

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Repeal of Chapters 15-116 and 15-126
Hawaii Administrative Rules

<January 29, 2020>

SUMMARY

1. Chapter 15-116, Hawaii Administrative Rules, entitled
“Community-Based Development Loan Program”, is repealed.
2. Chapter 15-126, Hawaii Administrative Rules, entitled
“Community-Based Development Grants Program”, is repealed.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 10

COMMUNITY-BASED DEVELOPMENT PROGRAM

CHAPTER 116

COMMUNITY-BASED DEVELOPMENT LOAN PROGRAM

REPEALED

§§15-116-1 to 15-116-14 Repealed. [R MAY 15 2020]

“HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 11

COMMUNITY-BASED DEVELOPMENT PROGRAM

CHAPTER 126

COMMUNITY-BASED DEVELOPMENT GRANTS PROGRAM

REPEALED

§§15-126-1 to 15-126-11 Repealed. [R MAY 15 2020]

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Adoption of Chapter 15-120
Hawaii Administrative Rules

<January 29, 2020>

SUMMARY

Chapter 15-120, Hawaii Administrative Rules, entitled "Community-Based Economic Development Loan and Grants Program", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 10

COMMUNITY-BASED DEVELOPMENT PROGRAM

CHAPTER 120

COMMUNITY-BASED ECONOMIC DEVELOPMENT LOAN AND GRANTS
PROGRAM

§15-120-1	Purpose
§15-120-2	Definitions
§15-120-3	Community-based economic development advisory council
§15-120-4	Revolving fund
§15-120-5	Purpose of grants
§15-120-6	Grant eligibility requirements
§15-120-7	Conditions for grants
§15-120-8	Purpose of loans
§15-120-9	Loan eligibility requirements
§15-120-10	Loan application procedure
§15-120-11	Conditions for loans
§15-120-12	Inspection of premises and records for loans
§15-120-13	Loan default

Historical note: This chapter is based substantially on chapters 15-116 and 15-126. [Eff 12/16/1991; R **MAY 15 2020**]

§15-120-1 Purpose. The purpose of this chapter is to provide rules and procedures governing the administration and implementation of the community-based economic development technical and financial assistance program authorized by chapter 210D, Hawaii Revised Statutes. [Eff **MAY 15 2020**: HRS ch. 210D) (Imp: HRS ch. 210D)]

§15-120-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

“Community-based economic development” shall have the same meaning as in section 210D-2, HRS.

“Community-based organization” shall have the same meaning as in section 210D-2, HRS.

“Community-based enterprise” means a community-based economic development business that has a business model designed to increase community control over local resources and decision-making processes and to have positive economic impacts in the community such as increased job creation, local sourcing of product inputs, and other resources for community economic empowerment.

“Community of identity” shall have the same meaning as in section 210D-2, HRS.

“Community of interest” shall have the same meaning as in section 210D-2, HRS.

“Council” means the community-based economic development advisory council.

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

“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.

“Grant” means an award of funds by the department to a nonprofit community-based organization or its for-profit subsidiary, or a cooperative association, or an organization providing technical assistance to community-based organizations.

“Grantee” means the recipient of a grant.

“HRS” means the Hawaii Revised Statutes.

“Loan” means a direct loan made by the department or a participation loan in which the department participates with a financial institution.

“Perquisite” means a privilege, gain, or profit incidental to regular salary or wages.

“Personal information” means any information, financial or otherwise, provided by an applicant, the disclosure of which is not required under chapter 92F, HRS.

“Program” means the community-based economic development technical and financial assistance program.

“Revolving fund” means the Hawaii community-based economic development revolving fund established in section 210D-4, HRS, from which moneys shall be used for purposes of this chapter.

“SBA” means the Small Business Administration of the United States Government.

“State” means the State of Hawaii.

“Technical assistance” means support to organizations targeted at a business development need or problem, and includes prescribing or providing management counseling, skills training, consulting services, and other instruction, monitoring business activities, and sharing information, working knowledge, and expertise, and may also include the transfer of technical data. Technical assistance may be provided directly by the department, or by consultants or contractors, or by grantees awarded a grant for that purpose. [Eff MAY 15 2020 (Auth: HRS §210D-8) (Imp: HRS §§210D-1, 210D-2, and 210D-8)]

§15-120-3 Community-based economic development advisory council.

The council shall review requests for financial assistance and make recommendations to the department as to whether the financial assistance is likely to achieve the purposes of the program, subject to the final approval of the department. [Eff MAY 15 2020 (Auth: HRS §210D-8) (Imp: HRS §210D-7)]

§15-120-4 Revolving fund. Moneys in the revolving fund shall be used for the purposes of the program, including for the provision of grants and loans, the provision of technical assistance, the department’s costs to administer the program, and any other purpose designated by appropriation. [Eff MAY 15 2020 (Auth: HRS §210D-8) (Imp: HRS §210D-4)]

§15-120-5 Purpose of grants. (a) The purpose of the grants is to assist in the establishment and development of economically viable community-based economic development activities or community-based enterprises and to provide technical assistance to community-based organizations.

