

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

CHAPTER 3

CAPITAL ACCESS PROGRAM

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§15-3-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Hawaii Capital Access Program (HICAP) authorized by chapter 211D, Hawaii Revised Statutes.
[Eff.] (Auth: HRS §211D-4) (Imp: HRS §211D-4)

§15-3-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Adult residential care home" means a duly licensed facility providing twenty-four hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, but who do not need the services of an intermediate care facility.

"Capital access loan" means a loan that is entitled to be secured by the fund;

"Child care facility" means a duly licensed or registered child care facility maintained by any individual, organization or agency, that charges a fee, for the purpose of providing care for children. It includes a family child care home, group child care home, and group child care center;

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

"Fund" means the Hawaii capital loan revolving fund established in section 210-3, HRS;

"Lender" means a financial institution including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, or nontraditional financial institution;

"Loan" includes, but is not limited to a line of credit;

"Medium-sized business" means a for profit corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii; and
- (2) Employs one hundred (100) or more but fewer than five hundred (500) full-time employees in Hawaii;

"Nonprofit organization" means a private, nonprofit, tax-exempt corporation, association, or organization qualified under section 501(c)(3), Internal Revenue Code of 1986, as amended, that is domiciled in Hawaii;

"Program" means the Hawaii Capital Access Program;

"Reserve account" means an account established with a lender with the approval of the department, in which money is deposited to serve as a source of additional revenue to reimburse the lender for losses on loans enrolled in the program;

"Small-sized business" means a for profit corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii;
- (2) Is independently owned and operated; and
- (3) Employs fewer than one hundred (100) full-time employees in Hawaii.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §§211D-1, 211D-2, and 211D-4)

§15-3-3 Capital Access Program. (a) The purpose of the program is to assist lenders in making loans to small and medium-sized businesses and nonprofit organizations that face barriers in obtaining capital. The loan shall be used for a project, activity or enterprise in Hawaii that fosters economic development in Hawaii. The department may use money from the fund to make a deposit in a lender's reserve account, in an amount specified in this chapter, to be a source of money the lender may receive as reimbursement for losses on loans covered by the reserve account.

(b) The department shall determine the eligibility of a lender to participate in the program and may set a limit on the number of eligible lenders that may participate in the program.

(c) To participate in the program, an eligible lender shall enter into a participation agreement with the department that sets out the terms and conditions under which the department would make contributions to the reserve account established by the lender and specifies the criteria for a loan to qualify as a capital access loan.

(d) To qualify as a capital access loan, a loan shall:

- (1) Be made to a small or medium-sized business or to a nonprofit organization as defined in this chapter;

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- (2) Be used for a project, activity, or enterprise in Hawaii, that fosters economic development in Hawaii; and
- (3) Meet any other criteria provided by this chapter or established by the department.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §211D-3)

§15-3-4 Provisions and restrictions relating to capital access loans. (a) The lender shall be responsible for determining the recipient, the amount and interest rate of a capital access loan, and the fees and other related requirements related to the loan.

(b) When enrolling a loan in the program, a lender may specify an amount to be covered under the program that is less than the total amount of the loan.

(c) The maximum loan amount of one or more loans to any single borrower is \$1,250,000.

(d) The department, in its discretion, may allow a capital access loan to be sold on the secondary market under terms and conditions established or required by the department.

(e) A capital access loan may only be used for:

- (1) working capital, which includes the cost of exporting, accounts receivable, payroll, inventory, and other short-term financing needs of the borrower; or
- (2) the purchase, construction, or lease of capital assets, including buildings and equipment used by the borrower.

(f) A loan will not qualify as a capital access loan if the loan is used for:

- (1) Construction or purchase of residential housing;
- (2) Simple real estate investments, excluding the development or improvement of commercial real estate occupied by the borrower's business or organization;

- (3) Refinancing of existing loans not originally enrolled under this program; or
- (4) Insider loan transactions, as defined by the department.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §§21D-3 and 211D-5)

§15-3-5 Reserve account. (a) Upon approval by the department after entering into a participation agreement, a lender making a capital access loan shall establish a reserve account. The reserve account may only be used to cover losses arising from a default of a capital access loan made by the lender under this chapter or as otherwise provided by this chapter.

(b) When a lender makes a loan enrolled in the program, the lender shall require the borrower to pay the lender a fee not less than two percent (2%) but not more than three percent (3%) of the principal amount of the loan, which is deposited into the reserve account. The lender shall also deposit in the reserve account an amount equal to the amount of the fee received by the lender from the borrower under this subsection. The lender may recover from the borrower all or part of the amount the lender is required to pay in any manner agreed to by the lender and borrower.

(c) Within ten (10) working days of the loan origination date of each capital access loan, the lender shall certify to the department that the lender has made a capital access loan, the amount the lender has deposited in the reserve account, including the amount received from the borrower, the number of jobs created or affected by the loan and, if applicable, that the borrower is an enrolled enterprise zone business under chapter 209E, HRS, or operates a child care facility or adult residential care home, and any other information applicable to capital access loans the department may require or request.

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(d) Upon satisfactory receipt of a certification made under subsection (c), the department will deposit in the lender's reserve account for each capital access loan made by the lender:

- (1) An amount equal to the amount deposited by the lender for each loan if the lender:
 - (A) Has assets of more than one billion dollars (\$1,000,000,000); or
 - (B) Has previously enrolled loans in the program that in the aggregate are more than two million dollars (\$2,000,000);
- (2) An amount equal to one hundred fifty percent (150%) of the total amount deposited under subsection (b) for each loan if the lender is not described by paragraph (1); or
- (3) Notwithstanding paragraphs (1) and (2), an amount equal to two hundred percent (200%) of the total amount deposited under subsection (b) for each loan if:
 - (A) The borrower is an enrolled enterprise zone business under chapter 209E, HRS; or
 - (B) The borrower is a small or medium-sized business or a nonprofit organization that operates or proposes to operate a childcare facility or adult residential care home.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §211D-6)

§15-3-6 Limitations on department contribution to reserve account. (a) The amount deposited by the department into lenders' reserve account for any single loan recipient may not exceed \$100,000 during a three-year period.

