~~4. the procedure to be used for recording attendance of these attendees seeking to apply for continuing education credit and the procedure for certification by the program's registrar of attendance; and~~

~~5. a sample certificate of completion.~~

~~(2) When attending an approved program, a licensee must sign in and out each day and his or her attendance must be certified by the program's registrar.~~

~~(3) The provider shall maintain records of each course offering for 4 years following each licensure biennium during which the course was offered. Course records shall include a detailed course outline which reflects its educational objectives, the instructor's name, the date and location of the course, the participants' evaluations of the course, the hours of continuing education credit awarded for each participant and a roster of participants by name and license number.~~

(2)~~(4)~~ Programs offered by the Florida Occupational Therapy Association (FOTA), the American Occupational Therapy Association (AOTA) and occupational therapy courses accredited by the Accreditation Council for Occupational Therapy shall be deemed approved by this Board for continuing education ~~and shall not pay the fees required in subsection (1) of this rule~~.

(3)~~(5)~~ Courses and programs not approved in paragraph~~s (1) or (4)~~ (2) above shall be approved as appropriate continuing education if said course or program meets the following criteria:

(a) The content of the course or program is relevant to the practice of occupational therapy as defined in section (1)~~(b)~~ of this rule.

(b) The course or program is presented by instructor(s) who possess appropriate education, experience and credentials relevant to the course or program's subject matter.

(c) The course or program's educational goals, objectives and teaching methods are adequately identified in promotional materials.

(d) The course or program must be presented in a time block of at least one contact hour. "One (1) contact hour" equals a minimum of fifty (50) minutes. One half (1/2 or .5) contact hours equals a minimum of twenty-five (25) minutes.

~~(e) The provider of the course or program must present a certificate indicating full attendance and successful completion of the course or program to each licensee.~~

(e)~~(f)~~ The licensee must retain such receipts, vouchers, certificates, or other papers to document completion of the required continuing education for a period of not less than four (4) years from the date the course was taken. The Board will randomly audit licensees to assure the continuing education requirements have been met.

(4)~~(6)~~ A maximum of eight contact hours may be awarded per biennium for each of the following or a combination of the following:

(a) The presentation of a continuing education course or program as either the lecturer of the course or program or as the author of the course materials. Each licensee who is participating as either a lecturer or author of a continuing education course or program may receive credit for the portion of the offering he/she presented or authored up to the total hours awarded for the offering.

1. Continuing education credit may be awarded to a lecturer or author for the initial presentation of each course or program only; repeat presentations of the same continuing education course or program shall not be granted credit.

2. In order for a continuing education credit to be awarded to each licensee participating as either lecturer or author, the format of the continuing education course or program must conform with all applicable sections of this rule chapter.

3. Continuing education credit for publications is limited to continuing education courses or programs.

4. The number of contact hours to be awarded to each licensee who participates in a continuing education course or program as either a lecturer or author is based on the 50 minute contact hour employed within this rule chapter.

(b) Attendance at Occupational Therapy Board meetings. The number of contact hours awarded for such attendance is based on the definition of a contact hour as set forth in 64B11-6.001(5)(d), F.A.C.

(c) Attendance at Florida Occupational Therapy Association Leadership meetings. The number of contact hours awarded for such attendance is based on the definition of contact hour as set forth is 64B11-6.001(5)(d), F.A.C.

(5)~~(7)~~ In addition to the continuing education credits authorized above, any volunteer expert witness who is providing expert witness opinions for cases being reviewed pursuant to Chapter 468, Part III, the Occupational Therapy Practice Act, shall receive 3.0 hours of credit for each case reviewed. A volunteer expert witness may not accrue in excess of 6.0 hours of credit per biennium pursuant to this paragraph.

Specific Authority 455.587, 468.204, 468.219(2) FS. Law Implemented 468.219(2) FS. History–New 8-1-95, Amended 8-27-96, Formerly 59R-65.001, Amended 7-21-98, _____.

Section II
Proposed Rules

DEPARTMENT OF BANKING AND FINANCE

Division of Banking

RULE TITLE: RULE NO.:

Disapproval of Directors or Executive Officers 3C-100.03852

PURPOSE AND EFFECT: This rule will be revised so that more Florida-chartered financial institutions will not need to provide the Department of Banking and Finance sixty days

prior notice of the election of new directors and executive officers, thereby reducing the regulatory burden on Florida-chartered financial institutions.

SUMMARY: The proposed revision will include financial institutions rated "3" in safety and soundness reports of examination with institutions that are automatically exempted from the requirement to notify the Department in writing sixty days prior to the election or employment of new directors and executive officers. The revision will remove some of the currently listed actions meeting the definition of "regulatory action" and thereby also expand the financial institutions qualifying for exemption. The revision will also add a requirement that, to be exempted, financial institutions must also have an examination management rating of "1" or "2".

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 655.012(3), 655.0385 FS.

LAW IMPLEMENTED: 655.0385, 658.21, 658.33, 665.013 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Division of Banking Conference Room, 6th Floor, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking, Room 614, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9111

THE FULL TEXT OF THE PROPOSED RULE IS:

3C-100.03852 Disapproval of Directors or Executive Officers.

(1) through (5) No change.

(6) Pursuant to Section 655.0385(1)(b), Florida Statutes, the Department may exempt from the 60 day notice requirement a financial institution which has undergone a change of control or conversion within the preceding two years and which operates in a safe and sound manner.

(a) A financial institution with a composite rating of "1", "2" or "3~~2~~", and with a management rating of "1" or "2" in its most recent safety and soundness report of examination or, in the case of a trust company, its most recent trust report of examination, and which is not subject to a state or federal regulatory action shall be automatically exempted from the 60 day notice requirement. For purposes of this section "regulatory action" shall include cease and desist orders, written agreements, memoranda of understanding, ~~documents of resolution,~~ letters of understanding and agreement, ~~resolutions adopted at the request of financial institution regulators,~~ and any other equivalent action initiated by a financial institution regulator. (Examination ratings are based on the Federal Financial Institutions Examinations Council's Uniform Interagency Trust Rating System and Uniform Financial Institutions Rating System, often called the CAMELS rating system.)

(b) Other financial institutions may request an exemption by writing to the Director of the Division of Banking detailing why the institution believes it is operating in a safe and sound manner and why an exemption is appropriate. Any such request must include supporting documentation of improvements in the institution and its operations. The request for exemption shall be approved only when the Director of the Division of Banking concludes that, because of the documented improvements, the institution would be rated "1", "2" or "3~~2~~", with a management rating of "1" or "2" were a safety and soundness examination conducted on the date of the institution's request. For example, the Director of the Division of Banking may approve a request for waiver from an institution that was poorly rated in its last safety and soundness examination because of inadequate capital if the institution documents that it increased capital sufficiently to address the inadequacy.

Specific Authority 655.012(3), 655.0385(4) FS. Law Implemented 655.0385, 658.21, 658.33, 665.013 FS. History–New 12-14-93, Amended 3-20-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Donald M. Kelly, Financial Control Analyst, Division of Banking

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 27, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF BANKING AND FINANCE

Division of Banking

RULE TITLE: RULE NO.:
Reporting of Significant Events or Conditions 3C-100.948

PURPOSE AND EFFECT: The rule will be revised to automatically exempt more Florida-chartered financial institutions from the requirement to report significant events or conditions to the Division of Banking.

SUMMARY: This rule is being revised to include financial institutions rated "3" in the most recent safety and soundness report of examination with institutions rated "1" and "2" in the

definition of "operating in a safe and sound manner." The revision will delete from the list of "regulatory actions" certain types of actions that are considered informal by state and federal regulatory agencies. Financial institutions that are subject to a "regulatory action" cannot meet the tests of a financial institutions "operating in a safe and sound manner." The rule also adds a new test for this definition: that the management rating be either "1" or "2" in order for the institution to be "operating in a safe and sound manner." Financial institutions operating ins a safe and sound manner, that have been chartered for three or more years are exempted from the requirement to file significant event notices.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 655.012 FS.

LAW IMPLEMENTED: 655.948 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Division of Banking Conference Room, 6th Floor, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking, 614 Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9111

THE FULL TEXT OF THE PROPOSED RULE IS:

3C-100.948 Reporting of Significant Events or Conditions.

(1) No change.

(2)(a) "Operating in a safe and sound manner" shall mean any state financial institution operating with a composite rating of "1", "2" or "3~~2~~" and with a management rating of "1" or "2" in its most recent safety and soundness report of examination or, in the case of a trust company, its most recent trust report of examination, and which is not subject to a State or Federal regulatory action. For purposes of this section "regulatory action" shall include cease and desist orders, written agreements, memoranda of understanding, ~~documents of resolution,~~ letters of understanding and agreement, ~~resolutions adopted at the request of financial institution regulators,~~ and any other equivalent action initiated by a financial institution regulator. (Examination ratings are based on the Federal Financial Institutions Examinations Council's Uniform Interagency Trust Rating System and Uniform Financial Institutions Rating System, often called the CAMELS rating system.)

(b) Other financial institutions may request a determination that they are operating in a safe and sound manner by writing to the Director of the Division of Banking detailing why the institution believes it is operating in a safe and sound manner. Any such request must include supporting documentation of improvements in the institution and its operations. The request shall be approved only when the Director of the Division of Banking concludes that, because of the documented improvements, the institution would be rated "1", "2" or "3~~2~~", with a management rating of "1" or "2" were a safety and soundness examination conducted on the date of the institution's request. For example, the Director of the Division of Banking may approve a request from an institution that was poorly rated in its last safety and soundness examination because of inadequate capital if the institution documents that it increased capital sufficiently to address the inadequacy.

(3) through (6) No change.

Specific Authority 655.012 FS. Law Implemented 655.948 FS. History–New 11-2-92, Amended 6-20-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Donald M. Kelly, Financial Control Analyst, Division of Banking

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 27, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF BANKING AND FINANCE

Division of Banking

RULE TITLE: RULE NO.:

Application 3C-105.402

PURPOSE AND EFFECT: The rule is being revised to allow more Florida-chartered financial institutions to establish branch offices by 30 days prior written notice to the Department of Banking and Finance. Conversely, the change will require fewer financial institutions to file written applications with and to receive approvals from the Department of Banking and Finance for new branch offices.

SUMMARY: The revision will permit financial institutions with safety and soundness examination ratings "1", "2" or "3", with management ratings of "1" or "2" to establish new branches by providing 30 day prior notice to the Department. Financial institutions that are subject to a regulatory action or that are rated "4" or "5" in safety and soundness examinations may not establish branches by 30 days prior notice to the

Department and must file an application with the Department for approval to open new branches. A definition of "regulatory action" and a reference to the basis for examination ratings are added to the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 655.012(3), 658.26(2) FS.

LAW IMPLEMENTED: 658.26(2), 665.013 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Division of Banking Conference Room, 6th Floor, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking, Room 614, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9111

THE FULL TEXT OF THE PROPOSED RULE IS:

3C-105.402 Application.

Forms and Filing. A state financial institution operating in a safe and sound manner may submit a notice to the Department to establish a branch office at least 30 days before opening such branch. For the purpose of this section, a safe and sound financial institution is an institution that has been in operation for at least 24 months, is well-capitalized, ~~has adequate management,~~ has received an aggregate rating at the institution's most recent state or federal safety and soundness examination of "1", ~~no less than~~ "2;" or "3", with a management rating of "1" or "2", and is not the object of any regulatory ~~enforcement~~ action. Other financial institutions shall apply for approval to establish a branch office through filing Form DBF-C-16. For purposes of this section, "regulatory action" shall include cease and desist orders, written agreements, memoranda of understanding, letters of understanding and agreement and any other equivalent action initiated by a financial institution regulator. (Examination ratings are based on the Federal Financial Institutions Examinations Counsel's Uniform Interagency Trust Rating System and Uniform Financial Institutions Rating System, often called the CAMELS rating system.)

Specific Authority 655.012(3), 658.26(2)(c) FS. Law Implemented 658.26(2), 665.013 FS. History–New 3-22-76, Amended 5-24-78, 7-27-81, 8-12-82, Formerly 3C-13.02, Amended 3-24-86, Formerly 3C-13.002, Amended 8-14-94, 4-15-98, 9-27-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Donald M. Kelly, Financial Control Analyst, Division of Banking

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 27, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLES:	RULE NOS.:
Motor Vehicle Retail Installment Seller and Motor Vehicle Retail Installment Seller Branch Office License Renewal and Reactivation	3D-50.070
Prepaid Finance Charge	3D-50.075

PURPOSE AND EFFECT: Section 520.994(5), F.S., allows the Department to adopt rules to allow electronic submission of any form, document or fee required by Chapter 520, F.S.

SUMMARY: The proposed amendments will allow the renewal of motor vehicle retail installment seller and motor vehicle retail installment seller branch office licenses on the Department's website.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 520.03(2),(3), 520.994(5) FS.

LAW IMPLEMENTED: 520.03(2),(3), 520.994(5) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bob Tedcastle, Financial Administrator, Division of Securities and Finance, Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9500

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-50.070 Motor Vehicle Retail Installment Seller and Motor Vehicle Retail Installment Seller Branch Office License Renewal and Reactivation.

(1) Each active motor vehicle retail installment seller and motor vehicle retail installment seller branch office license shall be renewed for the biennial period beginning January 1 of each odd-numbered year, upon receipt of the statutory renewal fee required by Section 520.03, F.S., and the renewal/reactivation notice, Form DBF-MV-3, revised 10/99, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) through (5) No change.

(6) Renewal via the Internet. In lieu of filing the paper version of the renewal form, a licensee may renew its license electronically by following the applicable instructions on the Department's website (www.dbf.state.fl.us) on the Internet.

(7)~~(6)~~ If December 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

Specific Authority 520.03(2),(3), 520.994(5) FS. Law Implemented 520.03(2),(3), 520.994(5) FS. History–New 11-5-87, Amended 11-11-90, 12-18-93, 9-29-96, 12-8-99, _____.

3D-50.075 Prepaid Finance Charge.

Any fee designated as a loan processing fee, not to exceed $200.00, on a motor vehicle retail installment contract shall be treated as a prepaid finance charge and disclosed as such pursuant to Section 520.07(2)(a)3., F.S. The loan processing fee together with other finance charges assessed on a motor vehicle retail installment contract shall not exceed the finance charge limitation in Section 520.08, F.S. In the event that the buyer prepays the motor vehicle retail installment contract, the buyer shall receive a prorated refund of the loan processing fee as required by Section 520.09, F.S.; provided, however, in accordance with Section 520.085(1)(c)~~(3)~~, F.S., if the motor vehicle retail installment contract is a simple interest contract, no prorated refund is required.

Specific Authority 520.994(5) FS. Law Implemented 520.07, 520.08, 520.085, 520.09 FS. History–New 10-17-94, Amended 7-10-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bob Tedcastle, Financial Administrator, Division of Securities and Finance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don B. Saxon, Director, Division of Securities and Finance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLE: RULE NO.:

Retail Installment Seller and Retail Installment Seller Branch Office License Renewal and Reactivation 3D-60.070

PURPOSE AND EFFECT: Section 520.994(5), F.S., allows the Department to adopt rules to allow electronic submission of any form, document or fee required by Chapter 520, F.S.

SUMMARY: The proposed amendments will allow the renewal of retail installment seller and retail installment seller branch office licenses on the Department's website.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 520.32(2),(3), 520.994(5) FS.

LAW IMPLEMENTED: 520.32(2),(3), 520.994(5) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bob Tedcastle, Financial Administrator, Division of Securities and Finance, Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9500

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-60.070 Retail Installment Seller and Retail Installment Seller Branch Office License Renewal and Reactivation.

(1) Each active retail installment seller and retail installment seller branch office license shall be renewed for the biennial period beginning January 1 of each odd-numbered year, upon receipt of the statutory renewal fee required by Section 520.32, F.S., and the renewal/reactivation notice, Form DBF-RS-3, revised 10/99, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) through (5) No change.

(6) Renewal via the Internet. In lieu of filing the paper version of the renewal form, a licensee may renew its license electronically by following the applicable instructions on the Department's website (www.dbf.state.fl.us) on the Internet.

(7)~~(6)~~ If December 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

Specific Authority 520.32(2),(3), 520.994(5) FS. Law Implemented 520.32(2),(3), 520.994(5) FS. History–New 11-5-87, Amended 11-11-90, 12-18-93, 9-29-96, 12-8-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bob Tedcastle, Financial Administrator, Division of Securities and Finance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don B. Saxon, Director, Division of Securities and Finance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLE: RULE NO.:

Sales Finance Company and Sales Finance Company Branch Office License Renewal and Reactivation 3D-70.060

PURPOSE AND EFFECT: Section 520.994(5), F.S., allows the Department to adopt rules to allow electronic submission of any form, document or fee required by Chapter 520, F.S.

