

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 164

RENTAL ASSISTANCE PROGRAM

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Historical note: Chapter 164 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 314, of Title 6, Hawaii Administrative Rules. [Eff 5/24/93; R **OCT 25 1999**]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-164-1 Purpose. This rule is adopted under chapter 91, HRS, and implements subpart III.C. of chapter 201G, HRS. The purpose of this program is to increase the number of safe and sanitary rental housing accommodations available at affordable rents in the State by:

- (1) Assisting owners of rental housing accommodations in maintaining the rentals at levels affordable by families and individuals of low and moderate income through the provision of rental assistance payments which, with rentals received from tenants of low and moderate income, will provide the owners with limited but acceptable rates of return on their investment in rental housing accommodations; and
- (2) Providing a funding source for low-interest interim construction financing for the development of affordable rental housing by nonprofit and for-profit entities, as well as the corporation. [Eff **OCT 25 1999**] (Auth: HRS §201G-225) (Imp: HRS §§201G-222, 201G-223, 201G-224, 201G-225)

§15-164-2 Definitions. (a) The definition of the terms "eligible tenant", "owner", "regulatory agreement", and "rental assistance contract" shall be the same as defined in part III, chapter 201G, HRS.

(b) As used in this subchapter and the procedural handbook:

"Discount rate" means the rate to be used to determine the present value of the cumulative rental assistance payments made to an owner.

"Eligible project" means an eligible project as defined in part III, chapter 201G, HRS and which is not

feasible at affordable rentals without a rental assistance contract.

"Owner's equity" means the capital contributed by the owner to the eligible project and approved by the corporation pursuant to the procedural handbook and regulatory agreement.

"Qualified sponsor" means qualified sponsor as defined in part III, chapter 201G, HRS, and who is determined by the corporation to have articles of incorporation or comparable documents of organization or a written agreement with the corporation which, in addition to other requirements of law, provides that if the person or entity receives an interim construction loan under part III, chapter 201G, HRS, and subpart 3 of these rules, it shall be authorized to enter into an agreement with the corporation, providing for regulations with respect to rents, profits, dividends, and dispositions of property or franchises.

"Rate of return on owner's equity" means the annual percentages derived by dividing the owner's net earnings, as defined in the procedural handbook, by the owner's equity. [Eff **OCT 25 1999**] (Auth: HRS §201G-225) (Imp: HRS §§201G-222, 201G-223, 201G-224, 201G-225)

§15-164-3 Delegation. The corporation delegates to the administrator the authority to implement and carry out the purposes of this chapter. [Eff **OCT 25 1999**] (Auth: HRS §201G-225) (Imp: HRS §201G-225)

SUBCHAPTER 2

RENTAL ASSISTANCE PROGRAM

§15-164-11 Rental assistance revolving fund. (a) The corporation shall administer the rental assistance revolving fund established pursuant to section 201G-223, HRS.

(b) Subject to the restrictions in section 201G-223, HRS, the corporation may use the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund to make payments under the rental assistance contracts or to subsidize

tenants' rents in projects developed by the corporation under part III of chapter 201G, HRS.

[Eff **OCT 25 1999**] (Auth: HRS §201G-225)

(Imp: HRS §201G-223)

§15-164-12 Rental assistance contracts; sharing of appreciation. (a) The corporation may enter into an agreement to enter into a rental assistance contract in accordance with section 201G-224, HRS. The agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in the procedural handbook. The maximum annual rental assistance payment amount shall be determined pursuant to the procedural handbook. The rate of return on owner's equity shall not exceed fifteen per cent annually.

(b) The corporation shall be entitled to share in the appreciation of the value of units maintained for eligible tenants within an eligible project realized at the time of refinancing or prepayment of the eligible project loan in accordance with section 201G-225, HRS; provided that the corporation shall exempt projects owned by a county from this shared appreciation requirement if all of the following requirements are met:

- (1) The funds derived by the county as a result of appreciation in value of the units are used for housing projects wherein:
 - (A) At least sixty per cent of the project is affordable to families earning up to one hundred per cent of the area median income as determined by the United States Department of Housing and Urban Development and as adjusted for family size; and
 - (B) At least one-half of the foregoing sixty per cent is affordable to families earning up to eighty per cent of the area median income as determined by the United States Department of Housing and Urban Development and as adjusted for family size; and
- (2) The project from which the appreciation in value is derived remains as affordable as it was prior to the refinancing or prepayment of the eligible project loan.

(c) The discount rate used in calculating the corporation's share of the appreciation in value shall be as stated in the rental assistance contract, but shall not exceed fifteen per cent.

[Eff **OCT 25 1999**] (Auth: HRS §201G-225)
(Imp: HRS §201G-225)

§15-164-13 Procedures, implementation of program. (a) The corporation shall develop a procedural handbook which shall contain, but not be limited to, procedures for evaluating rental schedules, reviewing tenants' income in eligible projects, inspecting units, and calculating appreciation upon refinancing or prepayment of the eligible project loan.

(b) The operation and implementation of the rental assistance program shall be conducted in accordance with part III, chapter 201G, HRS, these rules, and the procedural handbook as amended or supplemented from time to time by the corporation at its sole discretion.