(b) Grant funds may be used to cover costs such as, but not limited to, administration and personnel, training and education, technical assistance, organizational development and planning, and advertising and marketing; provided that such costs are directly related to and used exclusively for the establishment and development of the community-based economic development activity or community-based enterprise, or the provision of technical assistance. Grant funds shall not be used for capital improvements, equipment,

salaries or other compensation, insurance, rent, utilities, or other non-exclusive, normal operating expenses.

(c) Grants shall be made on based on the program's strategic plan and priorities and the recommendations of the council. [Eff MAY 1 5 2021] HRS §210D-8) (Imp: HRS §§210D-8 and 210D-11)

§ 15-120-6 Grant eligibility requirements. (a) To be eligible for a grant, the applicant shall be either:

- (1) A for-profit subsidiary of a nonprofit community-based organization incorporated under the laws of the State;
- (2) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service;
- (3) A cooperative association; or
- (4) An organization providing technical assistance to community-based organizations.

(b) In the case of a nonprofit organization, such organization shall have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies which describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and shall not employ or contract with two or more members of a family or kin of the first or second degree unless specifically permitted by the department.

(c) The applicant shall establish, to the satisfaction of the department, that sufficient funds are available for the effective operation of the community-based economic development activity or community-based enterprise, or provision of technical assistance for the purpose for which the grant is awarded.

[Eff MAY 1 5 2021] HRS §210D-8) (Imp: HRS §210D-11)

§15-120-7 Conditions for grants. (a) Before receiving a grant, each applicant shall provide written assurance to the department that it shall:

- (1) Use the grant exclusively for community-based economic development activities, community-based enterprises, or the provision of technical assistance to community-based organizations, consistent with the purposes of this chapter;
- (2) Have applied for or received all applicable licenses and permits;
- (3) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation,

disability, or any other characteristic protected under federal or state law;

- (4) Not use grant funds for entertainment purposes or as perquisites;
- (5) Comply with other requirements as the department may prescribe;
- (6) Comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes, permitting and agency rules;
- (7) Indemnify and save harmless the State and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department;
- (8) Not use or intend to use facilities for sectarian instruction or as a place of worship;
- (9) Allow the representatives of the department full access to records, reports, files, and fiscal practices of the grantee so that grantee may be monitored and evaluated to assure the proper and effective expenditure of public funds and compliance with the purposes of this chapter;
- (10) Allow the representatives of the department or other state agencies to inspect, at reasonable hours, the physical facilities and operations of the grantee relating to the operation of the community-based economic development activity or community-based enterprise, or provision of technical assistance, either in connection with the processing of a grant application or in the administration of the grant;
- (11) Maintain sound fiscal management controls and accounting procedures to assure effective operation of the community-based economic development activity or community-based enterprise, or provision of technical assistance;
- (12) Return to the department all unobligated grant funds at the end of the specified period; and
- (13) Submit to the department progress and final reports relating to any aspects of the grant when requested by the department.

(b) Grants shall be made for amounts not to exceed \$100,000 for each applicant.

(c) The department may require an applicant to provide additional information or documents relating to an application deemed necessary by the department or the council. [Eff MAY 1 1991] (2021: HRS §210D-8) (Imp: HRS §§210D-8 and 210D-11)

§15-120-8 Purpose of loans. (a) The department may make community-based enterprise establishment and improvement loans for the start-up costs, purchase, or improvement of a community-based enterprise, and for working capital, and for the purchase, construction, or improvement of facilities.

(b) The department may also make operating loans to carry on or improve an existing community-based enterprise for the purchase of equipment, and for production and marketing expenses including materials, labor, and services.

(c) 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;
- (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;
- (3) Effect a change in ownership of a business, unless the change shall 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; or
- (7) Encourage monopoly or be inconsistent with generally accepted practices of the American system of free enterprise. [Eff MAY 15 2020
(Auth: HRS §210D-8) (Imp: HRS §§210D-8 and 210D-9)]

§15-120-9 Loan eligibility requirements. To be eligible for a loan, the applicant shall:

- (1) Be an organization engaged in or establishing community-based economic development activities or a community-based enterprise;
- (2) Not be able to obtain a loan from at least one private or other public financial institution;
- (3) Furnish information to show that the applicant has the ability to repay the loan out of income from the business;