SUMMARY: The proposed amendments will allow the renewal of sales finance company and sales finance company branch office licenses on the Department's website.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 520.52(2),(3), 520.994(5) FS.

LAW IMPLEMENTED: 520.52(2),(3), 520.994(5) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bob Tedcastle, Financial Administrator, Division of Securities and Finance, Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9500

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-70.060 Sales Finance Company and Sales Finance Company Branch Office License Renewal and Reactivation.

(1) Each active sales finance company and sales finance company branch office license shall be renewed for the biennial period beginning January 1 of each odd-numbered year, upon receipt of the statutory renewal fee required by Section 510.52, F.S., and the renewal/reactivation notice, Form DBF-SF-3, revised 10/99, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) through (5) No change.

(6) Renewal via the Internet. In lieu of filing the paper version of the renewal form, a licensee may renew its license electronically by following the applicable instructions on the Department's website (www.dbf.state.fl.us) on the Internet.

(7)~~(6)~~ If December 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

Specific Authority 520.52(2),(3), 520.994(5) FS. Law Implemented 520.52(2),(3), 520.994(5) FS. History New 11-5-87, Amended 11-11-90, 12-18-93, 9-29-96, 12-8-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bob Tedcastle, Financial Administrator, Division of Securities and Finance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don B. Saxon, Director, Division of Securities and Finance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLE: RULE NO.:

Home Improvement Finance Seller and Home Improvement Finance Seller Branch Office License Renewal and Reactivation 3D-80.050

PURPOSE AND EFFECT: Section 520.994(5), F.S., allows the Department to adopt rules to allow electronic submission of any form, document or fee required by Chapter 520, F.S.

SUMMARY: The proposed amendments will allow the renewal of home improvement finance seller and home improvement finance seller branch office licenses on the Department's website.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 520.63(2),(3), 520.994(5) FS.

LAW IMPLEMENTED: 520.63(2),(3), 520.994(5) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bob Tedcastle, Financial Administrator, Division of Securities and Finance, Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9500

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-80.050 Home Improvement Finance Seller and Home Improvement Finance Seller Branch Office License Renewal and Reactivation.

(1) Each active home improvement finance seller and home improvement finance seller branch office license shall be renewed for the biennial period beginning January 1 of each odd-numbered year upon receipt of the statutory renewal fee required by Section 520.63, F.S., and the renewal/reactivation notice, Form DBF-HI-3, revised 10/99, and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) through (5) No change.

(6) Renewal via the Internet. In lieu of filing the paper version of the renewal form, a licensee may renew its license electronically by following the applicable instructions on the Department's website (www.dbf.state.fl.us) on the Internet.

(7)~~(6)~~ If December 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

Specific Authority 520.63(2),(3), 520.994(5) FS. Law Implemented 520.63(2),(3), 520.994(5) FS. History–New 4-13-88, Amended 11-11-90, 12-18-93, 9-29-96, 12-8-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bob Tedcastle, Financial Administrator, Division of Securities and Finance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don B. Saxon, Director, Division of Securities and Finance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLE RULE NO.:

Consumer Finance License Renewal and Reactivation 3D-160.031

PURPOSE AND EFFECT: Section 516.03(1), F.S., allows the Department to adopt rules to allow electronic submission of any form, document or fee required by the Florida Consumer Finance Act.

SUMMARY: The proposed amendments will allow the renewal of consumer finance licenses on the Department's website.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 516.03(1), 516.22(1), 516.23(3) FS.

LAW IMPLEMENTED: 516.03(1), 516.05(1),(2) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 27, 2000

PLACE: Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bob Tedcastle, Financial Administrator, Division of Securities and Finance, Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9500

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-160.031 Consumer Finance License Renewal and Reactivation.

(1) Each active consumer finance license will be renewed for the biennial period beginning January 1 of every odd-numbered year, upon submission of the statutory renewal fee and renewal notice to the Department. Form DBF-CF-3 (effective 10/99), Consumer Finance License Renewal, is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) Failure to return the renewal notice and fee prior to January 1 of the renewal year shall automatically result in the license becoming inactive. The inactive license may be

reactivated within six (6) months after becoming inactive upon payment of the biennial license fee; and payment of the reactivation fee which is a fee equal to the biennial license fee; and return of the reactivation notice.

(3) Renewal via the Internet. In lieu of filing the paper version of the renewal form, a licensee may renew its license electronically by following the applicable instructions on the Department's website (www.dbf.state.fl.us) on the Internet.

(4) If December 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

Specific Authority 516.03(1), 516.22(1), 516.23(3) FS. Law Implemented 516.03(1), 516.05(1),(2) FS. History–New 12-13-88, Amended 1-5-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bob Tedcastle, Financial Administrator, Division of Securities and Finance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don B. Saxon, Director, Division of Securities and Finance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF INSURANCE

RULE TITLE: RULE NO.:

Health Maintenance Organization

(HMO) Penalty Categories 4-191.300

PURPOSE AND EFFECT: Establishes penalty categories that specify varying ranges of monetary fines for willful and nonwillful violations pursuant to Section 642.25, Florida Statutes.

SUMMARY: This will establish penalty categories that specify varying ranges of monetary fines for willful and nonwillful violations pursuant to Section 641.25, Florida Statutes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 641.25, 641.36 FS.

LAW IMPLEMENTED: 641.25 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., December 7, 2000

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Alan Irvin, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0300

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting Yvonne White, (850)922-3100, Ext. 4214.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-191.300 Health Maintenance Organization (HMO) Penalty Categories.

(1) Purpose. The purpose of this rule is to establish penalty categories that specify varying ranges of monetary fines for willful and nonwillful violations of applicable provisions of the Florida Insurance Code, or rules promulgated thereunder, that are committed by HMOs.

(2) Scope. This rule applies to all HMOs licensed under Chapter 641, Florida Statutes. It applies to all violations of the provisions of the Florida Insurance Code, or rules promulgated thereunder, applicable to HMOs pursuant to Section 641.25, Florida Statutes.

(3) Definitions. The following terms have the following meanings for purposes of this rule:

(a) "Action" means an event or events leading to the commission of a violation.

(b) "Department" shall have the same meaning as Section 624.05, Florida Statutes.

(c) "Departmental Rules" means rules adopted by the Department which apply to HMOs.

(d) "Examination" means an inspection of an HMO as authorized by Section 641.27, Florida Statutes.

(e) "Florida Insurance Code" shall have the same meaning as Section 624.01, Florida Statutes.

(f) "HMO" means a health maintenance organization as defined in Section 641.19(13), Florida Statutes, and licensed pursuant to the provisions of Chapter 641, Florida Statutes.

(g) "Investigation" means any official departmental review, analysis, inquiry, or research into referrals, complaints, or inquiries to determine the existence of a violation.

(h) "Knowing and willful" means any act or omission, which is committed intentionally as opposed to accidentally and which is committed with knowledge of the act's unlawfulness or with reckless disregard as to the unlawfulness of the act.

(i) "Repeat Violations" means a second or subsequent offense of any given violation under this rule within the preceding four years.

(j) "Violation" means any instance of noncompliance by an HMO with any applicable provisions of the Florida Insurance Code, rules or orders of the Department governing HMOs.

(4) General Provisions.

(a) Rule Not All-Inclusive. This rule contains illustrative violations. This rule does not, and is not intended to, encompass all possible violations of statute or Department rule that might be committed by an HMO. The absence of any violation from this rule shall in no way be construed to indicate that the HMO is not subject to penalty. In any instance wherein the violation is not listed in this rule, the penalty shall be determined by consideration of:

1. The aggravating and mitigating factors specified in this rule; and

2. Any similar or analogous violation that is listed in this rule, if applicable.

(b) Rule and Statutory Violations Included. This rule applies whether the violation is of an applicable statute or Department rule, or an order implementing such a statute or rule.

(c) Relationship to Other Rules. The provisions of this rule shall be subordinated in the event that any other rule more specifically addresses a particular violation or violations.

(d) Other Licensees. The imposition of a penalty upon any HMO in accordance with this rule shall in no way be interpreted as barring the imposition of a penalty upon any agent, adjuster, or other licensee in connection with the same conduct.

(5) Aggravating Factors. The following aggravating factors are considered in determining penalties for violations not listed in this rule, and, as to listed violations, the placement of the penalty within the range specified. The factors are not necessarily listed in order of importance.

(a) Willfulness and knowledge of the violation.

(b) Actual harm or damage to any member, claimant, applicant, or other person or entity caused by the violation, as determined by the Department's financial examination, market conduct examination, or investigation.

(c) Degree of harm to which any member, claimant, applicant, or other person or entity was exposed by the violation, as determined by the Department's financial examination, market conduct examination, or investigation.

(d) Whether the HMO reasonably should have known of the action's unlawfulness.

(e) Financial gain or loss to the HMO or its affiliates from the violation.

(f) Whether the violation is a repeat violation.

(g) The number of occurrences of a violation found during an examination or investigation.

(6) Mitigating Factors. The following mitigating factors are considered in determining penalties for violations not listed in this rule, and, as to listed violations, the placement of the penalty within the range specified.

(a) Whether corrective activities were actually and substantially initiated (not just planned) and implemented by the HMO before the violation was noted by or brought to the attention of the Department and before the HMO was made aware that the Department was investigating the alleged violation. Such corrective activities must be implemented to assure that the violation does not recur and include but are not limited to the following: personnel changes, reorganization or discipline, and making any injured party whole as to harm suffered in relation to the violation.

(b) Destruction of records by fire, hurricane, or other natural disaster.

(c) Death of key personnel.

(7) Penalty Categories and Fines Assessed. Violations are divided into four categories. Category I violations are the most serious and Category IV violations are the least serious. The Department will use the factors in subsections (5) and (6) above, and any similar or analogous violation listed in this rule, if applicable, to determine, within the penalty ranges specified below, the fine for each violation within a category. The penalty amount does not include any examination costs that are assessed in addition to the fine.

(a) CATEGORY I. When a fine is imposed within this category for a knowing and willful violation, the amount shall not be less than $5000 nor exceed $20,000. Additionally, fines for knowing and willful violations may not exceed an aggregate amount of $250,000 for all such violations arising out of the same action. When a fine is imposed for a nonwillful violation within this category, the fine shall not be less than $500, nor exceed $2,500. Additionally fines for non-willful violations may not exceed an aggregate amount of $25,000 for all such violations arising out of the same action.

1. Violation by the HMO of any lawful order of the Department.

2. Failure by the HMO to take corrective actions or other measures as agreed to in writing by the HMO with the Department, pursuant to Section 641.23, Florida Statutes.

3. Failure by the HMO to take corrective actions or other measures which cure any formal written criticism made by the Department in a previous financial or market conduct examination report, after that report becomes final and within the timefram prescribed by the Department, pursuant to Sections 641.23 and 641.27, Florida Statutes.

4. Failure of the HMO or any of its officers or directors to respond to or cooperate with the Department in reporting, or providing information to the Department, or producing or making reasonably available, any of its accounts, records, or files, as requested by the Department, pursuant to Section 641.27, Florida Statutes.

5. Use by the HMO of an unlicensed managing general agent, broker, agent, representative, or third party administrator, pursuant to Section 641.386, Florida Statutes.

6. Filing or causing to be filed any materially incorrect financial report with the Department pursuant to Section 641.26, Florida Statutes.

7. Reporting assets not in compliance with Section 641.35, Florida Statutes, on financial statements required by the Department.

8. Transacting any business subject to the Florida Insurance Code other than that authorized under a certificate of authority issued by the Department.

9. Engaging in an unfair or deceptive act, advertisement or practice, pursuant to Sections 641.385, 641.3901, and 641.3903, Florida Statutes.

10. Use by the HMO of unfiled or disapproved rates or forms, pursuant to Sections 641.21(1), 641.221, 641.31(3), and 627.6699, Florida Statutes, and Rules 4-149 and 4-191, Florida Administrative Code.

11. Failure by the HMO to comply with and maintain surplus requirements, pursuant to Section 641.225, Florida Statutes.

12. Failure by the HMO to comply with limits on investments, without a special consent from the Department pursuant to Section 641.35, Florida Statutes.

13. Failure by the HMO to comply with the requirements of Sections 641.255 and 628.4615, Florida Statutes, pertaining to the voting securities of a health maintenance organization.

14. Failure by an HMO participating in the small group market to offer guarantee issue health coverage to eligible small employers and eligible employees/dependents pursuant to Section 627.6699(5), Florida Statutes.

15. Failure by an HMO participating in the small group market to market health benefit plans to small employers, pursuant to Sections 627.6699(5),(12) and (13), Florida Statutes.

16. Failure by the HMO to offer policies pursuant to Section 641.3921, Florida Statutes.

17. Failure by the HMO to give adequate notice of termination pursuant to Section 641.3108, Florida Statutes.

18. Entering into a commission arrangement that is varied depending upon health status, claims experience, industry or occupation for small groups, pursuant to Section 627.6699(13)(d), Florida Statutes.

19. Payment of dividends by the HMO in excess of guidelines established in Section 641.365, Florida Statutes, without prior written approval of the Department.

20. Inducing an employer to separate or exclude an eligible employee, pursuant to Section 627.6699(13)(g), Florida Statutes.

21. Failure by the HMO to provide comprehensive health care services pursuant to Sections 641.3007, 641.31, 641.31071, 641.31094, 641.31095, and 641.31096, Florida Statutes.

22. Failure by the HMO to offer minimum medical benefits, pursuant to Section 641.31, Florida Statutes.

23. Failure by the HMO to timely pay a claim pursuant to Section 641.3155(2), Florida Statutes. Assignment by the HMO of claim processing and/or payment to a third party administrator or other entity does not relieve the HMO of its responsibilities for timely claim payment.

24. Failure by the HMO to pay interest on a late paid claim pursuant to Section 641.3155(3), Florida Statutes.

25. Failure by the HMO to exclude non-admitted assets as defined in and required by Section 641.35, Florida Statutes.

(b) CATEGORY II. Failure to timely file annual and quarterly financial reports pursuant to and in compliance with Sections 641.26 and 641.35, Florida Statutes, and Rule 4-191.075, Florida Administrative Code. The fine will be calculated as follows:

1. The day after the due date, the Department will impose a fine of not less than $750, nor more than $1,000 per day for each day thereafter through day 10.

2. If the violation continues past day 10, an additional fine of not less than $1500, nor more than $2,000 per day will be added to the total for day eleven and each day thereafter until the report(s) is received, not to exceed $100,000 for each report.

3. If the violation continues past day 10, suspension of enrollment to new subscribers is immediate upon written notification by the Department pursuant to Section 641.26(4), Florida Statutes.

(c) CATEGORY III. If the violation is knowing and willful, the fine assessed shall be not less than $2,500 and not more than $10,000 per violation. If the violation is nonwillful, the fine assessed shall be not less than $500 and not more than $1,000 per violation.

1. Use of an agent by the HMO who is licensed but not properly appointed pursuant to Section 641.386, Florida Statutes.

2. Failure by the HMO to provide a health care provider with a written reason for the termination of the provider's contract pursuant to Section 641.315(7), Florida Statutes.

3. Failure by the HMO to provide 45 days notice of cancellation or non-renewal of an HMO subscriber contract or failure to state in writing the reason or reasons for the cancellation, termination, or non-renewal pursuant to Section 641.3108, Florida Statutes.

4. Use by the HMO of any form which gas a title, heading, or other indication of its provisions which is misleading pursuant to Section 641.31(3)(c)3., Florida Statutes.

5. Failure by the HMO to make delivery of the HMO contract pursuant to Sections 641.31(1) and 641.3107, Florida Statutes.

6. Failure by the HMO to maintain a fidelity bond pursuant to Section 641.22(7), Florida Statutes.

7. Failure by the HMO to maintain a sufficient insolvency deposit pursuant to Section 641.285, Florida Statutes.

8. Failure by the HMO to file small employer advertising with the Department as required by Section 627.6699(12)(d)4., Florida Statutes.

9. Failure by the HMO to submit translations of forms pursuant to Section 641.305(1)(b), Florida Statutes.

10. Failure by the HMO to include a provision in provider contracts which holds the subscriber harmless pursuant to Sections 641.315(1) and 641.3154, Florida Statutes.

11. Failure by the HMO to maintain an investment approval mechanism pursuant to Section 641.35(7), Florida Statutes.

12. In order to be considered as a timely filing, the reports required under Chapter 641.26, Florida Statutes, must be verified by the oath of two officers of the organization, or, if not a corporation, of two persons who are principal managing directors of the affairs of the organization. The signatures of such officers or principal managing directors must be properly notarized.

