

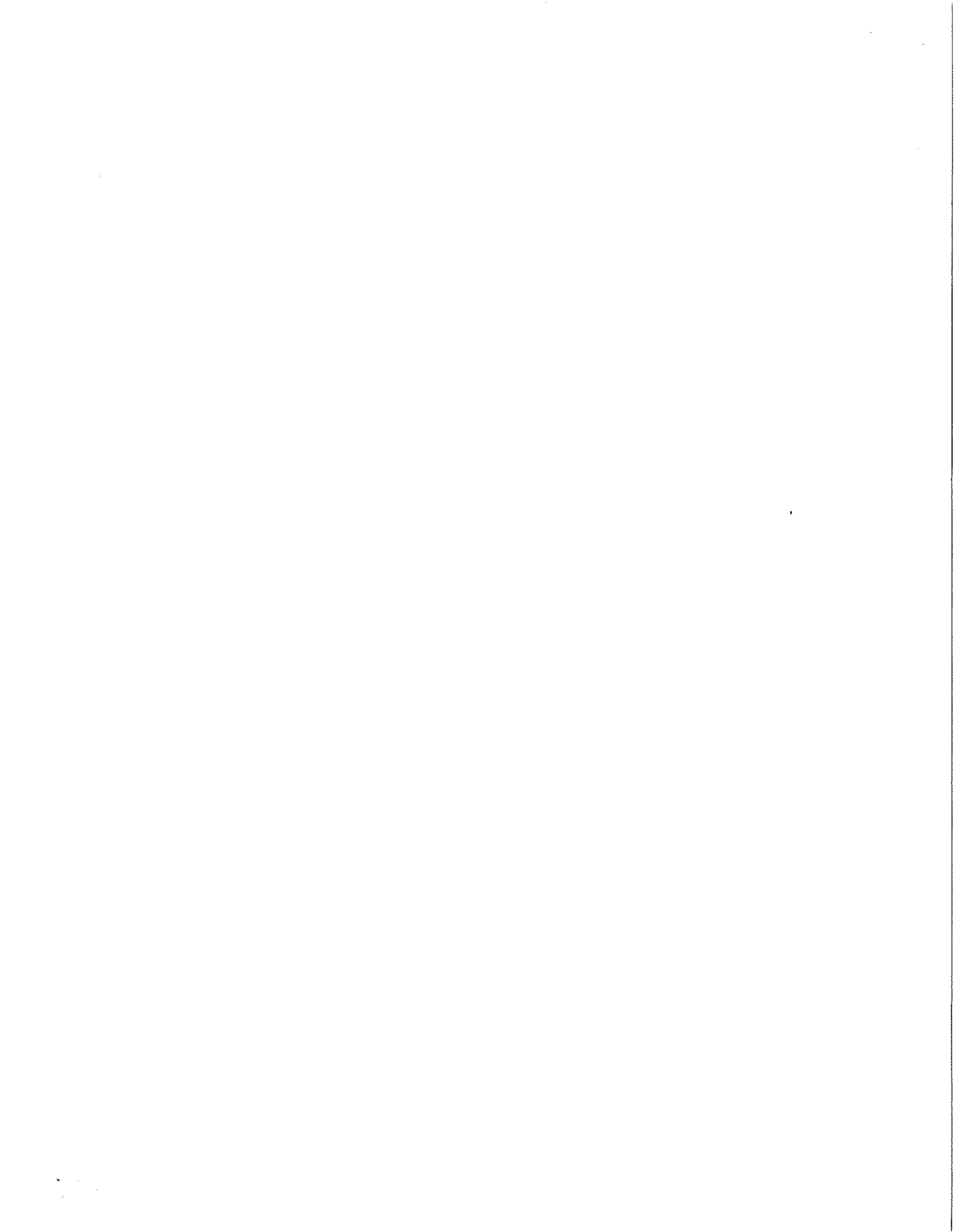
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Adoption of Chapter 15-320
Hawaii Administrative Rules

October 3, 2011

SUMMARY

Chapter 15-320, Hawaii Administrative Rules,
entitled "Low Income Housing Tax Credit Program" is
adopted.



HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 320

LOW INCOME HOUSING TAX CREDIT LOAN PROGRAM

Subchapter 1 General Provisions

- §15-320-1 Purpose
- §15-320-2 Definitions
- §15-320-3 Eligibility; minimum requirements
- §15-320-4 Application fee

Subchapter 2 State Low Income Housing Tax
Credit Loan Program

- §15-320-20 Funding availability; loan program
funding rounds
- §15-320-21 Loan application procedures
- §15-320-22 Selection preferences and priorities
- §15-320-23 State low income housing tax credit
loan
- §15-320-24 Compliance with federal requirements
- §15-320-25 Loan forgiveness
- §15-320-26 Asset management
- §15-320-27 Default

SUBCHAPTER 1

GENERAL PROVISIONS

§15-320-1 Purpose. (a) The purpose of this program is to encourage the development and preservation of rental housing for low income households by creating a cost-effective financing mechanism for projects that are awarded state low-income housing tax credits.