(b) The maximum amount the department may deposit into a reserve account for each capital access loan made under this chapter is the lesser of \$35,000 or an amount equal to:

- (1) Eight percent (8%) of the loan amount if:

- (A) The borrower is an enrolled enterprise zone business under chapter 209E, HRS; or
 - (B) The borrower is a small or medium-sized business or a nonprofit organization that operates or proposes to operate a child care facility or adult residential care home; or
- (2) Six percent (6%) of the loan amount for any other borrower.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §211D-7)

§15-3-7 State's rights with respect to reserve account. (a) All of the money in a reserve account established under this chapter is property of the State.

(b) The State is entitled to earn interest on the amount of contributions made by the department, borrower, and lender to a reserve account under this chapter. The department shall withdraw monthly or quarterly from a reserve account the amount of the interest earned by the State. The department shall deposit the amount withdrawn under this section into the fund.

(c) If the amount in a reserve account exceeds thirty-three percent (33%) of the balance of the lender's outstanding capital access loans, the department may withdraw the excess amount and deposit the amount in the fund. A withdrawal of money authorized under this subsection may not reduce an active reserve account to an amount that is less than \$200,000.

(d) The department shall withdraw from the reserve account the total amount deposited in the account and any interest earned on the account, and deposit the amount in the fund when:

- (1) A lender is no longer eligible to participate in the program or a participation agreement entered into under

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this chapter is terminated without renewal by the department or the lender; and

- (2) The lender has no outstanding capital access loans.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §211D-8)

§15-3-8 Claims Process. (a) The lender shall exercise reasonable care and diligence in its collection efforts on all capital access loans. The minimum standard of care to be exercised by the lender in its collection efforts on capital access loans shall be no less than the standard of care exercised by the lender in its collection efforts on its conventional business loans.

(b) The lender may submit to the department a claim form seeking reimbursement for losses actually incurred on a capital access loan only after:

- (1) The lender has exhausted all legal remedies against the borrower and all guarantors, including, but not limited to the garnishment, seizure, foreclosure, repossession, and liquidation of all collateral;
- (2) The lender has charged off the capital access loan in accordance with the lender's usual and customary practice and policy for charging off its conventional business loans; and
- (3) The lender makes a good faith determination that any further collection efforts would be futile, and no longer economically feasible.

The amount of the claim for reimbursement shall be limited to the amount of principal charged off that is covered under the program as described in section 15-3-4(b), together with accrued interest, and any out-of-pocket collection expenses reasonably incurred.

(c) In the event that a lender simultaneously submits claims for reimbursement involving more than one capital access loan, and the funds available in the reserve account are insufficient to cover all of the

claims submitted, then the lender may designate the order of priority of the claims in which the lender seeks reimbursement.

(d) No claim for reimbursement shall be allowed beyond the available funds in the reserve account established by the lender under section 15-3-5. After the department is satisfied that a lender has met the conditions in subsection (b) above, then to the extent that funds are available in the reserve account, the department may authorize the payment of a claim for reimbursement.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §211D-4)

§15-3-9 General reporting requirements. (a) A lender shall submit an annual report to the department by January 10, which report shall include, but is not limited to:

- (1) Information regarding the lender's outstanding capital access loans, capital access loan losses, and any other information on capital access loans the department may require or request;
- (2) Information regarding the total amount of loans made, or held by the lender for which the department has made a contribution under this chapter;
- (3) A copy of the lender's most recent financial statement;
- (4) Information regarding the type and size of businesses and nonprofit organizations with capital access loans; and
- (5) Any other relevant information and reporting required or requested by the department.

(b) A lender shall submit a quarterly report to the department, which report shall include, but is not limited to:

- (1) Information on the lender's capital access loans, including the total number of loans made, the initial amount financed, and the remaining balance on each capital access loan;

- (2) Information on each borrower in the program, including: the borrower's gross revenues; the nature of the borrower's business or nonprofit organization; whether the borrower is a designated enterprise zone business, child care facility or adult residential care home; and the North American Industry Classification System code ("NAICS") for the borrower; and
- (3) Any other relevant information requested by the department.

The lender shall submit the quarterly reports on or before the following deadlines: for the period January 1 through March 31, by April 10; for the period April 1 through June 30, by July 10; for the period July 1 through September 30, by October 10; and for the period October 1 through December 31, by January 10.

A lender is not required to submit a quarterly report if the lender does not have any outstanding capital access loans.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §211D-9)

§15-3-10 State liability prohibited. Neither the State nor the department shall be liable to a lender for payment of the principal, the interest, or any late charges on a capital access loan made under this chapter.

[Eff. _____] (Auth: HRS §§211D-2 and 211D-4) (Imp: HRS §211D-11)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Chapter 15-3, Hawaii Administrative Rules, on the Summary Page dated _____, was adopted on _____, following a public hearing held on _____, after public notice was given in The Honolulu Advertiser on _____.

The adoption of chapter 15-3 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Seiji F. Naya, Director
of Business, Economic
Development, and Tourism

APPROVED:

Benjamin J. Cayetano
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

New Rules

Standard Format

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
And Tourism

Adoption of Chapter 15-3
Hawaii Administrative Rules

August 6, 2002

SUMMARY

Chapter 15-3, Hawaii Administrative Rules,
entitled "Capital Access Program" is adopted.