(d) CATEGORY IV. If the violation is knowing and willful, the fine assessed will range from $1,500 to $2,500. If the violation is non-willful, the fine assessed will range from $500 to $1,000.

1. Failure by the HMO to provide Medicare stickers pursuant to Section 641.31(13), Florida Statutes.

2. Failure by the HMO to secure a signed statement from a prospect before issuing a small group plan pursuant to Section 627.6699(12)(d), Florida Statutes.

3. Failure by the HMO to notify the Department of a change in its name pursuant to Rule 4-191.094, Florida Administrative Code.

4. Failure by the HMO to maintain an advertising file pursuant to Rule 4-191.063, Florida Administrative Code.

5. Use by the HMO of prohibited terms, such as "insurance", "casualty", "surety", "mutual", pursuant to Section 641.33, Florida Statutes.

6. Failure by the HMO to include a provision in provider contracts for 60 days advance written notice to the provider and the Department before canceling, without cause, the contract with the provider pursuant to Section 641.315(2), Florida Statutes.

7. Failure by the HMO to properly notify the Department of the termination of a contracted provider pursuant to Section 641.315(2), Florida Statutes.

8. Failure by the HMO to include a contractual provision for the Department's termination of administrative contracts pursuant to Section 641.234(3), Florida Statutes.

9. Failure by the HMO, whenever a contract exists between an HMO and a provider, to disclose to the provider:

(a) The mailing address or electronic address where claims should be sent for processing;

(b) The telephone number that a provider may call to have questions and concerns regarding claims addressed; or

(c) The address of any separate claims processing centers for specific types of services, in violation of Section 641.315(4), Florida Statutes.

10. Failure by the HMO to provide to its contracted providers no less than 30 calendar days prior written notice of any changes in the information required in Section 641.315(4), Florida Statutes.

11. Failure by the HMO to establish written procedures for a contract provider to request authorization for utilization of health care services in contravention of Section 641.315(8), Florida Statutes.

12. Failure by the HMO to establish written procedures for the HMO to grant authorization for utilization of health care services in contravention of Section 641.315(8), Florida Statutes.

13. Failure by the HMO to give written notice to the contract provider prior to any change in these procedures, in violation of Section 641.315(8), Florida Statutes.

Specific Authority 641.25, 641.36 FS. Law Implemented 641.25 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Alan Irvin, Bureau of Managed Care, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jim Bracher, Bureau Chief of Managed Care, Division of Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 14, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 9, 1999

DEPARTMENT OF INSURANCE

Division of State Fire Marshal

RULE TITLES:	RULE NOS.:
Scope	4A-57.001
Definitions	4A-57.002
Standards of the National Fire Protection Association Adopted	4A-57.003
Occupancy Capacity of Each AFCH	4A-57.004
Evacuation Capability	4A-57.005

Fire Exit Drills	4A-57.006
Inspections	4A-57.007
Cooking Equipment; Exceptions	4A-57.008

PURPOSE AND EFFECT: Section 400.621(2), Florida Statutes, provides in part: "Pursuant to s. 633.022, the State Fire Marshal, in consultation with the department [of Elder Affairs] and the agency [for Health Care Administration], shall adopt uniform firesafety standards for adult family-care homes." The rule chapter is being promulgated to conform to this statute.

SUMMARY: The rules establish uniform requirements that provide a reasonable degree of safety from fire in any premises used as an adult family care home. The rules attempt to avoid requirements which may result in unreasonable or unnecessary inconvenience or which may interfere with normal use and occupancy as an adult family care home. However, the rules require compliance with uniform standards for firesafety which are consistent with the public interest, even though a financial hardship may result in some individual cases. These rules are concerned with life safety during fires and similar emergencies. They stress the prevention of fires but also address matters such as devices, systems installation, and occupancy of buildings to minimize danger to life from fire, smoke, fumes, or panic.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 633.01(1), 400.621(2) FS.

LAW IMPLEMENTED: 633.022, 633.022(1)(b), 633.022(10)(b), 400.621(2) FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:30 a.m., November 30, 2000

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James Goodloe, Bureau Chief, Bureau of Fire Prevention, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0342, (850)413-3620

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting Jim Goodloe, (850)413-3620.

THE FULL TEXT OF THE PROPOSED RULES IS:

4A-57.001 Scope.

Pursuant to Section 633.022(1)(b), Florida Statutes, these rules apply to all new, existing, and proposed Adult Family Care Homes licensed in accordance with Part VII, Chapter 400, Florida Statutes.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022(1)(b), 400.621(2) FS. History–New .

4A-57.002 Definitions.

As used in these rules:

(1) "AFCH" means adult family care home.

(2) "Agency" means the Agency for Health Care Administration.

(3) "AHJ" means the local authority having firesafety and fire prevention jurisdiction which employs or contracts with at least one firesafety inspector certified under Chapter 633, Florida Statutes.

(4) "Department" means the Department of Elder Affairs.

(5) "Division" means the Division of State Fire Marshal of the Department of Insurance.

(6) "NFPA" means the National Fire Protection Association.

(7) "Occupant" means a resident of the adult family care home other than the provider or the provider's family.

(8) "Prompt" means not more than three minutes for an adult family care home and refers to the ability of a group to move reliably to a point of safety in a timely manner that is equivalent to the capacity of a household in a general population.

(9) "Provider" means the owner of the adult family care home.

(10) "Provider's Family" means a person who is the father, mother, son, daughter, brother, sister, grandfather, grandmother, great-grandfather, great-grandmother, granddaughter, grandson, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of a provider as long as that person maintains his or her residence at the adult family care home.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022, 400.621(2) FS. History–New .

4A-57.003 Standards of the National Fire Protection Association Adopted.

(1) The following portions of NFPA 101, the Code for Safety to Life from Fire in Buildings and Structures, known as the Life Safety Code, 2000 edition, are hereby adopted and incorporated herein by reference:

(a) All of Chapter 24, "One and Two Family Dwellings," except Section 24-3.4, "Detection, Alarm and Communication Systems."

(b) Sections 32-3.3.4.7, 32-3.3.4.8, and 32-3.3.5.5 only, of Chapter 32.

(2) The codes and standards published by the National Fire Protection Association may be obtained by writing to the NFPA at: 1 Batterymarch Park, Quincy, Massachusetts 02269-9101. All standards adopted and incorporated by reference in this rule are also available for public inspection during regular business hours at the Bureau of Fire Prevention, Division of State Fire Marshal, Department of Insurance, 325 John Knox Road, The Atrium, Third Floor, Tallahassee, Florida 32303.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022(10)(b), 400.621(2) FS. History–New .

4A-57.004 Occupancy Capacity of Each AFCH.

Pursuant to Section 58A-14.004(4), Florida Administrative Code, there shall be no more than 5 occupants in any AFCH. The maximum number of occupants in any particular AFCH shall be determined by the agency in consultation with the AHJ. If the agency has been notified in writing that there is no AHJ, the agency shall consult with an authorized representative of the division concerning occupancy capacity.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022(10)(b), 400.621(2) FS. History–New .

4A-57.005 Evacuation Capability.

(1) The evacuation capability for each AFCH shall be "prompt."

(2) If the AFCH does not achieve an evacuation capability of "prompt" during the fire exit drill, a second fire exit drill must be performed within 30 days of the fire exit drill in which the AFCH did not achieve an evacuation capability of "prompt."

(3) If the AFCH does not achieve an evacuation capability of "prompt" during the second fire exit drill, the inspector shall notify the agency that the AFCH can no longer meet the required safety requirements.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022(1)(b), 400.621(2) FS. History–New .

4A-57.006 Fire Exit Drills.

(1) A fire exit drill shall be conducted by each provider at each AFCH at least three (3) times per year to assure that the evacuation capability of the facility is "prompt." Subject to 4A-57.005(2), each fire exit drill shall be conducted at least 30 days after the previous fire exit drill. The AHJ is permitted to require an additional fire exit drill in conjunction with an annual firesafety inspection.

(2) The purpose of each fire exit drill is to familiarize each occupant with the procedures required for the safe, orderly, and expeditious exiting of the building or structure. All occupants shall exit the building or structure to a predetermined area of safety. The climate and weather conditions shall be taken into consideration when scheduling any fire exit drill.

(3) Each fire exit drill shall be conducted at an unexpected time and under varying conditions that may occur in the case of fires.

(4) Each fire exit drill shall be applicable to all occupants of the AFCH with emphasis on the safe, orderly, and expeditious exiting under proper discipline.

(5) Any occupant subject to a fire exit drill shall proceed to a predetermined location outside the building and remain there until all occupants are accounted for. Occupants shall be allowed to return to the building only when permitted by the person conducting the fire exit drill.

(6) The provider shall keep a record of each fire exit drill on DI Form 4A- , "Fire Exit Drills," which is hereby adopted and incorporated into these rules by reference, and shall take effect on the effective date of these rules. Copies of the form may be obtained by writing to the Department of Insurance, Division of State Fire Marshal, Bureau of Fire Prevention, 200 East Gaines Street, Tallahassee, Florida 32399-0342. The record shall list as a minimum:

(a) The date the drill was conducted.

(b) The time of day the drill was conducted.

(c) The amount of time, in minutes and seconds, that were required for all occupants to safely exit the building.

(d) Any unusual circumstance affecting the safe, orderly and expeditious exit from the building, which shall be in narrative or outline form.

(7) If the provider does not keep the record required by subsection (6), or keeps it in a manner that is incomplete, incorrect, or otherwise does not contain the required information, the fire exit drill will be presumed to have achieved an evacuation capability that does not meet the requirement of "prompt." Another fire exit drill must be performed as soon as possible and the results correctly recorded. In addition, the firesafety inspector shall advise the agency that the AFCH is not maintaining compliance with the firesafety requirements for an AFCH.

(8) Any firesafety inspector or special firesafety inspector completing the required annual inspection is permitted to:

(a) Use the record for a determination of the evacuation capability of the facility, or

(b) Conduct his or her own fire exit drill.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022(1)(b), 400.621(2) FS. History–New .

4A-57.007 Inspections.

(1) The firesafety inspector shall conduct a firesafety inspection for each AFCH prior to occupancy as an AFCH.

(2) The provider shall request from the AHJ a firesafety inspection within 30 days following receipt of notification of license renewal.

(3) The AHJ or the agency is permitted to require additional firesafety inspections.

(4) The provider shall be responsible for requesting all required firesafety inspections.

(5) Each required firesafety inspection shall be completed by the AHJ, where available.

(6) Any time there is no AHJ to perform a firesafety inspection, the provider shall notify the agency in writing. The agency shall inspect or cause the facility to be inspected in accordance with Section 633.022, Florida Statutes.

(7) A firesafety inspector, or special state firesafety inspector, certified in accordance with Chapter 633, Florida Statutes, shall complete each firesafety inspection.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022(1)(b), 400.621(2) FS. History–New _____.

4A-57.008 Cooking Equipment; Exceptions.

Notwithstanding any previous construction or interpretation of any law, rule, or code provision, any time a single range or stove is used in an arrangement similar to that of a single family residence, the AFCH shall not be required to comply with NFPA 96.

Specific Authority 633.01(1), 400.621(2) FS. Law Implemented 633.022(1)(b), 400.621(2) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: James Goodloe, Bureau Chief, Fire Prevention, Division of State Fire Marshal, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Clark, Director, Division of State Fire Marshal, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 25, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 28, 2000

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLE: RULE NO.:
Admissions 12A-1.005

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.005, F.A.C., is to: 1) incorporate the decision regarding assessments imposed upon members of private clubs that are used for capital expenditures rendered in Department of Revenue v. John's Island Club, 680 So. 2d 475 (Fla. 1st DCA 1996); 2) restructure the current rule to provide a more organized presentation of the guidelines regarding the admissions tax; 3) remove or conform obsolete provisions to current statutory provisions; and 4) incorporate the provisions of s. 2, Chapter 2000-345, L.O.F., effective July 1, 2000, through June 30, 2003.

The effect of these proposed amendments to Rule 12A-1.005, F.A.C., will be to provide current guidelines regarding the tax imposed on admissions.

SUMMARY: The provisions, as included in the proposed amendments to Rule 12A-1.005, F.A.C., are restructured to provide a more organized presentation of the guidelines regarding the admissions tax. Provisions for collecting and remitting the tax to the Department are consolidated into one section of the rule. Guidelines for tax exempt and taxable admissions and participation fees are reorganized to provide for clarity. Substantial changes to the proposed provisions regarding the taxability of dues and initiation fees, equity and nonequity memberships, capital contributions and assessments, refundable deposits, and user fees are included.

The proposed amendments provide that tax is to be collected on the sales price or actual value of the admissions as defined in s. 212.04(1)(b), F.S., amended by s. 2, ch. 2000-345, L.O.F. Section 2, Chapter 2000-345, L.O.F., also amends s. 212.04(3), F.S., to provide that tax on admission to an event at a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility shall be collected at the time of payment for the admission, but the tax is not due to the Department until the first day of the month following the actual date of the event for which the admission is sold.

The proposed amendments: 1) clarify that admissions tax is due from the person initially collecting the tax, unless such person is an agent of the seller; and 2) provide that refundable deposits for the purchase of season tickets, box seats, or other admissions are not subject to tax as long as they do not entitle the payer to the right to be admitted to an event. The proposed amendments also provide that an agent will not be held liable for its principal's failure to timely remit funds to the Department if: 1) the agent has obtained the principal's active Florida sales tax number; and 2) the agent has disclosed in writing that when such agent remits proceeds from the sale of an admission to the principal the proceeds may include amounts that represent admissions tax and that it is the principal's obligation to timely remit any taxes due and owing to the Department or other taxing authority.

The proposed amendments incorporate the exemptions provided for certain agricultural fairs, certain semifinal or championship baseball and football games, entry fees for participation in fresh water fishing tournaments, and, under certain criteria, an exemption for events sponsored by a governmental entity, sports authority, or sports commission when held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility (created by s. 212.04(2)(a)2.c., F.S.). Current provisions regarding taxable admission and participation fees are reorganized and clarified.

The proposed amendments provide that taxable dues and user fees do not include: 1) charges for initiation into, or for joining, an organization that are paid by individuals to obtain an equitable ownership interest in the organization; 2) capital contributions or additional paid-in capital paid to an

organization by individuals who have an equitable ownership interest in the organization; 3) capital assessments levied by an organization; and 4) additional charges paid by an equity member that are used solely for capital expenditures, for capital improvements, or for debt servicing such expenditures and improvements. The terms "equitable ownership interest," "capital contributions or additional paid-in capital," and "capital assessments" are defined. Examples of capital expenditures and improvements are provided.

These proposed amendments further provide guidelines regarding the sale of vacation packages by travel agents. A proposed definition of the term "vacation package" is provided. The amendments also clarify that components provided free of charge as part of a vacation package are not considered "components" of such packages when determining the taxability of vacation packages.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since this proposed rule only implements statutory provisions, no new regulatory costs are being created. Therefore, no statement of estimated regulatory costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.02(1), 212.04, 212.08(6),(7), 616.260 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 2:00 p.m., November 28, 2000

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Charles Wallace, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4734

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-1.005 Admissions.

(1)(a) Every person ~~dealer~~ is exercising a taxable privilege when such person ~~who~~ sells or receives anything of value by way of admissions, as defined in s. 212.02(1), F.S., except those admissions that ~~which~~ are specifically exempt. Such seller is required to collect on each admission charge for 10 cents or more the amount of tax provided for by the applicable bracket provided in s. 212.12(9), F.S. Each admission is a single sale.

(b) It is required that either:

1. The seller collecting the charge for an admission prominently display, at the box office or other place where the admission charge is collected, a sign or other easily read notice disclosing the price of the admission; or

2. The face of each ticket sold reflect the actual sales price of the admission.

(c)1. The tax shall be computed and collected by the seller on the sales price or actual value of the admission, as provided in s. 212.04(1)(b), F.S., and is due at the moment of the transaction, except when the tax is collected for admission to an event at a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility. Tax collected on such events is due to the Department on the first day of the month following the actual date of the event for which the admission is sold and becomes delinquent on the 21st day of that month. Therefore, tax collected on season and series tickets for events held in such facilities should be apportioned to each event in the season or series and remitted to the Department accordingly.

2. An agent who collects admissions on behalf of a principal may forward the collected tax funds to the principal to be remitted by the principal to the Department. Both the principal and agent can be held liable for any failure to timely remit such tax funds to the Department. An agent shall not, however, be liable for its principal's failure to timely remit tax funds to the Department if the agent has obtained the principal's active Florida sales tax number and has disclosed in writing to the principal that when such agent remits proceeds from the sale of an admission to the principal the proceeds may include amounts that represent admissions tax and that it is the principal's obligation to timely remit any taxes due and owing to the Department or other taxing authority.