(b) It is the intent of the corporation to limit participation in this loan program to owners of qualified low-income buildings in the state of Hawaii that have:

- (1) Been awarded state low-income housing tax credits;
- (2) Certified that they have made a good faith attempt to syndicate, or otherwise find an investor for, their state low-income housing tax credits prior to requesting a loan under these rules;
- (3) Found a syndicator or investor for their federal low-income housing tax credits; and
- (4) Demonstrated readiness to proceed with the development or preservation of their rental housing project in a timely fashion.

(c) It is also the intent of the corporation to require projects and owners of qualified low-income buildings who opt to request a loan under these rules to comply with all requirements imposed by the Federal low-income housing tax credit program under Section 42 of the Code, section 235-110.8, HRS, and rules and requirements thereof. [Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

§15-320-2 Definitions. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

"Asset management" means monitoring eligible projects and owners under this program to ensure compliance with all applicable Code requirements in conjunction with corporation compliance monitoring procedures for the Federal low-income housing tax credit program.

"Board" means the board of directors of the Hawaii housing finance and development corporation.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated there under.

"Consolidated application" means the consolidated application for financing prepared by the corporation and completed by the project owner during the original low-income housing tax credit application process.

"Corporation" means the Hawaii housing finance and development corporation established pursuant to chapter 201H, Hawaii Revised Statutes.

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

"Funding round" means the competitive selection process among projects awarded state low-income housing tax credits by the corporation in a specific calendar year.

"HAR" means the Hawaii Administrative Rules.

"HRS" means the Hawaii Revised Statutes, as amended, and the rules promulgated there under.

"Owner" means the owner or owners of qualified low income housing units or investors in such units.

"Project" means a qualified low income housing project as that term is defined in section 42(g) of the Code.

"Readiness to proceed" means the ability to commence construction on a timely basis. Evidence of readiness to proceed can include, but is not limited to, executed construction contracts, building permits, binding commitments for construction financing, and compliance with, or approved variances from, zoning requirements.

"State" means the State of Hawaii.

"State low income housing tax credits" or "state tax credits" means the credits prescribed in section 235-110.8, HRS, for application against state income tax liability.

"State low income housing tax credit loan" or "loan" means a loan made pursuant to this chapter.

[Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

15-320-3 Eligibility; minimum requirements. (a) Eligibility for state low income housing tax credit loans under this chapter is limited to projects that have been awarded state low-income housing tax credits on or after January 1, 2011. Projects that have been awarded state low-income housing tax credits prior to January 1, 2011 shall not be eligible to participate in this program.

(b) Project owners may not apply for a loan under this chapter until two months following the date of their state low-income housing tax credit award.

(c) To be eligible for consideration for a loan under this chapter, project owners shall certify and provide documentation satisfactory to the corporation that:

- (1) They have found a syndicator or investor for the project's Federal low-income housing tax credits;

- (2) A syndicator or investor for the project's state low-income housing tax credits:
 - (A) Could not be found;
 - (B) Reasonable quoted pricing below the price used in the underwriting in the project's consolidated application; or
 - (C) Quoted state low-income housing tax credit pricing that does not allow the project to remain financially feasible;
- (3) The low income housing tax credit loan is necessary to ensure that their project is financially feasible; and
- (4) The project shall be completed by the deadline set forth by the awarded Federal low-income housing tax credit.

(d) Project owners that receive a loan under this chapter shall provide written notice to the executive director of their decision to return their state low-income housing tax credit award.

[Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

§15-320-4 Application fee. The corporation shall charge a loan application fee of \$500.00.
 [Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

SUBCHAPTER 2

STATE LOW INCOME HOUSING TAX CREDIT LOAN PROGRAM

§15-320-20 Funding availability; loan program funding rounds. (a) The availability of state low income housing tax credit loans shall be subject to the appropriation of funds for this program.

(b) When, in the executive director's sole discretion, it is determined that sufficient funds are available, the corporation shall establish a loan program funding round. The funding round shall be limited to owners and projects awarded state low-income housing tax credits in a specific calendar year, and shall be awarded on a competitive basis.

(c) The executive director shall provide a written notification of funding availability to eligible project owners. The notification shall include, but is not limited to, the amount of funds available for loans and loan application deadlines and timetables. [Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

§15-320-21 Loan application procedures. Loan applicants shall submit a written request that shall include, but is not limited to, the following information:

- (1) Certification and documentation that the project meets eligibility criteria set forth in section 15-320-3, HAR;
- (2) Written request for the loan funds, including a description of the project's need for the loan funds;
- (3) Amount of loan funds requested;
- (4) Revised project budget, including a line-by-line comparison with the project budget originally approved by the corporation and an explanation of any changes thereto;
- (5) Revised project sources and uses statement, including a comparison with the sources and uses statement originally approved by the corporation and an explanation of any changes thereto;
- (6) Detailed construction and funds expenditure timeline;

- (7) Financial updates based on the project's consolidated application exhibits; and
- (8) The \$500 application fee.
[Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

§15-320-22 Selection preferences and priorities.