(c) A copy of the procedural handbook, in its most current form, shall at all times be kept at the principal office of the corporation and shall be available for inspection during normal business hours.

[Eff **OCT 25 1999**] (Auth: HRS §201G-225)
(Imp: HRS §§201G-223, 201G-224, 201G-225)

SUBCHAPTER 3

INTERIM CONSTRUCTION PROGRAM

§15-164-21 Interim construction program. (a) Subject to the restrictions and funding limitations in section 201G-223, HRS, the corporation may use the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund to provide interim construction financing to:

- (1) Qualified sponsors of rental housing projects who are private nonprofit or for-profit entities; or
- (2) The corporation; provided that in allotting interim construction financing moneys under this program, the corporation shall give a preference to rental housing projects

developed by qualified sponsors who are private nonprofit or for-profit entities.

(b) Fund moneys used for this program shall be leveraged with bond proceeds for the development of affordable rental housing. [Eff **OCT 25 1999**] (Auth: HRS §201G-225) (Imp: HRS §201G-223)

§15-164-22 Project criteria for funding; minimum requirements. Affordable rental housing projects funded in whole or in part through loans under this program must meet the following criteria:

- (1) At least twenty per cent of the units in the project are rented to households with incomes of up to fifty per cent of the area median income as determined by the U.S. department of housing and urban development; or
- (2) At least forty per cent of the units are rented to households with incomes of up to sixty per cent of the area median income, as determined by the U.S. department of housing and urban development; or
- (3) At least sixty per cent of the units must be rented to households with incomes of up to one hundred forty per cent of the area median income, as determined by the U.S. department of housing and urban development; provided, however, that if there is an insufficient number of persons or families who meet the income qualifying criteria for admission into the housing project, the corporation may permit the developer to rent units to higher income tenants in order to ensure full occupancy of funded projects.
[Eff **OCT 25 1999**] (Auth: HRS §201G-225)
(Imp: HRS §201G-223)

§15-164-23 Applications for program funds. (a) Applicants desiring to utilize fund moneys under this program shall submit to the corporation an application, containing the following information.

- (1) Name, address, and telephone number of the applicant and evidence of the applicant's status as a sole proprietorship, corporation, partnership, joint venture or other business organization;

- (2) If the applicant is a corporation, certified copies of the articles of incorporation, and the names, addresses, and telephone numbers of each of the officers and directors of the corporation, and of any shareholder of the corporation holding more than twenty five per cent of the outstanding shares issued by the corporation. If the applicant is a partnership, joint venturer, or sole proprietorship, certified copies of the partnership, joint venture agreement or proprietorship, as applicable, and the names, addresses, and telephone numbers of each of the individual partners, joint venturers, or owners;
- (3) A resume of the applicant's or project team's experience in the development of housing projects including a list and a brief description of the projects in which the applicant participated;
- (4) The name, title, address, telephone number, and facsimile number of the person to whom communications should be addressed;
- (5) Evidence of the applicant's legal authority to incur obligations and to sign and deliver such documents as may be necessary to finance, develop, and construct the project;
- (6) A current certificate of good standing from the department of commerce and consumer affairs and tax clearance from the department of taxation;
- (7) Evidence of the applicant's creditworthiness including, to the extent available, the following financial information, which shall be kept confidential to the extent permitted by law:
 - (A) Three years' fiscal year-end financial statements of the borrowing entity. If the statements are unaudited, tax returns shall be provided;
 - (B) Personal financial statements and tax returns if the borrower or guarantor is an individual; and
 - (C) Any other financial information the corporation deems necessary;
- (8) Description of all housing projects or facilities owned or operated by the

- applicant;
- (9) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the applicant or its principals;
 - (10) Evidence of ability to secure the necessary performance or payment bond or other evidence of surety and the ability to perform the work required to be performed in the housing project proposed;
 - (11) A statement of the applicant's past or current involvement with the corporation or other governmental entity and the assistance, if any, received from those entities;
 - (12) Evidence that the applicant has met the requirements of section 201G-223, and these rules;
 - (13) A project plan, including:
 - (A) Evidence of site control (such as a deed, agreement of sale, commitment letter, or development agreement) or a site acquisition plan (such as a letter of intent), and names and addresses of all legal and equitable holders of an interest in the land and a complete description of each holder's interest in the land;
 - (B) Approximate number of dwelling units, within the proposed project and the total area of the proposed project;
 - (C) Site plan showing the general development of the site, including the locations and descriptions of proposed and existing buildings, parking areas, and service areas;
 - (D) Description of existing improvements within and adjacent to the proposed project, as well as off-site and on-site infrastructure and improvements requirements;
 - (14) Preliminary plans and specifications of typical housing units and other improvements in the project, including the number of proposed housing units, the number and types of structures, the number of stories, and the number of units by size (number of bedrooms and bathrooms);

- (15) Proposed financing of the project, including:
 - (A) The manner in which the project will be financed during the development and construction of the project and upon completion of the project;
 - (B) The sources of repayment of such financing;
 - (C) Estimated start-up expenses and the sources of funds to meet these expenses;
 - (D) The equity, if any, which the developer intends to contribute to the proposed project; and
 - (E) Budgets and cashflow requirements, showing, among other things, the projected rental rates for the units;
- (16) Development timetable, market analysis, and other activities relating to a successful development of the project to completion;
- (17) Comments from the community or community groups;
- (18) If the proposal for the development will cause displacement, the proposal shall include a program of housing accommodation for displaced persons;
- (19) Evidence that the project is in compliance with existing state and county zoning and planning laws;
- (20) Any other information that the corporation finds necessary to determine whether or not the proposed project meets the intent and purposes of section 201G-223, HRS.