3. When tickets or admissions are sold and not used but are instead returned to the seller, the seller shall credit or refund the sales tax to the purchaser. See Rule 12A-1.014, F.A.C., for the methods the seller is to use to obtain a credit or refund.

4. A refundable deposit that is paid to reserve the right to purchase season tickets, box seats, or other admissions, that is recorded on the books of the seller as a liability, and that does not entitle the payer to the right to be admitted to the event or events, is not subject to tax. If the refundable deposit is applied to the purchase of the season tickets, box seats, or other admissions, tax is due to the Department as provided in this paragraph.

(d) Operators of traveling shows, exhibitions, amusements, circuses, carnivals, rodeos, and similar traveling events shall, upon request of an agent of the Department of Revenue, produce a cash receipt or similar documentation evidencing payment to the State of admission taxes due on any or all previous engagements in Florida during their current tour and an itinerary of future engagements in this State during the current year. The operator must document any performance in Florida that is sponsored by a not-for-profit entity that qualifies under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, for which the admission charges are exempt from tax.

~~(2) The term "admissions" means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including but not limited to, theaters, mini theaters, outdoor theaters, shows, exhibitions, games, races, or any place where a charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees, or other fees or receipt of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation and all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including but not limited to golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities.~~

(2)~~(3)~~ EXEMPT ADMISSIONS. The following admissions are exempt from the tax imposed under s. 212.04, F.S.:

~~(a) Admissions by free pass are exempt. If a service charge or donation in excess of 9 cents is required for the issuance of a free admissions pass, such charge or donation is taxable.~~

(a)~~(b)~~ Admissions to athletic or other events held by schools, as provided in s. 212.04 (2)(a)1., F.S., are exempt.

(b)~~(c)~~ Admissions ~~are exempt~~ for students who are required to participate in a sport or recreation, provided the program or activity is sponsored by and under the jurisdiction of the educational institution and attendance is as a participant and not as a spectator are exempt. The institution will issue a certificate for the student to present to the person charging the admission in order to provide for this exemption.

(c)~~(d)~~ Admissions to ~~county, state, and regional~~ agricultural fairs are exempt, as provided in ss. 212.08(7)(jj) and 616.260, F.S.

(d)~~(e)~~ Admissions to the National Football League championship game, a Major League Baseball all-star game, any semifinal or championship game of a national collegiate tournament, or any postseason collegiate football game sanctioned by the National Collegiate Athletic Association, as provided in s. 212.04 (2)(a)4. and 9., F.S., are exempt.

~~(f)1. From July 1, 1987, through June 30, 1994, no tax was levied on admissions to athletic or other events sponsored by governmental entities as described in s. 212.08(6), F.S. Effective July 1, 1994, admissions to such athletic or other events sponsored by governmental entities are taxable.~~

~~2. For purposes of this paragraph, an "athletic or other event" is defined as follows:~~

~~a. An "athletic event" is an important or remarkable occurrence of limited duration engaged in by one or more humans that involves some movement of the human body; gives enjoyment or recreation; requires physical strength, skill, speed, dexterity, or training; and normally includes competition among participants.~~

~~I. Example: Greens fees charged by a governmental entity for routine use of its golf course are taxable. However, the charge for the greens fees during participation in a golf tournament sponsored by a governmental entity was exempt from July 1, 1987, through June 30, 1994, since the tournament was an "athletic event". Effective July 1, 1994, the charge made by a governmental entity for greens fees to participate in a golf tournament is taxable.~~

~~II. Example: Greens fees charged by a governmental entity for use of its golf course in a golf tournament sponsored by a for profit private organization or business have been and continue to be taxable as admissions.~~

~~b. An "other event" is an important or remarkable occurrence of limited duration. The term "other events" does not refer to routine events sponsored by governmental entities.~~

~~I. Example: A municipally owned civic center does not normally sponsor events held at the center. It leases the center to other organizations who sponsor the events. On five occasions over the last seven years the center did sponsor live musical presentations which ran for two weeks each. From July 1, 1987, through June 30, 1994, such presentations were considered to be an "other event" and were exempt. Effective July 1, 1994, admissions to such events are taxable.~~

~~II. Example: A municipally owned civic center routinely sponsors various types of events held at the civic center. Since the civic center routinely sponsors events, admissions to such events have been and continue to be taxable.~~

(e)~~3.~~ Participation fees or sponsorship fees to athletic or recreational structured programs imposed by governmental entities as described in s. 212.08(6), F.S., when such governmental entities sponsor, administer, plan, supervise, direct, and control such athletic or recreational programs are exempt. An organization qualified under s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, may work in conjunction with the governmental entity to sponsor, administer, plan, supervise, direct, and control the athletic or recreational structured program without affecting the exemption.

1.~~a.~~ Example: A city or county park and recreation department sponsors, administers, plans, supervises, directs, and controls its adult softball, little league, and other team recreation programs. The park and recreation department charges $100.00 for each team participating, or it may charge $10.00 per person for each person to participate. At the end of league play, a tournament is held to determine the championship. The participation fees charged for league and tournament play are exempt from tax as an athletic structured program.

2.~~b.~~ Example: A city operates a swimming pool. It charges an admission price of $2.00 for each adult and $1.00 for each child to enter the pool. The admission charges are taxable since this is not a structured athletic or recreational program.

3.~~c.~~ Example: A city or county park and recreation department sponsors, administers, plans, supervises, directs, and controls pottery and ceramics classes. The park and recreation department charges each person $20.00 to participate. The participation charges are exempt as a recreational structured program.

4.~~d.~~ Example: A not-for-profit organization that is not qualified under s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, sponsors a softball tournament and charges each team $250 to participate. The organization rents the softball field from the city. The $250 participation fee is subject to tax. If the organization is not registered to collect and remit sales tax, the organization must contact the local taxpayer service center to obtain a special events sales tax remittance number. The rental of the ball field by the city to the organization is taxable, unless the not-for-profit organization holds a Consumer's Certificate of Exemption and issues a copy of its ~~extends an exemption~~ certificate to the city.

(f)~~(g)~~ Dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations ~~or community or recreational facilities~~ are exempt. To receive this exemption, the organization making any such charges must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended. For purposes of this exemption, sponsorship of an event or program will be determined by the following criteria:

~~(h) For the purposes of this rule, sponsorship of an event or program is determined by using the following criteria:~~

1. Active participation by the entity in the planning and conduct of the event or program;

2. Assumption by it of responsibility for the safety and success of the event or program, such that it will be subject to a suit for damages for alleged negligence in its conduct;

3. Entitlement by it to the gross proceeds from the event or program and to the net proceeds after payment of its costs; and

4. Responsibility by it for payment of costs of the event or program and for bearing any net loss if the costs exceed gross proceeds.

(g) Admission charges to an event held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility are exempt when:

1. The event is sponsored by a sports authority or commission, exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, as amended, that is contracted with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community or is sponsored by a governmental entity;

2. 100 percent of the funds at risk belong to the sponsoring entity;

3. 100 percent of the risk of success or failure lies with the sponsoring entity; and

4. The talent for the event is not derived exclusively from students or faculty.

~~(i) The charge made by an owner or operator for chartering any boat or vessel, with a crew furnished, solely for the purpose of fishing is exempt. However, see paragraph (4)(o) of this rule for the taxable status of admissions for fishing trips aboard boats and vessels not considered to be charter trips. See also Rule 12A-1.071, F.A.C.~~

(h) Entry fees for participation in fresh water fishing tournaments, as provided in s. 212.04(2)(a)7., F.S., are exempt.

(i) Participation or entry fees charged to participants in a game, race, or other sport or recreational event when spectators are charged a taxable admission to such event, as provided in s. 212.04(2)(a)8., F.S., are exempt.

(j) Admissions charged by physical fitness facilities owned or operated by any hospital licensed under Chapter 395, as provided in s. 212.02(1), F.S., are exempt.

(k) Admissions to live theater, live opera, or live ballet productions, as ~~to the extent~~ provided in s. 212.04(2)(a)6., F.S., are exempt. The application required in s. 212.04(2)(a)6., F.S., should be addressed ~~In order to receive this exemption, the organization must make written request prior to March 1 of each year for a certificate of exemption~~ to:

Department of Revenue

Central Registration

P. O. Box 6480 ~~2096~~

Tallahassee, Florida 32314-6480 ~~32316-2096~~

~~Upon receipt and approval of the application, the department will issue a certificate of exemption to the organization and advise the organization of its pro rata share of the exemption.~~

(3)~~(4)~~ TAXABLE ADMISSIONS AND~~,~~ PARTICIPATION FEES~~, ETC~~. The following paragraphs contain examples of admission charges that are subject to tax, unless such admissions are specifically exempt under the provisions of s. 212.04(2), F.S. This list is not intended to be an exhaustive list.

(a) Admissions ~~Every person receiving anything of value by way of an admission charge of 10 cents or more~~ to any place of amusement, sport, or recreation are subject to tax~~, shall collect on each admission the amount of tax provided for by the applicable tax bracket shown in s. 212.12, F.S. All charges of 10 cents or more made at carnivals, fairs, amusement parks, and similar locations for rides on merry-go-rounds, roller coasters, ferris wheels, etc., are admissions and are taxable, except as provided in paragraph (3)(g) of this rule. For the purpose of collecting this tax, each admission shall be deemed a single sale~~.

~~(b) Every person operating a place of amusement where a taxable admission is charged must:~~

~~1. Prominently display, at the box office or other place where the admission charge is made, a sign or other easily read notice disclosing the price of the admission; or~~

~~2. Reflect on the face of each ticket the actual sales price of the admission.~~

~~(c) The tax shall be computed and collected on the basis of the actual price of such admission charged by the dealer.~~

~~(d) Tax is due at the time of the sale of the admission regardless of when the event is held and is to be collected on the full amount charged for the admission whether the sale is a cash sale, credit sale, installment sale, or a sale made on any kind of deferred payment plan. The dealer collecting the tax on the sale of an admission is required to remit the tax to the Department in the same manner as sales tax on the sale of tangible personal property, as provided in Rule 12A-1.056, F.A.C. When tickets or admissions are sold and not used but are returned to the seller, the seller shall credit or refund the sales tax to the purchaser. See Rule 12A-1.014, F.A.C., for the methods the seller is to use to obtain a credit or refund.~~

~~(e) Operators of traveling shows, exhibitions, amusements, circuses, carnivals, rodeos, and the like shall, upon request of an agent of the Department of Revenue, produce a cash receipt or other acceptable proof of payment to the State of admission taxes due on any or all previous engagements in Florida during their current tour and shall also furnish an itinerary of future engagements in this State during the current year. Any performance in Florida for which the operator claims exemption on admission charges must be supported by proof that such performance was or is sponsored by a not-for-profit organization exempt under paragraph (3)(g) of this rule and that the admissions were sold by the sponsoring organization.~~

(b)~~(f)~~ Admissions to places of amusement, operated under the supervision of the State Racing Commission and any admissions to such place for events not under the supervision of the State Racing Commission, are subject to tax ~~taxable~~. ~~The tax imposed under Section 550.09, F.S., by the State Racing Commission on admissions and the federal tax are excluded from the taxable base if separately stated.~~

(c)~~(g)~~ Admissions ~~All admissions~~ to attractions, shows, carnivals, exhibitions, and to fairgrounds that do not qualify for exemption under the provisions of ss. 212.08(7)(jj) and 616.260, F.S., are subject to tax ~~taxable, except as provided in paragraphs (d), (f), and (g) of subsection (3) of this rule~~. Fairgrounds shall be deemed to mean any area for which a charge is made to view exhibits or entries. ~~The admissions to rides, attractions, shows, and the like, for which a separate charge is made, are taxable, except as provided in paragraph (3)(g) of this rule.~~

(d) Charges to attend consumer trade shows and exhibitions are subject to tax.

(e) Charges made at carnivals, fairs, amusement parks, and similar locations for rides, such as on merry-go-rounds, roller coasters, ferris wheels, and similar rides, are admissions subject to tax.

(f) Charges for live pony rides are admissions subject to tax.

(g)~~(h)~~ Charges made for the privilege of bowling, golfing, swimming, using trampolines, ~~fishing, and~~ for playing billiards, ping pong, tennis, squash, badminton, slot racing, go-kart racing, and similar sports are admissions subject to tax ~~taxable, except as provided in paragraphs (3),(g) and (i) of this rule~~. ~~The charge for the privilege of participating in go-cart races or for the use of the equipment is taxable, except as provided in paragraph (3)(g) of this rule.~~

(h)~~(i)~~ Admissions to theaters, mini-theaters, outdoor theaters, and shows are subject to tax ~~taxable~~.

(i)~~(j)~~ Charges made for participation in saltwater fishing tournaments are subject to tax ~~taxable, except as provided in paragraph (3)(g) of this rule~~.

(j)~~(k)~~ Charges made for the privilege of entering or engaging in any kind of activity for which ~~a taxable admission charge is made to spectators are exempt. When~~ no admission charge is made to spectators are subject to tax. When spectators are charged a taxable admission to a game, race, or other sport or recreational event, the~~, such~~ participation or entrance fees are exempt ~~taxable, except as provided in paragraph (3)(g) of this rule.~~ The purchase of taxable items used by the sponsoring entity are subject to tax, even though receipts from charges for the participation or entrance fees are used to make such purchases. ~~The purchase of taxable gifts, trophies, and promotional items used by an entity sponsoring an event is subject to tax, notwithstanding that these items may be purchased with receipts from charges for participation or entrance fees, unless such purchases are made by a sponsoring organization issuing a valid consumer's certificate of exemption.~~

1. EXAMPLE: A private golf club hosts a local tournament and charges $100.00 entry fee from all participants with no admission charge made to spectators. The entry fee covers the greens fees, cart rental, and a meal for each participant, with the excess being used to purchase gifts, gift

certificates, and trophies to be given to the winners. The entry fee is subject to tax, even if the charge for each item is separately itemized ~~taxable, as are also gifts, trophies, and other promotional items purchased by the club~~. ~~If, instead of a single entry fee covering the greens fees, cart rentals, and meals, there is a separate charge made for each, such charges are also taxable.~~ The purchase of gifts, trophies, and other promotional items by the club is subject to tax. If the club is donating a gift that it has in its inventory for sale, the club is required to accrue and remit the tax on the cost of the gift at the time it is removed from inventory. When the winning participants are given gift certificates to be used to purchase merchandise from the club, the club is deemed to be selling the merchandise, and it shall collect the tax from the gift certificate holders at the time the merchandise is sold.

2. EXAMPLE: A sponsoring golf association enrolls participants to participate in a tournament for a fee of $100.00 with $20.00 of the fee attributable to organizational services provided by the sponsor and $80.00 attributable to the club's charges for an unlimited number of rounds and the use of a golf cart, with the excess being used to purchase gifts, gift certificates, and trophies to be given to the winners. No tax is due on the $100.00 fee paid by the participant to the sponsoring organization. The $80.00 entry fee paid by the sponsoring organization to the club is taxable, even if the charge for each item is separately itemized. The purchase of gifts, trophies, and other promotional items by the club is subject to tax~~, as are gifts, trophies, food, beverages, and other promotional items purchased by the association from the club~~. ~~If, instead of the entry fee covering the greens fees, cart rentals, and meal, there is a separate charge made for each, such charges are also taxable~~. When participants are given gift certificates to be redeemed for merchandise from the club's pro shop, the club is deemed to be selling the merchandise and shall collect tax from the gift certificate holders at the time the holder redeems the certificate for merchandise.

~~(l) Charges made for the privilege of using trampolines or for live pony rides are taxable, except as provided in paragraph (3)(g) of this rule.~~

~~(m) The rental of bowling shoes, skates, golf clubs, bathing suits, and other sports and athletic equipment is taxable.~~

~~(n) The price charged by golf driving ranges for balls and clubs is taxable.~~

(k)1.~~(o)~~ When the owner of a boat or vessel operated as a "head-boat" or "party boat" supplies the crew, which remains under the control and direction of the owner, and makes a charge measured on an admission or entrance or length of stay aboard the vessel for the privilege of participating in sightseeing, dinner cruises, sport, recreation, or similar activities including fishing, the charge is taxable as an admission.

2. The charge made by an owner or operator for chartering any boat or vessel, with a crew furnished, solely for the purpose of fishing is exempt.