- (4) Have applied for or received all applicable licenses and permits;
 - (5) Satisfactorily demonstrate to the department that it can operate on a sound financial basis;
 - (6) If required by the department, provide collateral to reasonably protect the State's interest. The amount of collateral needed, considered along with other factors, shall be determined by the department on a case-by-case basis;
 - (7) Demonstrate that the purpose of the loan is in conformity with provisions of this chapter; and
 - (8) Demonstrate that the loan amount is not obtainable:
 - (A) Through other existing state loan programs;
 - (B) Through the public offering or private placement of securities of the applicant;
 - (C) 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;
 - (D) Without undue hardship through utilization of the personal credit or resources of the owner, partners, management, or principal shareholders of the applicant; or
 - (E) Through other appropriate government financing.
- [Eff MAY 11 5 2028: HRS §210D-8) (Imp: HRS §210D-8)

§15-120-10 Loan application procedure. (a) All persons applying for loans shall utilize the department's designated loan application form, or the appropriate SBA forms which may be obtained from a commercial bank or the local SBA office.

(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 an application 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 ninety days prior to the application date, tax returns, and other documents or information deemed necessary by the department or the council.

(c) The applicant's proposed business plans, except financial statements or personal information, shall be reviewed by the council to assess whether the proposed community-based economic development activity or community-based enterprise is likely to achieve the purposes of this chapter.

(d) The department shall approve a loan only where the applicant can provide 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 loan activity, 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.

(e) Information on applications meeting the requirements enumerated in this chapter shall be reviewed by the council. Financial statements or personal information shall be withheld from review by persons other than the director or the director's authorized staff. The council shall assess whether the proposed community-based economic development activity or community-based enterprise is likely to achieve the purposes of this chapter. The council shall make recommendations to the director regarding the acceptability of the proposed business concept. Final approval or disapproval of the loan application shall be made by the director.

(f) 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 and recordation of mortgages, and any other work required in processing the loan which is not performed by the department. At the discretion of the department, an applicant may be responsible for hiring independent appraisers to determine the value of capital assets or to assess the economic feasibility of a business operation. [Eff ~~MAY 15 2020~~ MAY 15 2020: HRS §210D-8) (Imp: HRS §210D-8)

§15-120-11 Conditions for loans. Loans shall be made to qualified applicants with the following terms and conditions:

- (1) The amount of the outstanding balance on all loans to any one applicant at any one time shall not exceed \$250,000;
- (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) The maximum term of a loan shall not exceed ten years;
- (4) Each loan shall bear a simple interest rate of not less than three and not more than six per cent a year;
- (5) The department shall determine the commencement date for the repayment of the first installment. The director may defer principal and interest payments of loans for a period not to exceed two years, provided that principal and interest shall accrue over the two-year deferral period; and

- (6) When appropriate, the department may prescribe management counseling. [Eff ~~MAY 1 5 2020~~ MAY 1 5 2020] (Auth: HRS §210D-8) (Imp: HRS §§210D-8, 210D-9, and 210D-10)

§15-120-12 Inspection of premises and records for loan. The department and other state agencies shall have the right to inspect and monitor, at reasonable hours, the plant, physical facilities, equipment, premises, books, records, and business activities of any applicant either in connection with the processing of a loan application or in the administration of a loan granted to that applicant. [Eff ~~MAY 1 5 2020~~ MAY 1 5 2020] (Auth: HRS §210D-8) (Imp: HRS §210D-8)

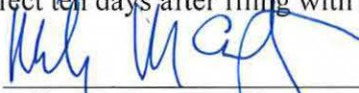
§15-120-13 Default. (a) Loans that are three installments in arrears shall be considered in default. The borrower shall also be considered to be in default for failure to comply with any term or condition of the loan authorization, loan agreement, or mortgage. If the borrower is in default, then at the option of the director, the entire balance plus accrued interest shall become due and payable. The director may foreclose any mortgage by any method provided by law. Any expense incurred by the department in recovering the 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 ~~MAY 1 5 2020~~ MAY 1 5 2020] (Auth: HRS §210D-8) (Imp: HRS §210D-8)

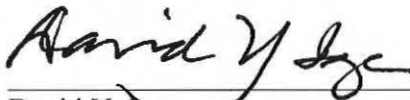
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Chapters 15-116 and 16-126, Hawaii Administrative Rules, were repealed, and chapter 15-120, Hawaii Administrative Rules, on the Summary Page dated January 29, 2020, was adopted on January 29, 2020, following a public hearing held on December 13, 2019, after public notice was given in the Star-Advertiser from November 13 to November 19, 2019, and in the Garden Island from November 13 to November 19, 2019, and in the Hawaii Tribune Herald from November 13 to November 19, 2019 and in the Maui News from November 13 to November 19, 2019.

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


Mike McCartney, Director
Department of Business, Economic
Development, and Tourism

APPROVED:


David Y. Ige
Governor
State of Hawaii

Dated: 05-05-2020

APPROVED AS TO FORM:


Deputy Attorney General

Filed

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LIEUTENANT GOVERNOR'S
OFFICE

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