Consideration for loans under this chapter shall be extended only to applicants who meet the following requirements:

- (1) Organization, small business or enterprise engaged in community-based development industries, including traditional industries.
- (2) Not able to obtain a loan from private and/or other public financial institutions;
- (3) Furnishes information to show that the applicant has the ability to repay the loan out of income from the business;
- (4) Shall apply for all applicable licenses and permits;
- (5) Shall satisfactorily demonstrate to the department that it can operate on a sound financial basis;
- (6) Collateral may be required to reasonably protect the State's interest. The amount of collateral needed, considered along with other factors, is determined by the Director on a case-by-case basis; and
- (7) The purpose of the loan is in conformity with provisions of section 15- 116-4. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-7 Application procedure. (a) All persons applying for loans shall utilize the department's loan application form or the appropriate SBA forms which may be obtained from any commercial bank or the local SBA office. The application shall be submitted to the department.

(b) All financial statements submitted by an applicant shall show the applicable date of the information given and shall be signed and certified by the proprietor, partner, or a licensed public accountant. The department may require an audited statement. The department may also require that financial statements accompanying applications include balance sheets and profit and loss statements for the past five tax years, a year-to-date interim financial statement dated no later than 90 days prior to the application date and tax returns or other documents as required. [Eff. DEC 16 1991] (Auth. Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-8 Consideration and review of applications. (a) For the department to consider a loan request, the applicant must be able to demonstrate that the loan amount is not obtainable:

- (1) Through other existing State loan programs such as the Hawaii Capital Loan Program, Molokai Loan Program and the small and large fishing vessel loan programs.
- (2) Through the public offering or private placement of securities of the applicant; or
- (3) Through the disposal at fair price of assets not required by the applicant in the conduct of its existing business or not reasonably necessary to its potential healthy growth; or
- (4) Without undue hardship through utilization of the personal credit or resources of the owner, partners, management or principal shareholders of the applicant; or
- (5) Through other appropriate government financing.

(b) The applicant's proposed business plans, except financial statements or personal information, will be initially reviewed by council to assess whether the proposed business or enterprise is likely to achieve purposes of this chapter.

(c) The department shall approve a loan only where the applicant provides reasonable assurance that the loan can and will be repaid pursuant to its terms. Reasonable assurance of repayment shall be based upon consideration of the applicant's record of past earnings or projections of future earnings which indicate that the applicant will be able to repay the loan from the income of the business.

(d) Information on applications meeting the requirements enumerated above and in the foregoing sections of this chapter shall be reviewed by the council. Financial statements or personal information shall be withheld from review by other than the director or his authorized staff. The council shall assess whether the proposed business or enterprise is likely to achieve the purposes of this chapter. They shall make recommendations to the director regarding the acceptability of the proposed business concept. Final authority to approve or disapprove the loan application will be made by the director.

(e) An applicant shall not be required to pay any fees in connection with filing an application, but shall be required to pay for such costs as appraisals, title searches, documentation of mortgages, and any other work required in processing the loan which is not performed by the department. When determined to be necessary by the director, an applicant shall be responsible for hiring independent appraisers to

determine the value of capital assets or to assess the economic feasibility of a business operation. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-9 Preferences and priorities in granting loans. In granting loans, the department shall:

(a) Make every effort to ensure that traditional and small community-based businesses, supported by the State of Hawaii Community-Based Development Program, are distributed throughout the State.

(b) Give preference and priority to loan applications which establish or support businesses that:

(1) Have a majority ownership by community residents.

(2) Have a majority of employees who are residents of the community.

(3) Possess a demonstrated plan to utilize and sustain the available resources within the community.

(4) Can adequately demonstrate their conformance with the community's definition of cultural and environmental acceptability.

(5) Can demonstrate the potential for economic viability while generating socioeconomic benefits for the community. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-10 Maximum loan amount; loan terms and restrictions. (a) Loans made under this chapter shall be for the purposes and in accordance with the terms specified below:

(1) Ownership and improvements loans to provide for:

(A) The start-up costs, purchase or improvement of traditional or community-based enterprise; and

(B) The purchase, construction, or improvements of facilities.

(2) Operating loans to carry on and improve an existing enterprise, including:

(A) The purchase of equipment; and

(B) The payment of production and marketing expenses including materials, labor, and services.

(b) Loans shall be made to qualified applicants with the following terms and conditions:

(1) Direct loans to any one applicant shall not exceed \$500,000.

(2) The director shall determine the amount and kind of security required for each loan. Such security may be subordinated to other direct loans made by financial institutions.

(3) Loans may be granted for up to twenty years.

(4) Each loan shall bear a simple interest rate of not less than three and not more than ten percent a year. Three percent interest will be granted for all new loans for up to the first two years. After that second year, each loan will be re-evaluated by the Department to determine the interest rate based on repayment ability of the applicant.

(5) The director shall determine the commencement date for the repayment of the first installment. The director may defer the first installment on the principal and interest of each loan for a period not to exceed two years. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-11 Inspection of premises and records. The department shall have the right to inspect, at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any community-based business or enterprise either in connection with the processing of a loan application or in the administration of a loan granted to that community-based business or enterprise. When appropriate, the department will prescribe management counseling and will monitor the business activities. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-12 Annual reports required of borrowers; interim reports. During the life of a loan, each borrower shall submit to the department, annually, financial reports consisting of a balance sheet and profit and loss statement on either a fiscal year or calendar year basis, depending on the tax reporting period of the borrower. These reports shall be submitted no later than four months after the close of the applicable tax period. The department may require the filing of interim financial statements and reports and the submission of progress and final reports relating to any aspects of the business [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-13 Default. (a) Loans that are three installments in arrears shall be considered in default. The borrower shall also be considered to be in default for failure to comply with any term or condition of the loan authorization, loan agreement, or mortgage. If the borrower is in default, the entire balance plus accrued interest, at the option of the director, shall become due and payable. The director may foreclose any mortgage by any method provided by law. Any expense incurred by the department for recovering of monies shall be borne by the borrower.

(b) Loans in default shall be referred to the state attorney general for collection and legal action if the department is not able to obtain payment. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-116-14 Loans to Community-Based Organizations. In addition to making loans to eligible applicants according to the requirements, procedures, and terms specified in the preceding sections of this chapter, the department may also make loans to State approved profit and non-profit Community-based Organizations as follows:

(a) Any Community-based Organization which has become incorporated under state corporate law shall be eligible to apply to the department.

(b) The loan made to a community-based organization may be made for assistance to any business engaged in traditional or community-based development industries. The purpose of the loan must be in conformity with the provisions of section 15-116-4. However, each such loan to a Community-based Organization shall be subject to the following restrictions:

- (1) Loans for any single protect shall be of such an amount as determined by the department to be necessary and proper, but in no instance shall be more than \$500,000;
- (2) The term of the loan shall be no more than twenty years;
- (3) Each loan shall bear a simple interest rate of not less than three and not more than ten percent a year. Three percent interest will be granted for all new loans for up to the first two years. After the second year, each loan will be re-evaluated by the Department to determine the interest rate based upon repayment ability of the applicant;
- (4) The director shall determine the commencement date for the repayment of the first installment. The director may defer the first installment on the principal and interest of each loan for a period not to exceed two years.

(c) The Community-based Organization to whom a loan has been granted shall submit to the department annual financial statements no later than 4 months after the close of their applicable tax period during the life of the loan and interim financial statements and reports as may be required by the department. [Eff. DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)