~~1. Effective July 1, 1991, charges made by foreign registered vessels carrying passengers to international waters are exempt from the tax on admissions.~~

3.~~2.~~ Charges ~~Effective July 1, 1992, charges~~ made by foreign registered vessels carrying passengers to international waters where passengers cannot disembark from the vessel at points other than the origination point (cruises to nowhere) are taxable. If the vessel docks, and passengers can disembark, the charge is considered to be for transportation and is exempt from tax.

(l)~~(p)~~ Charges measured on an admission or entrance or length of stay for rides on helicopters, sightseeing trolley cars, sightseeing buses or trains, or any sightseeing or amusement ride where the participant is normally returned to the origination point are taxable. This does not apply to charter or regularly scheduled aircraft, bus, taxi, trolley, or train travel where the passengers may disembark for shopping, dining, or other activities at points other than the origination point.

(m)~~(q)~~ Charges made for hot air balloon rides are taxable.

(4)~~(5)~~ DUES AND INITIATION FEES, EQUITY AND NONEQUITY MEMBERSHIPS, CAPITAL CONTRIBUTIONS AND ASSESSMENTS, REFUNDABLE ~~AND NONREFUNDABLE~~ DEPOSITS, AND USER FEES.

(a)1. Dues and user fees paid to any organization, including athletic clubs, health spas, civic, fraternal, and religious clubs, and organizations that ~~which~~ provide physical fitness facilities or recreational facilities, such as golf courses, tennis courts, swimming pools, yachting, boating, athletic, exercise, and fitness facilities, are subject to tax ~~taxable, except as provided in paragraphs (3)(g) and (j) of this rule~~. Dues and user fees do not include:

a. Charges for initiation into, or for joining, an organization that are paid by persons to obtain an equitable ownership interest in the organization. The equitable ownership interest may be transferrable, with or without consideration, directly to another party or to the organization.

b. Additional charges paid by an equity member when joining an organization that are used by the organization solely for capital expenditures, capital improvements to the organization's facilities, or for debt servicing such expenditures and improvements by the organization. Examples of these types of payments and the use of such amounts include amounts expended for rebuilding and/or replacing the grass on greens or fairways; rebuilding and/or replacing bunkers; planting of additional trees; resurfacing and/or construction of tennis courts; resurfacing and/or construction of swimming pools; amounts expended for new furniture, fixtures and equipment; amounts expended for clubhouse renovations; amounts expended for kitchen equipment and utensils; amounts expended to improve the irrigation system; amounts

expended to acquire assets to enable the club to comply with environmental laws; amounts expended for acquiring maintenance equipment; amounts expended for new golf carts; and amounts expended for the installation of equipment on golf carts. Repairs to, or maintenance of, existing capital assets that do not materially add to the value or appreciably prolong the useful life of a capital asset are not deemed to be capital expenditures or capital improvements by the organization.

c. Capital assessments levied by an organization against persons who are, or seek to become, members of the organization.

d. Capital contributions or additional paid-in capital paid to an organization by individuals who have an equitable ownership interest in the organization.

2. Recurring or nonrecurring capital contributions or additional paid-in capital, or capital assessments, paid to an organization in a lump sum or by installments, are not subject to tax when such payments are:

a. Separately accounted for and not recorded in an operating revenue account by the organization.

b. Not paid for the right to use the organization's recreational, physical fitness, or other facilities or equipment without subsequent periodic payments;

c. Not used to effect a decrease in user fees or periodic membership dues; and

d. Not used to pay for the operating expenses of the organization.

~~2.a. Effective October 1, 1990, admissions, including dues and membership fees, paid to physical fitness facilities, athletic clubs, and health spas which do not offer other recreational facilities for participation sports, such as golf, tennis, swimming, yachting, boating, and similar activities are taxable. If a written contract for the admission to physical fitness facilities was entered into prior to July 7, 1990, the dues and membership fees shall be exempt from tax for the duration of the contract. The renewal of any such contract is fully taxable. For any written contract, or the renewal of any written contract, entered into on or after July 7, 1990, which provides for the admission to a physical fitness facility, the dues and membership fees which represent such admission for any period beginning on or after October 1, 1990, are taxable.~~

~~b. Example: A contract in the amount of $1,200 ($100 per month) is entered into beginning August 1, 1990, allowing the customer use of an organization's physical fitness facilities for the 12 month period of August 1, 1990, through July 31, 1991. The dues and membership fees representing admissions for the months of August and September 1990 ($200) are not taxable. However, dues and membership fees representing admission charges for the months of October 1990 through July 1991 ($1,000) are subject to sales tax, as well as any applicable discretionary sales surtax.~~

(b) For purposes of this rule: ~~Through June 30, 1991, initiation or membership fees are not taxable as charges for admissions when paid exclusively for membership in the organization and when they do not entitle the payer to use the organization's recreational or physical fitness facilities or equipment without subsequent payments, such as dues or user fees.~~

1. The phrase, "equitable ownership interest," means an interest that entitles a person to receive from the organization evidence or indicia of such ownership, the right to vote on decisions of the organization that are subject to determination by the organization's members or owners, and the right to receive a proportionate share of the organization's assets upon its dissolution, unless all such net assets are distributable upon dissolution to an organization exempt from federal income taxation or to a qualifying common interest realty association. The ownership interest must be reflected by the issuance of stock, a membership certificate, or similar instrument evidencing an ownership interest in the organization.

2. The phrases, "capital contributions or additional paid-in capital" and "capital assessments," mean equity payments that by themselves do not entitle an individual to use the facilities or equipment of an organization and that are intended as an investment to maintain or enhance members' and owners' interests in the organization.

~~(c) Through June 30, 1991, capital contributions or assessments to an organization by its members are not taxable as charges for admissions when they are in the nature of payments by the member of his or her share of capital costs, not charges for admissions to use the organization's recreational or physical fitness facilities or equipment, and when they are clearly shown as capital contributions on the organization's records. Contributions and assessments will be considered taxable when their payment results in a decrease in periodic dues or user fees required of the payer to use the organization's recreational or physical fitness facilities or equipment.~~

(c)~~(d)1.~~ Fees ~~Effective July 1, 1991, the following fees~~ paid to private clubs or membership clubs as a condition precedent to, in conjunction with, or for the use of the club's recreational or physical fitness facilities are subject to tax. Examples of such fees are:

1. User fees paid by members or nonmembers to an organization that entitle the payor to use the organization's recreational or physical fitness facilities or equipment.

~~a. Initiation fees when paid to equity or nonequity private clubs and membership clubs, except see sub-subparagraphs 2.c. and d., below.~~

~~b. Any periodic assessments (additional paid in capital) required to be paid by members of an equity or non equity club for capital improvements or other operating costs, unless the periodic assessment meets the criteria of a refundable deposit as provided in sub-subparagraph 2.e. below.~~

2.~~c.~~ Dining room minimum fees ~~paid to equity or nonequity clubs to the extent that sales tax is not paid on the dining room charges~~.

3.~~d.~~ Social membership fees when such payments are required of members who hold no equitable interest in, or ownership of, the club.

4.~~e.~~ Periodic payments required to be paid by members or any payment required of a nonmember in order to use the club's facilities.

~~f. Nonrefundable deposits which represent advance payments for the right to use the club's facilities.~~

(d)~~2.~~ Fees paid ~~The following payments made~~ to private clubs or membership clubs that do not entitle the payor to the use of the club's recreational or physical fitness facilities are not ~~"fees" which are~~ subject to tax ~~on admissions~~. Examples of such fees are:

1.~~a.~~ Charges to members or nonmembers to establish or maintain a handicap, ranking, or average.

2.~~b.~~ Charges for professional instructions in any sport conducted at the club, so long as such charges are exclusively for the instructions and include the use of the facility only during the period of time the instructions are taking place. It is not the intention of this rule to allow a club to exempt what is in effect a dues or membership fee by labeling ~~calling~~ such charges as instruction fees.

~~c. Purchase of equitable ownership in a corporation (stock or certificates of membership in nonprofit clubs organized under the provisions of Chapter 617, F.S., or stock in a for-profit club organized under the provisions of Chapter 607, F.S.).~~

3.~~d.~~ Mandatory dues and fees paid to a condominium association, homeowners' association, or cooperative association when they are required to be paid as a condition of ownership or occupancy of real property and the club facilities are part of the common elements or common areas of the real property.

(e)~~e.~~ Refundable deposits advanced to an organization when the organization is obligated to repay the deposit and the deposit is reflected as a liability in the organization's books and records are not subject to tax. The organization's obligation to repay refundable deposits must be evidenced by a promissory note, a bond, or other written documentation. ~~At the time the deposit or any portion of it is not shown as a liability in the organization's books and records, such as a portion of the deposit being applied against a member's taxable obligation to the club, that portion is subject to tax.~~

~~f. User fees paid by those who are members or by those who are nonmembers of an organization are taxable as charges for admissions when they entitle the payer to use of the organization's recreational or physical fitness facilities or equipment.~~

(f)~~(e)~~ Dues and fees paid by persons for membership in clubs that do not entitle the members to use recreational or physical fitness facilities are not subject to tax. Examples of such clubs are ~~as~~ sewing clubs, bowling clubs, square dancing clubs, bridge clubs, and gun clubs where the dues or fees entitle the payor to be a member of the club, but do not entitle the payor to use~~, which provide no~~ recreational or physical fitness ~~or other~~ facilities ~~for their members, are exempt~~. ~~Any charge made by any such club for admission to any event conducted or sponsored by the club is taxable, except as provided in paragraphs (3)(g) and (j) of this rule.~~

(5)~~(6)~~ No change.

(6)~~(7)~~ SALES OF VACATION PACKAGES.

(a) A dealer owes tax on purchases of any taxable components of a vacation package which he or she sells. ~~Such taxable components may include, but are not limited to, admissions, transient rentals, rental cars, and meals.~~

(b) No tax is due on the sale of a vacation package by a travel agent if the components are not separately itemized and if applicable tax has been paid on the initial purchase of the taxable components. For purposes of this subsection, a "vacation package" means a bundle consisting of two or more components, such as admissions, transient rentals, transportation, or meals. Coupon books, maps, or other incidental items, that are provided free of charge as part of a vacation package are not considered "components" for purposes of this subsection.

(c) If a travel agent ~~unless the selling dealer~~ itemizes the taxable components and sells the taxable components for more than was paid for them~~. If the itemized components are sold for more than the dealer paid for them~~, he or she must register and collect and remit tax on the itemized taxable components, and may take a credit for taxes previously paid.

(d)~~(c)~~ If the itemized components are sold for the same amount or less than was paid for each of them, the seller of the package shall not collect any additional tax, and shall not take credit for taxes previously paid.

(e)~~(d)~~ If the actual price charged for the admission by the dealer to a travel agent, which is a member of the same controlled group of corporations as the dealer, is an amount less than the price charged to unrelated travel agents under normal industry practices, then the related travel agent will be required to itemize the components of the package to his customer, collect tax on the itemized taxable components, and may take a credit for taxes previously paid.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), ~~212.031,~~ 212.04, 212.08(6), (7), ~~240.533(4)(c),~~ 616.260 FS. History–Revised 10-7-68, 1-7-70, 6-16-72, Amended 7-19-72, 12-11-74, 9-28-78, 7-3-79, 12-3-81, 7-20-82, Formerly 12A-1.05, Amended 1-2-89, 12-16-91, 10-17-94, 3-20-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Charles Wallace, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, or by telephone at (850)922-4734

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed rule was noticed for the first Rule Development Workshop in the Florida Administrative Weekly on October 9, 1998 (Vol. 24, No. 41, pp. 5431-5434). A rule development workshop was held on October 27, 1998, in Room B-12, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, regarding the proposed amendments to Rule 12A-1.005, F.A.C. Changes were made to those proposed amendments and a revised proposed rule was noticed for workshop in the Florida Administrative Weekly on February 26, 1999 (Vol. 25, No. 8, pp. 769-772). A second rule development workshop was held on March 17, 1999, in Room B-12, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida. Changes were made to the proposed amendments presented at the second rule development workshop and a revised proposed rule was noticed for workshop in the Florida Administrative Weekly on December 30, 1999 (Vol. 25, No. 52, pp. 5897-5902). A third rule development workshop was held on January 20, 2000, in Room B-12, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida. Changes were also made to the proposed amendments presented at the third rule development workshop and a revised proposed rule was noticed for workshop in the Florida Administrative Weekly on September 8, 2000 (Vol. 26, No. 36, pp. 4150-4157). A fourth and final rule development workshop was held on September 26, 2000, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida

STATE BOARD OF ADMINISTRATION

RULE TITLE: RULE NO.:
Investment Policy Statement 19-9.001

PURPOSE AND EFFECT: This rule is promulgated to implement Section 121.4501(14), regarding the Public Employee Optional Retirement Program.

SUMMARY: Proposed new rule 19-9.001 adopts the Investment Policy Statement required by Section 121.4501(14) and approved by the Trustees of the State Board of Administration on September 26, 2000.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Board has prepared a statement and found the cost to be minimal.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 121.4501(8)(a), 215.52 FS.

LAW IMPLEMENTED: 121.4501(1),(2),(3),(4),(5),(6),(7),(8),(9),(10),(11),(12),(13),(14),(15) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. – 12:00 Noon, Tuesday, November 28, 2000

PLACE: Room 116, Hermitage Conference Room, 1801 Hermitage Blvd., Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Cindy Gokel, Assistant General Counsel, State Board of Administration, P. O. Drawer 13300, Tallahassee, FL 32317-3300, phone (850)413-1199

THE FULL TEXT OF THE PROPOSED RULE IS:

19-9.001 Investment Policy Statement.

The Florida Retirement Systems Public Employee Optional Retirement Program Investment Policy Statement, as approved by the Trustees of the State Board of Administration on September 26, 2000, is hereby adopted and incorporated by reference.

Specific Authority 121.4501(8)(a), 215.52 FS. Law Implemented 121.4501(1),(2),(3),(4),(5), (6),(7),(8),(9),(10),(11), (12),(13),(14),(15) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. James Francis, Chief Economist, State Board of Administration

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Trustees of the State Board of Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 24, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 22, 2000

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE TITLE: RULE NO.:
Publications, Rules and Interagency Agreements Incorporated by Reference 40E-4.091

PURPOSE AND EFFECT: SFWMD rules require an environmental resource permit applicant to provide financial assurances of their capability to perform proposed mitigation to offset wetland impacts and specifies that the SFWMD be the sole beneficiary of the applicant's financial assurance mechanisms. The proposed amendment to this rule will allow any local pollution control program acting pursuant to Section

403.182, F.S., to be a co-beneficiary with the SFWMD of the financial assurance mechanism (such as performance bonds or letters of credit) and as co-beneficiary provide written notice to the SFWMD prior to withdrawing or transferring any portion of the funds therein.

SUMMARY: SFWMD's rules require that in order to obtain a standard general, individual, or conceptual approval under Chapters 40E-4 or 40E-40, F.A.C., an applicant must provide, among other things, reasonable assurances that the construction, alteration, operation, maintenance, removal or abandonment of a surface water management system will be conducted by an entity with the sufficient financial, legal and administrative capability to ensure that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued. Specifically, in those instances where mitigation is required to offset adverse wetland impacts, the specific criteria of Section 4.3.7.4, Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District (August 2000), incorporated by reference in Rule 40E-4.091(1)(a), F.A.C., currently requires the SFWMD to be the sole beneficiary of financial assurance mechanisms. However, the proposed rule amendment will allow applicants to post a common financial assurance mechanism shared by the SFWMD and a local government in compliance with Section 403.182, F.S., which provides for a level of consistency of the local government with statewide goals regarding wetland impacts and mitigation.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory cost has been prepared.

Any person who wished to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so within 21 days of publication of this notice.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171, 373.413 FS.

LAW IMPLEMENTED: 373.413, 373.4135, 373.414, 373.4135, 373.4137, 373.4142, 373.416, 373.418, 373.421, 373.426 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 8:30 a.m., December 14, 2000

PLACE: South Florida Water Management District Headquarters, 3301 Gun Club Road, Auditorium, 1st Floor, West Palm Beach, FL 33406

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Penelope Bell, South Florida Water Management District, 3301 Gun Club Road, MS 1410, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, Extension 6320 or (561)682-6320 or via email at pbell@sfwmd.gov.

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, at (561)682-6206 at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41, and 40E-400, F.A.C.:

(a) "Basis or Review for Environmental Resource Permit Applications Within the South Florida Water Management District – _____ ~~August 2000~~".

(b) through (j) No change.

(2) No change.

Specific Authority 373.044, 373.113, 373.171, 373.413 FS. Law Implemented 373.413, 373.4135, 373.4137, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426 FS. History–New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, _____.