(a) In any loan funding round, first preference shall be given to projects that have been awarded low-income housing tax credits under the state housing credit ceiling under Section 42(h)(3)(C) of the Code and section 235-110.8, HRS.

- (1) Under the first preference set forth in subsection (a) above, eligible projects shall be scored in accordance with the state's qualified allocation plan for the low-income housing tax credit program. Scoring factors contained in the qualified allocation plan, including financial structure, experience, reasonableness of development costs, and project readiness, shall be a component of the overall evaluation, and not the sole determining factor for the awarding of loans.
- (2) No earlier than two months following an eligible project's low-income housing tax credit award, project owners may request an exchange of state low-income housing tax credits for program loan funds. The deadline to request such an exchange shall be six months following the project's credit award date.

(b) If there are available funds remaining after loans for all first preference awardees have been reserved in the funding cycle, second preference may be given to eligible projects that have been awarded credits allocated pursuant to Section 42(h)(4) of the Code and section 235-110.8, HRS.

- (1) Eligible projects under the second preference shall be scored in accordance with the state's qualified allocation plan for the low-income housing tax credit program. Scoring factors contained in the qualified allocation plan, including financial structure, experience, reasonableness of development costs, and project readiness, shall be a component of the overall evaluation, and not the sole determining factor for the awarding of loans. The corporation may reserve loan funds for eligible projects under the second preference in order of priority, subject to the availability of funds in the funding round.
- (2) Projects receiving a loan award under the second preference will be reviewed ten months after the receipt of the award. The corporation shall review the status and progress made by the project. The corporation may rescind the loan award with no further compensation to the project or project owner if it determines, in its sole discretion, that insufficient progress has been made.

(c) No project shall be eligible to compete in more than one loan program funding round.

[Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,)(Imp: Act 158, SLH 2011)

§15-320-23 State low income housing tax credit loan. (a) Loans under this chapter shall not exceed the maximum loan amount as determined utilizing the following formula:

(Credit amount returned x 10) x \$0.50.

(b) The corporation reserves the right to make smaller loan awards based on its assessment of the project and the available funding sources.

(c) Loans may be provided subject to any additional conditions set forth in this section.

(d) The corporation shall set forth the terms and conditions of the loan on a case-by-case basis, including the loan term, repayment schedule, appropriate security, and the like.

(e) The corporation shall ensure that loans provided under this section are secured to safeguard against a change in the use or ownership of the project, or the project no longer fulfilling the intended purpose for which the loan was provided. Loans may be secured through use of a forgivable or subordinated mortgage and a regulatory agreement.

[Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

§15-320-24 Compliance with federal requirements. Low income housing tax credit loan recipients shall comply with all laws, rules, regulations applicable to low-income housing tax credit projects. Failure to comply with all applicable requirements may be construed as a default of the loan.

[Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,) (Imp: Act 158, SLH 2011)

§15-320-25 Loan forgiveness. The corporation may forgive amounts remaining under the loan to the owner of an eligible project following the completion of the loan term, which shall be a minimum of thirty years and shall not exceed the project's affordability term commitment, provided that the project has been in compliance with all requirements throughout the loan term. Project owners are solely responsible for determining and accommodating the potential financial impact of a forgiveness of debt provision could have on the project and its owners. [Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,)(Imp: Act 158, SLH 2011)

§15-320-26 Asset management. (a) The corporation shall monitor, or cause to be monitored, projects which have been issued loans under this chapter to ensure compliance with all applicable Code requirements for the term of the loan.

(b) Applicants who are issued loans under this chapter shall comply with all reporting and other requirements, as applicable. [Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,)(Imp: Act 158, SLH 2011)

§15-320-27 Default. Should the corporation, in its sole discretion, determine that a project owner is unable to fulfill the project completion requirement, or other loan terms, the corporation may recapture the loan award with no further compensation to the project or project owner. All loans issued under this chapter shall contain provisions providing for acceleration and repayment of the loan in the event of default. [Eff OCT 27 2011] (Auth: Act 158, SLH 2011; HRS §201H-4,)(Imp: Act 158, SLH 2011)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM


Chapter 15-320, Hawaii Administrative Rules, on the Summary Page dated October 3, 2011, was adopted on October 3, 2011 following public hearings held on September 30, 2011 after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui Times, West Hawaii Today, and The Hawaii Tribune-Herald newspapers on August 31, 2011.

The adoption of chapter 15-320 shall take effect ten days after filing with the Office of the Lieutenant Governor.



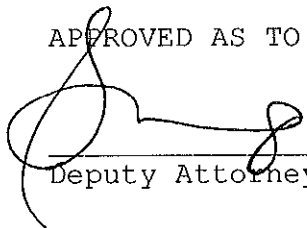
DAVID LAWRENCE, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED:

for 
NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 10/19/11

APPROVED AS TO FORM:


Deputy Attorney General

Filed

11 OCT 17 02 07

LEUTENANT GOVERNOR'S
OFFICE

10/11/11

903

10/11/11