Additional information may also be requested by the corporation to determine the qualification of the applicant and the project.

[Eff **OCT 25 1999**] (Auth: HRS §201G-225) (Imp: HRS §201G-223)

§6-164-24 Evaluation of requests for program funds. (a) The corporation will review and evaluate each application for program funds, and shall take into consideration factors such as compliance with the purposes and intent of section 201G-223, HRS, and other relevant factors.

(b) In evaluating the requests for program funding, the corporation shall provide a preference to projects meeting the following criteria:

- (1) Projects which dedicate a greater number of units or a larger proportion of their project for very low and low income persons or families; and
- (2) Projects which are committed to serving very low and low income persons or families over a longer period of time.

The corporation may also include other criteria as it deems necessary to carry out the purposes of the fund. [Eff **OCT 25 1999**] (Auth: HRS §201G-225) (Imp: HRS §201G-223)

§6-164-25 Corporation action. (a) The corporation may accept a request that program funds be allocated or may deny a request for program funds for a project. The corporation may also defer action on any request for project funds and may request that additional information be submitted. If the corporation accepts a request that program funds be allocated for a project, the corporation must make specific findings that the use and application of program funds for the project are consistent with the purposes of the program and must submit a recommendation to the governor that program funds be allocated for the project.

(b) For any project that the corporation recommends to be assisted by program funds, the corporation shall provide the governor with a summary of the project to be developed. The summary shall include:

- (1) The various aspects of the project, including any projects or loan programs to be a part of the program;
- (2) The methods of financing the project or loans;
- (3) If applicable, how the program funds will be returned to the program;
- (4) Specific findings that the application of program funds will meet the requirements of the program and that the application of program funds will comply with the primary objectives of the program;
- (5) Other information which the corporation deems relevant; and
- (6) Other information as the governor may request. [Eff **OCT 25 1999**] (Auth: HRS

\$201G-225)

\$15-164-26 Commitment of program funds. Program funds may be committed in participation with other lenders. The corporation shall not issue nor make any commitment of program funds for any project unless the corporation has first made a determination that the purposes and amounts for which program funds are to be applied are consistent with the purposes of the program and the governor has approved the commitment of program funds for the project. All commitments for program funds shall be made subject to availability of program funds. [Eff **OCT 25 1999**]
 (Auth: HRS \$201G-225) (Imp: HRS \$201G-223)

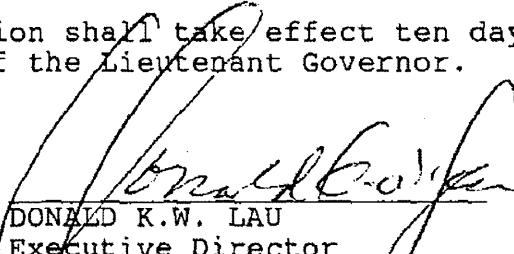
\$6-164-27 Conditions for program funds. For a commitment of project funds, the corporation may require the applicant to enter into an agreement with the corporation, including a development agreement or regulatory agreement, evidencing the applicant's obligation to develop the project in a manner which will carry out the intent and purpose of the program. The corporation may require the applicant to prepare and maintain such records, including cost certifications, which evidence that project funds are being applied in a manner which meets the requirements of the program.

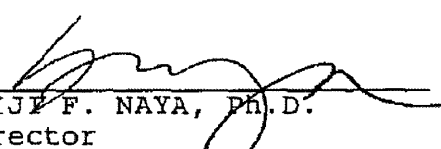
Additionally, the corporation may impose other restrictions which the corporation shall require as a condition for project funds. [Eff **OCT 25 1999**]
 (Auth: HRS \$201G-225) (Imp: HRS \$201G-223)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM


The repeal of chapter 6-314 and the adoption of chapter 15-164, Hawaii Administrative Rules, on the Summary Page dated August 27, 1999, was adopted on August 27, 1999, following public hearings held on Maui on July 15, 1999, Hilo on July 16, 1999, Oahu on July 19, 1999, and Kauai on July 20, 1999, after public notice was given in the Midweek newspaper on June 7, 1999.

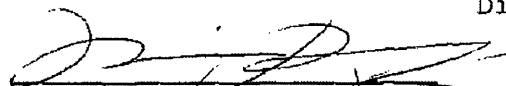
The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.


DONALD K.W. LAU
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APPROVED:


BENJAMIN J. CAYETANO
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Dated:

10-14-99

OCT 15 1999
Filed

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OFFICE

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