(The following represents the proposed amendments to Section 4.3.7.4 of the document entitled "Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District – August 2000" incorporated by reference in Rule 40E-4.091(1)(a), F.A.C.)

Section 4.3.7.4, General Terms for Financial Responsibility Mechanisms

4.3.7.4(a) No change.

4.3.7.4(b) The mechanisms shall name the District as sole beneficiary or shall be payable solely to the District. However, any local pollution control program acting pursuant to Section 403.182, F.S., may be a co-beneficiary of the financial assurance mechanism. The original financial responsibility mechanism shall be retained by the District.

4.3.7.4(c) and (d) No change.

4.3.7.4(e) Prior written approval from the District shall be obtained before withdrawing or transferring any portion of the funds therein. Except that a co-beneficiary as provided in subsection (b) shall provide written notice to the District prior to withdrawing or transferring any portion of the funds therein.

4.3.7.4(f) No change.

NAME OF PERSON ORIGINATING PROPOSED RULE: Robert G. Robbins, Director, Natural Resources Management Division, Water Resources Management Department

NAME OF PERSON OR SUPERVISOR WHO APPROVED THE PROPOSED RULE: South Florida Water Management District's Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 12, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 11, 2000 (Vol. 26, No. 32, Page 3659).

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE TITLE: RULE NO.:
Definitions 59A-10.032

PURPOSE AND EFFECT: The purpose of this rule amendment is to include all nurses licensed under Chapter 464, Florida Statutes within the definition of "Health Care Professional" for the purpose of licensure as Health Care Risk Manager under Sections 395.10971 through 395.10975, Florida Statutes.

SUMMARY: This amendment is to include all nurses licensed under Chapter 464, Florida Statutes within the definition of "Health Care Professional" for the purpose of licensure as Health Care Risk Manager.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposed lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 395.10973 FS.

LAW IMPLEMENTED: 395.10974 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THE HEARING WILL NOT BE HELD).

TIME AND DATE: 9:00 a.m., December 5, 2000

PLACE: The Agency for Health Care Administration, Fort Knox Complex, 2727 Mahan Drive, Building #1, Plans and Construction Conference Room, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Anna Polk, Program Administrator, Office of Risk Management, 2727 Mahan Drive, Tallahassee, Florida 32308, (850)487-1709

THE FULL TEXT OF THE PROPOSED RULE IS:

59A-10.032 Definitions.

When used in these rules, the following words and terms shall have the meaning as described in this section.

(1) through (14) No change.

(15) The term "Health Care Professional" means a physician licensed pursuant to Chapter 458, F.S., an osteopath licensed pursuant to Chapter 459, F.S., a chiropractor licensed pursuant to Chapter 460, F.S., a podiatrist licensed pursuant to Chapter 461, F.S., a pharmacist licensed pursuant to Chapter 465, F.S., a ~~registered~~ nurse licensed pursuant to Chapter 464, F.S., a radiologic technologist certified pursuant to Chapter 468, F.S., a respiratory therapist registered pursuant to Chapter 468, F.S., and an emergency medical technician certified pursuant to Chapter 401, F.S.

(16) through (17) No change.

Specific Authority 395.10973 FS. Law Implemented 395.10974 FS. History–New 7-8-86, Formerly 4-65.002, 4-217.015, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Anna Polk

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ruben King-Shaw, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 7, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 2000

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: RULE NO.:
Continuing Education Requirements for
Certificateholders and Registrants 61G4-18.001

PURPOSE AND EFFECT: The proposed rule amendment is intended to allow up to 4 hours of continuing education (CE) credit for licensees who attend meetings as a member of the Florida Building Code Commission.

SUMMARY: The proposed rule amendment allows licensees up to 4 hours of CE credit for attending meetings as a member of the Florida Building Code Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.213(7), 489.108 FS.

LAW IMPLEMENTED: 455.271(10), 489.115, 489.116, 455.2123 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 28, 2000

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Cathleen O'Dowd, Executive Director, Construction Industry Licensing Board, 7960 Arlington Expressway, Suite 300, Jacksonville, Florida 32211-7467

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-18.001 Continuing Education Requirements for Certificateholders and Registrants.

(1) through (3) No change.

(4) The Board shall grant a maximum of four (4) hours of continuing education credit, on an hour for hour basis, to any licensee who participates as a member of ~~any technical advisory committee to~~ the Florida Building Code Commission within the Department of Community Affairs, or any technical advisory committee of that commission.

(5) through (8) No change.

Specific Authority 455.213(7), 489.108 FS. Law Implemented 455.271(10), 489.115, 489.116, 455.2123 FS. History–New 12-2-93, Amended 5-19-94, 8-16-94, 10-12-94, 1-18-95, 2-4-98, 5-11-99, 7-12-99, 1-23-00, 2-1-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 15, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 13, 2000

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO.: 00-42R

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Hazardous Waste	62-730
RULE TITLES:	RULE NOS.:
Definitions	62-730.020
References, Variances and Case-by-Case Regulations	62-730.021
Identification of Hazardous Waste	62-730.030
Standards Applicable to Generators of Hazardous Waste	62-730.160
Standards Applicable to Transporters of Hazardous Waste	62-730.170
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	62-730.180
Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	62-730.181
Land Disposal Restrictions	62-730.183
Adoption of Federal Procedures for Decision Making	62-730.184
Standards for Universal Waste Management	62-730.185
Applications for Permits	62-730.220

PURPOSE, EFFECT AND SUMMARY: The proposed rule amendments incorporate by reference changes made between July 1, 1997 and June 30, 2000 to the federal hazardous waste regulations by the U.S. Environmental Protection Agency. The Department is authorized by the federal government to administer parts of the hazardous waste program. As a result of that authorization, the Department must adopt changes that make its rules equivalent to the existing federal regulations. These amendments serve to make the state rules equivalent to the existing federal regulations.

SPECIFIC AUTHORITY: 403.061, 403.087, 403.704, 403.72, 403.721, 403.722, 403.724, 403.7255, 403.8055 FS.

LAW IMPLEMENTED: 403.061, 403.151, 403.704, 403.707, 403.72, 403.721, 403.722, 403.723, 403.7255, 403.724 FS.

THIS RULEMAKING IS UNDERTAKEN PURSUANT TO SECTION 403.8055, F.S.

SUBSTANTIALLY AFFECTED PERSONS MAY FILE OBJECTIONS WITH THE ENVIRONMENTAL REGULATION COMMISSION AT THE FOLLOWING ADDRESS: 3900 Commonwealth Boulevard, Mail Station 18, Tallahassee, Florida 32399-3000, Attention Jackie McGorty. Objections must be received within 14 days of publication of this notice and must specify the portions of the proposed rule to which the person objects and the reasons for the objection. Objections that are frivolous will not be considered sufficient to prohibit adoption of the rule as published.

WRITTEN COMMENTS: The Secretary of the Department of Environmental Protection will consider any written comments received within 21 days after publication of this notice.

Comments shall be submitted to Ms. Agusta Posner, Office of General Counsel, Mail Station 35, Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

THE FULL TEXT OF THE PROPOSED RULES IS:

62-730.020 Definitions.

(1) The Department adopts by reference the definitions contained in 40 CFR Section 260.10 revised as of July 1, 1999 ~~1998~~. The Department adopts by reference the amendments to 40 CFR Section 260.10 in the Federal Register dated September 30, 1999 (64 FR 52827).

(2) through (4) No change.

Specific Authority 403.704, 403.721, 403.8055 FS. Law Implemented 403.72, 403.721, 403.704 FS. History–New 5-28-81, Amended 9-8-81, 12-6-81, 11-25-82, 5-19-83, 1-5-84, 8-24-84, 7-5-85, Formerly 17-30.02, Amended 9-19-86, 10-31-86, 5-3-88, 1-25-89, Formerly 17-30.020, Amended 8-13-90, 9-10-91, 10-14-92, 10-7-93; Formerly 17-730.020, Amended 1-5-95, 9-7-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.021 References, Variances and Case-by-Case Regulations.

(1) The Department adopts by reference the following sections of 40 CFR Part 260 revised as of July 1, 1999 ~~1998~~:

(a) through (d) No change.

(2) The Department adopts by reference 40 CFR Section 270.6 revised as of July 1, 1999 ~~1998~~, which lists the referenced publications.

Specific Authority 403.704, 403.721, 403.8055 FS. Law Implemented 403.704, 403.721 FS. History–New 7-5-85, Formerly 17-30.021, Amended 1-25-89, 8-13-90, 9-10-91, 10-14-92, 10-7-93, Formerly 17-730.021, Amended 1-5-95, 9-7-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.030 Identification of Hazardous Waste.

(1) The Department adopts by reference 40 CFR Part 261 revised as of July 1, 1999 ~~1998~~, and all appendices except for the following optional amendments:

(a) The amendments in the Federal Register dated May 20, 1992 (57 FR 21524);

(b) The amendments in the Federal Register dated July 1, 1992 (57 FR 29220).~~;~~

~~(c) The amendments in the Federal Register dated May 6, 1998 (63 FR 24963); and~~

(c)~~(d)~~ The amendments to 40 CFR 261.2(c)(3) and 261.2(c)(4) Table 1 ~~261.2 and 261.4~~ in the Federal Register dated May 26, 1998 (63 FR 28555).

(d) The amendments to 40 CFR 261.2(c)(3) and 261.2(c)(4) Table 1 in the Federal Register dated May 11, 1999 (64 FR 25408).

(e) The amendments to 40 CFR 261.4(b)(15) in the Federal Register dated February 11, 1999 (64 FR 6806).

For the optional amendments in (a) through (e) ~~(d)~~ above, the language in effect immediately prior to the effective date of the referenced Federal Registers remains in effect. 40 CFR Part 261 contains EPA's rules on the identification and listing of hazardous waste. No delisting is effective until it is adopted by the Department.

(2) The Department adopts by reference the amendments to 40 CFR Part 261 in the Federal Registers dated September 30, 1999 (64 FR 52827), October 20, 1999 (64 FR 56469), November 19, 1999 (64 FR 63209), March 17, 2000 (65 FR 14472) and June 8, 2000 (65 FR 36365).

(2) through (4) renumbered (3) through (5) No change.

Specific Authority Section 403.72, 403.721, 403.8055 FS. Law Implemented 403.72, 403.721 FS. History–New 5-28-81, Amended 9-8-81, 12-6-81, 3-4-82, 11-25-82, 1-5-84, 8-24-84, 12-18-84, 7-5-85, 10-3-85, Formerly 17-30.03, Amended 5-5-86, 8-25-86, 9-19-86, 10-31-86, 3-31-87, 4-13-88, Formerly 17-30.030, Amended 1-25-89, 8-13-90, 9-10-91, 10-14-92, 10-7-93, Formerly 17-730.030, Amended 1-5-95, 9-7-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.160 Standards Applicable to Generators of Hazardous Waste.

(1) The Department adopts by reference 40 CFR Part 262 revised as of July 1, 1999 ~~1998~~, including the Appendix with the exception of 40 CFR 262.34(e). The Department adopts by reference the amendments to 40 CFR Part 262 in the Federal Registers dated October 20, 1999 (64 FR 56469) and March 8, 2000 (65 FR 12378).

(2) through (7) No change.

Specific Authority 403.704, 403.721, 403.8055 FS. Law Implemented 403.704, 403.72, 403.721 FS. History–New 15-19-82, Amended 5-20-82, 3-31-83, 2-2-84, 8-24-84, 7-5-85, 10-3-85, Formerly 17-30.16, Amended 9-19-86, 10-31-86, 3-31-87, 5-26-87, 6-28-88, Formerly 17-30.160, Amended 1-25-89, 8-13-90, 9-10-91, 10-14-92, 10-7-93, Formerly 17-730.160, Amended 1-5-95, 9-7-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.170 Standards Applicable to Transporters of Hazardous Waste.

(1) The Department adopts by reference 40 CFR Part 263 revised as of July 1, 1999 ~~1998~~.

(2) through (3) No change.

Specific Authority 403.704, 403.721, 403.724, 403.8055 FS. Law Implemented 403.704, 403.721, 403.724 FS. History–New 11-8-81, Amended 5-31-84, 9-13-84, Formerly 17-30.17, Amended 9-19-86, 3-31-87, 5-26-87, 6-28-88, Formerly 17-30.170, Amended 1-25-89, 8-13-90, 9-10-91, 10-14-92, 10-7-93, Formerly 17-730.170, Amended 1-5-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.180 Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.

(1) The Department adopts by reference 40 CFR Part 264 revised as of July 1, 1999 ~~1998~~, including all appendices; except for the following optional amendments:

(1)(a) through (c) No change.

(2) The Department adopts by reference 40 CFR Part 265 revised as of July 1, 1999 ~~1998~~, including all appendices, with the exception of:

(a) through (3) No change.

(4) The Department adopts by reference the amendments to 40 CFR Parts 264 and 265 in the Federal Register dated September 30, 1999 (64 FR 52827).

(4) through (9) renumbered (5) through (10) No change.

Specific Authority 403.704, 403.721, 403.724, 403.8055 FS. Law Implemented 403.704, 403.721, 403.724 FS. History–New 5-19-82, Amended 3-4-82, 5-20-82, 7-14-82, 8-30-82, 10-7-82, 11-25-82, 2-3-83, 3-31-83, 5-19-83, 1-5-84, 2-2-84, 11-7-84, 7-5-85, 10-3-85, Formerly 17-30.18, Amended 5-5-86, 9-19-86, 10-31-86, 3-31-87, 4-13-88, 6-28-88, Formerly 17-30.180, Amended 1-15-89, 8-13-90, 9-10-91, 10-14-92, 10-7-93, Formerly 17-730.180, Amended 1-5-95, 9-7-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.181 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

(1) The Department adopts by reference 40 CFR Part 266 revised as of July 1, 1999 ~~1998~~. The Department adopts by reference the amendments to 40 CFR Part 266 in the Federal Register dated September 30, 1999 (64 FR 52827) and November 19, 1999 (64 FR 63209).

(2) through (3) No change.

Specific Authority 403.704, 403.721, 403.7255, 403.8055 FS. Law Implemented 403.704, 403.721, 403.7255 FS. History–New 7-5-85, Amended 10-3-85, 5-5-86, 4-13-88, 4-15-86, 5-3-88, Formerly 17-30.181, Amended 1-25-89, 8-13-90, 10-14-92, 10-7-93, Formerly 17-730.181, Amended 1-5-95, 9-7-95, 2-25-96, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.183 Land Disposal Restrictions.

(1) The Department adopts by reference 40 CFR Part 268 revised as of July 1, 1999 ~~1998~~, and all appendices, with the exception of:

(a)~~(1)~~ 40 CFR 268.5, 268.6, 268.42(b) and 268.44. The authority for implementing these excluded sections remains with EPA; ~~and~~

(b)~~(2)~~ The amendments to 40 CFR ~~268.2(k),~~ 268.7(a)(1), 268.7(a)(2), 268.7(a)(3), 268.7(a)(4), 268.7(a)(4) entry 8 in the table entitled "Generator Paperwork Requirements," 268.7(a)(5), 268.7(a)(6), 268.7(b)(1), 268.7(b)(2), 269.7(b)(4), ~~268.7(a), 268.7(b),~~ 268.7(e), and 268.49 in the Federal Register dated May 26, 1998 (63 FR 28555 ~~24963~~) ~~which are optional~~.

(c) The amendments to 40 CFR 268.7(a)(4) entry 8 in the table entitled "Generator Paperwork Requirements," and 268.49 in the Federal Register dated May 11, 1999 (63 FR 25408).

(2) The Department adopts by reference the amendments to 40 CFR Part 268 in the Federal Registers dated March 17, 2000 (65 FR 14472) and June 8, 2000 (65 FR 36365). The Department adopts by reference the amendments in the Federal Register dated October 20, 1999 (64 FR 56469) except for the amendments to 40 CFR 268.49.

For the optional amendments the Department is not adopting in (1)(b), (1)(c) and (2) above, the ~~The~~ language in effect immediately prior to the effective date of the referenced Federal Registers ~~this Federal Register~~ remains in effect.

Specific Authority 403.704, 403.721, 403.8055 FS. Law Implemented 403.704, 403.721 FS. History–New 1-25-89, Formerly 17-30.183, Amended 8-13-90, 9-10-91, 10-14-92, 10-7-93, Formerly 17-730.183, Amended 1-5-95, 9-7-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.184 Adoption of Federal Procedures for Decision Making.

(1) The Department will follow the procedures set forth in these sections of 40 CFR Part 124 revised as of July 1, 1999 ~~1998~~: 124.3(a); 124.5(a), (c), and (d); 124.6(a), (d), and (e) except (d)(4)(ii) through (v); 124.8(a) and (b) except (b)(3) and (b)(8); 124.10(a) except (a)(1)(i) and (a)(1)(iv) through (a)(3); 124.10(b); 124.10(c) except (c)(1)(iv) through (vii); 124.10(d) except (d)(1)(vii) through (viii) and (d)(2)(iv); 124.11; 124.12(a); and 124.17 except (b); 124.31 except for two sentences in 124.31(a) which include the phrase "over which EPA has permit issuance authority"; 124.32 except for two sentences in 124.32(a) which include the phrase "over which EPA has permit issuance authority"; and 124.33 except for 124.33(a); which are hereby adopted by reference. Sections 124.31, 124.32, 124.33 apply to all applicants seeking permits for hazardous waste management units.

(2) The Department adopts by reference the amendments to 40 CFR 124.5(d)(1) and 124.6(e) in the Federal Register dated May 15, 2000 (65 FR 30886).

Specific Authority 403.704, 403.721, 403.722, 403.8055 FS. Law Implemented 403.704, 403.721, 403.722 FS. History–New 10-7-93, Formerly 17-730.184, Amended 1-5-95, 4-30-97, 8-19-98, 2-4-00, _____.

62-730.185 Standards for Universal Waste Management.

(1) The Department adopts by reference 40 CFR Part 273 revised as of July 1, 1999 ~~1998~~.

(2) No change.

Specific Authority 403.704, 403.721, 403.8055 FS. Law Implemented 403.061, 403.704, 403.721 FS. History–New 9-7-95, Amended 4-30-97, 8-19-98, 2-4-00, _____.

62-730.220 Applications for Permits.

(1) through (2) No change.

(3) The Department adopts by reference the following sections of 40 CFR Part 270 revised as of July 1, 1999 ~~1998~~: 270.1(c), 270.2, 270.3, 270.4, 270.6, 270.10, 270.11, 270.12 through 270.28 ~~270.27~~, 270.30, 270.31, 270.32(b)(2), 270.33, 270.51, 270.61, 270.62, 270.66, 270.68, ~~and~~ 270.72, and 270.79 through 270.230. The Department adopts by reference the amendments to 40 CFR Part 270 in the Federal Register dated September 30, 1999 (64 FR 52827).

(4) through (11) No change.

Specific Authority 403.061, 403.087, 403.704, 403.721, 403.722 FS. Law Implemented 403.151, 403.704, 403.707, 403.721, 403.722, 403.723 FS. History–New 7-9-82, Amended 1-5-84, 8-19-84, 7-22-85, Formerly 17-30.22, Amended 9-23-87, 6-28-88, 12-12-88, Formerly 17-30.220, Amended 8-13-90, 9-10-91, 10-14-92, 10-7-93, Formerly 17-730.220, Amended 1-5-95, 4-30-97, 8-19-98, 2-4-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: John Ruddell, Director, Division of Waste Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kirby B. Green, Deputy Secretary, Department of Environmental Protection

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 20, 2000

DEPARTMENT OF HEALTH

Division of Disease Control

RULE TITLE: RULE NO.:

Control of Communicable Diseases, Public and Nonpublic Schools, Grades Preschool, and Kindergarten Through 12; Forms and Guidelines 64D-3.011

PURPOSE AND EFFECT: The Bureau of Immunization proposes an amendment to provide a department form under which a parent or guardian may elect not to participate in the immunization registry; to provide a department form for application and approval to obtain access to the immunization registry by health care practitioners licensed under chapters 458, 459 or 464, F.S., and departmental form for application

and approval to obtain access to the immunization registry by public and nonpublic schools and licensed or registered child care facilities.

SUMMARY: The proposed amendment to Rule 64D-3.011 provides the required procedure for forms completion and application to Florida SHOTS (State Health Online Tracking System) Opt Out Provision, Florida SHOTS Private Provider Participation, and Florida SHOTS School and Licensed or Registered Child Care Facility Participation.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: At this time, a Statement of Estimated Regulatory Cost is not available.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 381.003(1)(e)2.,4. FS.

LAW IMPLEMENTED: 381.003 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 1:00 p.m., Monday, November 27, 2000

PLACE: Room 320P, 2585 Merchants Row Blvd., Tallahassee, FL 32399-1719

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Susan Lincicome, Senior Management Analyst II, Department of Health, Bureau of Immunization, Room 210N, 2585 Merchants Row Blvd., Tallahassee, FL 32399-1719, (850)245-4342, Mailing address: 4052 Bald Cypress Way, Bin #A-11, Tallahassee, FL 32399-1719

THE FULL TEXT OF THE PROPOSED RULE IS:

64D-3.011 Control of Communicable Diseases, Public and Nonpublic Schools, Grades Preschool, and Kindergarten Through 12; Forms and Guidelines.

(1) through (6) No change.

(7) Florida SHOTS (State Health Online Tracking System) Opt Out Provision – Parents or guardians may elect to decline participation in the Florida immunization registry, Florida SHOTS, by completing a DH Form 1478, Florida SHOTS Notification and Opt Out Form, as incorporated by reference in 64D-3.011(10), and returning the form to the Department of Health. The immunization records of children whose parents choose to opt-out will not be shared with other entities that are allowed by law to have access to the child's immunization record via authorized access to Florida SHOTS.

(8) Florida SHOTS Private Provider Participation – Any health care practitioner licensed in Florida under Chapters 458, 459 or 464, Florida Statutes may request authorization to access Florida SHOTS by filling out a DOH Form 1479, Authorized Private Provider User Agreement for Access to Florida SHOTS (Florida State Health Online Tracking System), as incorporated by reference in 64D-3.011(10). The DOH Form 1479 will be returned to the Department of Health for processing and authorization to access Florida SHOTS. Notification of access approval and instructions for accessing Florida SHOTS will be provided by the Department of Health. The authorized user and the applicable licensing authority or agency shall notify the Department of Health Bureau of Immunization Florida SHOTS personnel when an authorized user's license or registration has expired or has been suspended or revoked.

(9) Florida SHOTS School and Licensed or Registered Child Care Facility Participation – Any public or nonpublic school, or licensed or registered child care facility may request authorization to access Florida SHOTS by completing a DOH Form 2115, Authorized School, and Licensed or Registered Child Care Facility User Agreement for Access to Florida SHOTS, as incorporated by reference in 64D-3.011(10). The DOH Form 2115 will be returned to the Department of Health for processing and authorization to access Florida SHOTS. Notification of access approval and instructions for accessing Florida SHOTS will be provided by the Department of Health. The authorized user and the applicable licensing authority or agency shall notify the Department of Health Bureau of Immunization Florida SHOTS when an authorized user's license or registration has expired or has been suspended or revoked.

(10) Forms and Guidelines – Forms used to document compliance with Section 381.003, F.S., and guidelines for completion of the forms , are hereby incorporated by reference:

FORM #	EFFECTIVE DATE	TITLE	FORMS AND GUIDELINES AVAILABILITY
DH 1478	Nov. 2000	Florida SHOTS Notification and Opt Out Form	DOH Bureau of Immunization 4052 Bald Cypress Way Bin #A-11 Tallahassee, FL 32399-1719
DH 1479	Nov. 2000	Authorized Private Provider User Agreement for Access to Florida SHOTS (State Health Online Tracking System)	DOH Bureau of Immunization 4052 Bald Cypress Way Bin # A-11 Tallahassee, FL 32399-1719
DH 2115	Nov. 2000	Authorized School And Licensed or Registered Child Care Facility User Agreement For Access to Florida SHOTS (State Health Online Tracking System)	DOH Bureau of Immunization 4052 Bald Cypress Way Bin # A-11 Tallahassee, FL 32399-1719

Specific Authority 232.032(1), 381.0011(13), 381.003(1), 381.003(2), 381.005(2) FS. Law Implemented 232.032(1), 381.0011(4), 381.003(1), 381.005(1)(i), 458, 459, 460 FS. History–New 12-29-77, Amended 6-7-82, 11-6-85, Formerly 10D-3.88, Amended 2-26-92, 9-20-94, 9-21-95, 4-7-96, Formerly 10D-3.088, Amended 7-14-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Henry T. Janowski, M.P.H., Chief, Bureau of Immunization

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Landis K. Crockett, M.D., M.P.H., Director, Division of Disease Control

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 4, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 1, 2000

FLORIDA HOUSING FINANCE CORPORATION

RULE TITLES:	RULE NOS.:
Definitions	67-21.002
Application and Selection Process for Loans	67-21.003
Applicant Administrative Appeal Process	67-21.0035
Federal Set-Aside Requirements	67-21.004
Public Policy Criteria Requirements	67-21.0041
Determination of Method of Bond Sale	67-21.0045
Selection of Qualified Lending Institutions as Credit Underwriters, Originators or Servicers	67-21.005
Development Requirements	67-21.006
Fees	67-21.007
Terms and Conditions of Loans	67-21.008
Interest Rate on Mortgage Loans	67-21.009
Issuance of Revenue Bonds	67-21.010
No Discrimination	67-21.011
Advertisements	67-21.012
Private Placements of Multifamily Mortgage Revenue Bonds	67-21.013
Credit Underwriting Procedures	67-21.014
Use of Bonds with Other Affordable Housing Finance Programs	67-21.015
Compliance Procedures	67-21.016
Transfer of Ownership	67-21.017
Refundings and Troubled Development Review	67-21.018
Issuance of Bonds for 501(c)(3) Corporations	67-21.019

PURPOSE AND EFFECT: The purpose of Rule Chapter 67-21, Florida Administrative Code (F.A.C.), is to establish the procedures by which the Florida Housing Finance Corporation shall administer the application process, determine loan amounts and issue multifamily mortgage revenue bonds for new construction or substantial rehabilitation of affordable rental units under the Multifamily Mortgage Revenue Bond Program.

SUMMARY: Prior to the opening of an Application Cycle, the Corporation (1) researches the market's need for affordable housing throughout the State of Florida and (2) evaluates prior application cycles to determine what changes or additions should be made to the Rule or Application. The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that apply for funding in 2001 application cycle.

STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 420.507, 420.508 FS.

LAW IMPLEMENTED: 420.502, 420.503, 420.507, 420.508, 420.509 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 2:00 p.m. – 5:00 p.m., November 27, 2000

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th Floor Seltzer Room, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Deborah A. Dozier, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

67-21.002 Definitions.

(1) "Acknowledgment Resolution" means the official action taken by Florida Housing to reflect its intent to attempt to finance a Development provided that the requirements of Florida Housing, the terms of the Loan Commitment, and the terms of the Credit Underwriting Report are met. Such official action shall not be taken until Florida Housing has received the information necessary to make the findings required by the Code and the Act.

(2) "Act" means the Florida Housing Finance Corporation Act, sections 420.501 through 420.517, Florida Statutes, as amended.

(3) "Affiliate" means any person that (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant (ii) serves as an officer or director of the Applicant or of any Affiliate of the Applicant, or (iii) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i) or (ii) above.

(4) "Annual Recertification" means the compilation of the gross income of all persons or families qualified as lower-income tenants to continue to meet the requirements established in section 142(d) of the Code.

(5) "Annual Household Income" means the gross income of a person, together with the gross income of all persons who intend to permanently reside with such person in the Development to be financed by Florida Housing, ~~annual household income to be defined as that income~~ as of the date of occupancy shown on the income certification promulgated from time to time by Florida Housing.

(6) "Applicant" means any person or entity, for profit or not-for profit, that is seeking a loan from Florida Housing for a multifamily Development and that has agreed to subject itself to the regulatory powers of Florida Housing by submitting an Application. The Applicant entity, as identified in the Application, cannot be changed until after final allocation of tax credits has been issued by FHFC, and any such change is subject to the approval of the Board.

(7) "Application" means the completed Form MFMRB2001 ~~MFMRB2000~~, its instructions, and its appendices together with exhibits submitted to Florida Housing by the Applicant in accordance with the provisions of this Rule Chapter and in the Application in order to apply for the ~~Multifamily Bond~~ Program.

(8) "Application Fee" means the non-refundable application fee to Florida Housing in an amount as listed in 67-21.007, F.A.C.

(9) "Board" or "Board of Directors" means the Board of Directors of Florida Housing.

(10) "Bond Counsel" means the attorney or law firm retained by Florida Housing to serve the specialized function generally described in the industry as bond counsel.

(11) "Bonds" or "Revenue Bonds" means the Bonds of Florida Housing issued to finance Mortgage Loans, including any Bond, debenture, note, or other evidence of financial indebtedness issued by Florida Housing under and pursuant to the Act.

(12) "Bond Trustee" or "Trustee" means a financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bond holders, and in some instances Florida Housing, in enforcing the terms of the Program Documents.

(13) "Code" is the Internal Revenue Code of 1986, as amended, or similar predecessor or successor provisions applicable to a Development to be financed under this rule, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States.

(14) "Completeness and Threshold Check" or "CTC" means the examination of the Application by a Credit Underwriter assigned by FHFC. This examination shall consist of a determination that ~~determine if~~ all required information has been provided in the Application, and a verification and analysis of ~~shall verify and analyze~~ all such information in accordance with the Completeness and Threshold Checklist found in Appendix A of the Application. The CTC shall not be deemed to constitute the final credit underwriting of the Development.

(15) "Contact Person" means a person ~~with decision-making authority for the Applicant~~, Developer, or owner of the Development with whom the Corporation will correspond concerning the Application and the Development.

(16) "Corporation" or "Florida Housing" or "FHFC" means the Florida Housing Finance Corporation created pursuant to the Act.

(17) "Cost of Issuance Fee" means the fee charged by Florida Housing to the Applicant for the payment of the costs and expenses associated with the sale of Bonds and the loaning of the proceeds, including a fee for Florida Housing.

(18) "Credit Enhancement or Guarantee Instrument" means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to Florida Housing or its Trustee for a minimum of ten years by a third party Credit Enhancer or financial institution securing, ~~or~~ insuring or guaranteeing the repayment of the mortgage loan or Bonds under Florida Housing's Program. A Credit Enhancement or Guarantee Instrument of less than ten years must be approved by the Board prior to being accepted to secure any Bonds.

(19) "Credit Enhancer" means a financial institution, insurer or other third party which provides a Credit Enhancement or Guarantee Instrument acceptable to Florida Housing securing repayment of the Mortgage Loan or Bonds issued pursuant to Florida Housing's Program.

(20) "Credit Underwriter" means the legal representative under contract with Florida Housing having the responsibility for providing stated credit underwriting services, including the CTC. Such services shall include, for example, a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, and the evidence of need for affordable housing in order to determine that the Development meets the Program requirements. The Credit Underwriter shall determine a recommended Bond amount that should be made to a Development, whether an initial loan or a refunding.

(21) "Credit Underwriting Report" means a report that is produced by the Credit Underwriter designated by Florida Housing and includes a thorough analysis of the proposed Development and a statement as to whether a loan is recommended, and if so, the amount recommended. The Credit Underwriter or Florida Housing may request such information as is necessary to properly analyze the credit risk being presented to Florida Housing and the bondholders. The Applicant shall pay the cost of such credit underwriting in addition to any other fees payable to Florida Housing in conjunction with the Application and Program financing.

(22) "Cross-collateralization" means the pledging of the security of one Development to the obligations of another development.

~~(23) "Demonstration Development" shall mean a development which provides a unique, demonstrated benefit to a population or area not adequately served by existing Florida Housing programs, may serve as a replicable model for future~~

~~Florida Housing programs, and otherwise complies with any rule of Florida Housing regarding Demonstration Developments.~~

(23)~~(24)~~ "Developer" means any individual, association, corporation, joint venturer or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing pursuant to this Rule Chapter. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

(24)~~(25)~~ "Developer Fee" means the fee earned by the Developer. Such fee shall be limited to 18 percent of Total Development Cost excluding land and, for rehabilitation, building acquisition costs. A Developer Fee on the building acquisition cost shall be limited to 4% of the cost of the building(s) exclusive of land cost. Consulting fees, if any, must be paid out of the Developer Fee. Consulting fees include, for example, payments for Application consultants, construction management or supervision, or local government consultants. Fees for the Applicant's and Developer's attorney(s) which are in excess of an amount equal to the greater of $40,000 or 0.75% of the total amount of the Bonds must also be paid out of the Developer Fee. Fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against FHFC with respect to a Development shall ~~not~~ also not be included in Total Development Costs. Fees for services provided by architects, accountants, appraisers, engineers or Financial Advisors may be included as part of the Total Development Costs, except that those fees for a Financial Advisor that are in excess of $18,000 must be paid out of the Developer Fee. In the event of extraordinary circumstances, Applicant may petition the Board for relief from the attorney fee and Financial Advisor caps. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest relationship as defined herein between the Applicant, or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowed for the Developer Fees pursuant to the HUD subsidy layering regulations. Florida Housing shall not authorize fees to be paid for duplicative services or duplicative overhead.

(25)~~(26)~~ "Development" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, which is intended for use as multifamily rental housing, together with such related non-housing facilities as Florida Housing determines to be necessary, convenient, or desirable. A Development shall constitute a "project" within the meaning of the Act.

(26)~~(27)~~ "Difficult Development Area" means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with Section 42(d)(5), IRC.

(27)~~(28)~~ "Disclosure Counsel" means the Special Counsel designated by Florida Housing to be responsible for the drafting and delivery of Florida Housing's disclosure documents such as preliminary official statements, official statements, re-offering memorandums or private placement memorandums and continuing disclosure agreements. The fees of Disclosure Counsel shall be set by contract with Florida Housing and shall be paid from the Cost of Issuance Fee or from the Good Faith Deposit submitted with the Loan Commitment.

(28) "Elderly Person" means qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), Florida Statutes.

(29) "Elderly Housing", "Elderly Development", or "Elderly Unit" means housing or a unit being occupied or reserved for qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), Florida Statutes provided that such development:

(a) Does not contain in excess of 160 units;

(b) For which independent market analysis demonstrates a local need for such housing, and;

(c) The Applicant has developed a detailed plan to attract, serve and keep the targeted population.

(30) "Executive Director" means the Executive Director or Chief Executive Officer of Florida Housing.

(31) "Farmworker" means any laborer who is employed on a seasonal, temporary or permanent basis in the planting, cultivating, harvesting, or processing of agricultural or aquacultural products and who has derived at least 50% of his/her income in the immediately preceding 12 calendar months from such employment. "Farmworker" also includes a person who has retired as a laborer due to age, disability, or illness. In order to be considered retired from farm work due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker immediately preceding retirement. In order to be considered retired from farm work due to disability or illness, it must be:

(a) Medically established that the person is unable to be employed as a Farmworker due to such disability or illness; and

(b) Established that he or she had previously met the definition of Farmworker.

(32) "Farmworker Development" means a Development:

(a) Of not greater than 160 units, at least (60)% of the total residential units of which are occupied or reserved for Farmworker Households;

(b) For which independent market analysis demonstrates a local need for such housing, and;

(c) For which the Applicant has developed a detailed plan to attract, serve and keep the targeted population.

(33) "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at time of occupancy.

(34)~~(31)~~ "Final Board Approval" means formal action by the Board of Directors to adopt a resolution to award a portion of Florida Housing's State Bond Allocation to a Development and which triggers preparation of ~~final~~ Program Documents.

(35) "Final Credit Underwriting" means an in-depth analysis of post-cure period information and all documents submitted in connection with the Application to produce the Credit Underwriting Report.

(36)~~(32)~~ "Financial Advisor" means, with respect to an issue of Bonds, a professional who is either under contract to Florida Housing or is engaged by the Applicant who advises on matters pertinent to the issue, such as structure, timing, marketing, fairness of pricing, terms, bond ratings, cash flow, and investment matters.

(37)~~(33)~~ "Financial Beneficiary" means one who is to receive a financial benefit of:

(a) 3% or more of T~~t~~otal Development Cost (including deferred fees) if T~~t~~otal Development Cost is $5 million or less; or

(b) 3% of the first $5 million and 1% of any costs over $5 million (including deferred fees) if total Development Cost is greater than $5 million.

This definition includes any party which meets the above criteria, such as the Developer and its principals and principals of the Applicant entity. The definition does not include third party lenders, third party management agents or companies, housing credit syndicators, credit enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or building contractors whose total fees are within the limit described in Rule 67-21.002(35), F.A.C.

(38)~~(34)~~ "Florida Housing" or "FHFC" means the Florida Housing Finance Corporation as created by the Act.

(39)~~(35)~~ "General Contractor" means an entity duly licensed in the State of Florida meeting the following criteria:

(a) The Development superintendent is an employee of the General Contractor and the costs of that employment are charged to the general requirements line item of the General Contractor's budget;

(b) The Development construction trailer and other overhead is paid directly by the General Contractor and charged to general requirements;

(c) Building permits are issued in the name of the General Contractor;

(d) Payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit or other guarantee acceptable to Florida Housing) is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co. and none of General Contractor duties can be subcontracted; and

(e) No more than 20 percent of the construction cost is sub-contracted to any one entity.

(40)~~(36)~~ "General Contractor's Fee" means a fee inclusive of general requirements, profit and overhead. General Contractor's Fees shall be limited to 14 percent of hard costs, excluding any hard cost contingencies. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest as defined herein between the Applicant and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements. Additionally, fees shall be allowed to be paid only to the person or entity that actually meets the definitional requirements to be considered a General Contractor. Florida Housing shall not allow fees for duplicative services or duplicative overhead.

(41)~~(37)~~ "Good Faith Deposit" means a total deposit equal to one percent of the Loan amount reflected in the Loan Commitment paid by the Applicant to Florida Housing ~~which shall be applied toward the Cost of Issuance Fee, and of which one-half is payable not later than 7 calendar days after the Board approves the final Credit Underwriting Report and the balance is payable at the time of execution of the Loan Commitment~~. If the Good Faith Deposit is exhausted, the Applicant shall be required to pay, within three days of notice, an additional deposit to ensure payment of the expenses associated with the processing of the Application, the sale of the Bonds, including document production and the securitization of the Loan. The Good Faith Deposit shall be remitted by certified check or wire transfer.

(42)~~(38)~~ "Housing Credit Program" means the federal tax credit program administered by FHFC in accordance with Section 42 of the Code and Rule Chapter 67-48, F.A.C.

(43)~~(39)~~ "HUD Risk Sharing Program" means the demonstration program authorized by Section 542 of the Housing and Community Development Act of 1992.

(44)~~(40)~~ "Identity of Interest" means, for the purpose of the HUD Risk Sharing Program, any person or entity that has a one percent or more financial interest in the Development and in any entity providing services for a fee to the Development. Unless otherwise excluded, persons or entities that share in the net profits of the Development shall be construed as having an ownership interest to the extent that they share in Development or project revenues. The Identity of Interest definition shall not apply to the tax credit syndicator, limited partner investors, or professionals who are retained pursuant to a negotiated fee arrangement consistent with industry standards and which fee arrangement does not incorporate the payment of fees from Development operating revenues.

(45)(41) "Income Certification," "Tenant Income Certification" or "Form TIC-1" means that Form TIC-1 which is adopted and incorporated herein by reference, revised February 1999, as same may be modified from time-to-time by action of the Board, and which shall be used to certify the income of all tenants residing in a Set-Aside unit in a Development.

(46)(42) "Issuer" means the Florida Housing Finance Corporation.

(47)(43) "Land Use Restriction Agreement" means that agreement among Florida Housing, the Bond Trustee and the Applicant which sets forth certain restrictions on the use of the Development to comply with the Code, the Act, this Rrule, the policies of Florida Housing and any requirements of a Credit Enhancer. Such document may also be known as the "LURA" or the "Regulatory Agreement" and shall be recorded prior to the Mortgage in the public records in the county where the Development is located, unless the Board or the Executive Director expressly agrees to subordinate the LURA to facilitate the financing.

(48)(44) "Loan" means the loan made by Florida Housing to the Applicant from the proceeds of the Bonds issued by Florida Housing.

(49)(45) "Loan Agreement" means the Loan or Program Document wherein Florida Housing and the Applicant specify the terms and conditions upon which the proceeds of the Bonds shall be loaned, and the terms and conditions for repayment of the Loan.

(50)(46) "Loan Commitment" means the Loan or Program Document executed by Florida Housing and the Applicant after the issuance of a favorable Credit Underwriting Report and filed with Florida Housing along with full payment of the Good Faith Deposit before substantive work commences on Program Documents other than the Loan Commitment. The Loan Commitment defines the conditions under which Florida Housing agrees to lend the proceeds of the Bonds to the Applicant for the purpose of financing all or a portion of a Development.

(51)(47) "Local Government" means a unit of local general-purpose government as defined in Section 218.31(2), Florida Statutes (1995).

(52)(48) "Local Public Fact Finding Hearing" means a public hearing requested by any person residing in the county or municipality in which the proposed Development is located and which is conducted by Florida Housing for the purpose of receiving public comment or input regarding the financing of a proposed Development with Bonds by Florida Housing.

(53)(49) "Lower Income Tenants" means individuals or families whose annual income does not exceed either 50 percent or 60 percent (depending on the minimum Set-Aside elected) of the area median income as determined by HUD with adjustments for household size. In no event shall occupants of a Development unit be considered to be Lower Income Tenants if all the occupants of a unit are students ([as defined in Section 151(c)(4) of the Code)] or if the tenants do not comply with the provisions of the Code defining Lower Income Tenants. (See Section 142 of the Code.) If Taxable Bonds (other than Taxable Bonds issued simultaneously with Tax-Exempt Bonds, in which case the above referenced provisions apply) or Bonds that do not require State Bond Allocation are being used to finance the Development, Lower Income Tenants shall be defined as an individual or family with an Annual Household Income not in excess of 80 percent of the state or county median income, whichever median income is higher. In the event Bonds are issued on behalf of a corporation organized under Section 501(c)(3) of the Code, the Set-Aside shall not be less than that required by the 501(c)(3) documents.

(54) "Master Waiting List" shall mean the list of ranked applications established after informal appeals and maintained in accordance with the ranking criteria identified in the Application.

(55)(50) "Mortgage" means the instrument securing the Loan which creates a first, co-equal or acceptable subordinate lien on the Development, subject to permitted encumbrances.

(56)(51) "Mortgage Loan" means the Loan secured by the Mortgage and evidenced by a Note or Mortgage Note.

(57)(52) "Notice of Funding Availability" or "NOFA" means the notification published in the Florida Administrative Weekly which shall contain the deadline for submission of Applications, the estimated funding amount, and any targeting requirements. Said notice shall be published at least 30 days prior to the deadline contained in such notice. The NOFA shall be mailed to all entities entries on FHFC's Program mailing list.

(58)(53) "Principal" means any individual acting in their individual capacity or acting as president, vice president, treasurer or secretary, member of the board of directors or the legal or beneficial owner of 10% or more of any class of stock of a corporation which is a general partner of a limited partnership Applicant or Developer; or the general partner of a limited partnership that is the general partner of a limited partnership Applicant or Developer; or is a partner in a general partnership or joint venture acting alone or as a part of another entity that is an Applicant or Developer. With respect to a limited liability company either acting alone or as a part of another entity that is an Applicant or Developer, each manager and each member is a principal. With respect to a registered limited liability partnership either acting alone or as a member of another entity that is an Applicant or Developer, each partner is a principal. With respect to a trust either acting alone or as a part of another entity that is an Applicant or Developer, any individual or entity owning 10% or more of the beneficial interest in the trust is a principal. A General Contractor,

mMmanagement aAgent, aArchitect/eEngineer, aAttorney that participates on an arms-length fee arrangement are not considered Principals of the Applicant entity.

(59)(54) "Private Placement" or "Limited Offerings" means the sale of Florida Housing Bonds directly or through an uUnderwriter or pPlacement aAgent to 35 or fewer initial purchasers who are not purchasing the Bonds with the intent to offer the Bonds for retail sale and who are Qualified Institutional Buyers. Private placements may only be used to finance Developments as specified in Section 67-21.013, F.A.C.

(60)(55) "Program" means Florida Housing's Multifamily Mortgage Revenue Bond Program.

(61)(56) "Program Documents or Loan Documents" means the Loan Commitment, Loan Agreement, Note, Mortgage, Credit Enhancement or Guarantee Instrument, Land Use Restriction Agreement, Trust Indenture, Preliminary and Final Official Statements, Intercreditor Agreement, Assignments, Bond Purchase Agreement, Compliance Monitoring Agreement, Mortgage Servicing Agreement and such other ordinary and customary documents necessary to issue and secure repayment of the Bonds and Mortgage, sufficient to protect the interests of the Bond owners and Florida Housing and to protect the tax-exempt status of the Bonds.

(62)(57) "Public Policy Criteria" means the requirements and guidelines established by Florida Housing and set forth in 67-21.004, F.A.C. These requirements shall be incorporated in the Loan Commitment and Program Documents. Such Public Policy Criteria have been adopted for the purpose of accomplishing the programmatic goals of the Code, Florida Housing and the Act.

(63)(58) "Qualified Institutional Buyer" is sometimes called a "sophisticated investor" and specifically includes the following:

(a) Any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers that, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity:

1. Any insurance company as defined in section 2(13) of the Securities Exchange Act;

2. Any investment company registered under the Investment Company Act or any business development company as defined in section 2(a)(43) of that Act;

3. Any Small Business Investment Company licensed by the U.S. Small Business Administration under sections 301(c) or (d) of the Small Business Investment Act of 1958;

4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees;

5. Any employee benefit plan within the meaning of Ttitle I of the Employee Retirement Income Security Act of 1974;

6. Trust funds of various types, except for trust funds that include participants' individual retirement accounts or H.R. 10 plans;

7. Any business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940;

8. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (except a bank or savings and loan defined in Section 3(a)(2) or 3(a)(5)(A) of the Securities and Exchange Act, or a foreign bank or savings and loan or similar institution), partnership, Massachusetts or similar business trust, or any investment adviser registered under the Investment Advisors Act.

(b) Any dealer registered under Section 15 of the Securities Exchange Act, acting on its own behalf or on the behalf of other Qualified Institutional Buyers who in the aggregate own and invest at least $10 million of securities of issuers not affiliated with the dealer (not including securities held pending public offering).

(c) Any dealer registered under section 15 of the Securities Exchange Act acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

(d) Any investment company registered under the Investment Company Act that is part of a family of investment companies that together own at least $100 million in securities of issuers, other than companies with which the investment company or family of investment companies is affiliated.

(e) Any entity, all of whose equity owners are Qualified Institutional Buyers.

(f) Any bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Exchange Act, or foreign bank or savings and loan or similar institution that, in aggregate with the other Qualified Institutional Buyers, owns and invests in at least $100 million in securities of affiliates that are not affiliated with it and that has an audited net worth of at least $25 million as demonstrated during the 16 to 18 months prior to the sale.

(64)(59) "Qualified Census Tract" means any census tract which is designated by the Secretary of Housing and Urban Development as having 50% or more of the households at an income which is less than 60% of the area median gross income in accordance with Section 42(d)(5), of the Code.

(65)(60) "Qualified Lending Institution" means any bank or trust company, mortgage banker, savings bank, credit union, national banking association, savings and loan association, building and loan association, insurance company, the Florida Housing Development Corporation, or other financial institution authorized to transact business in the State of Florida and which customarily provides service or otherwise aids in the financing of mortgages on real property in Florida.

(66)(61) "Qualified Project Period" means the period of time, as provided in the Code, that a Development financed with Tax-exempt Bonds must comply with the Lower Income Tenant Set-Aside.

(67) "Rehabilitation Development" means a Development, the Rehabilitation Expenditures with respect to which equal or exceed 15% of the portion of the cost of acquiring such Development to be financed with Bond proceeds. "Rehabilitation Expenditures" has the meaning set forth in Section 147(d)(3) of the Code.

(68)~~(62)~~ "Set-Aside" means the occupancy requirements or restrictions for Developments financed by Florida Housing. Such Set-Aside requirements shall be set forth in the Land Use Restriction Agreement and other such Program Documents as are deemed necessary by Florida Housing. The minimum ~~minimal~~ Set-Aside requirements are as follows:

(a) For Taxable Bonds – 20 percent or more of the residential units in the Development shall be occupied or held available for occupancy by one or more persons or a family whose Annual Household Income does not exceed 80 percent of the State or county median income, whichever median income is higher, provided, however, that if such taxable bonds are being issued in connection with Tax-exempt Bonds, the requirement of (b) below shall govern.

(b) For Tax-exempt Bonds – 20 percent or more of the residential units in the Development shall be occupied or held available for occupancy by one or more persons or a family whose Annual Household Income does not exceed 50 percent of the State or county median income, whichever is higher, or 40 percent or more of the residential units in the Development shall be occupied by or held available for one or more persons or a family whose Annual Household Income does not exceed 60 percent of the State or county median income, whichever is higher, or that which is required by the Code at the time of issuance of the Bonds or required by Florida Housing to meet its programmatic purposes.

(69)~~(63)~~ "Special Counsel" means the attorney, attorneys, law firm or law firms retained by Florida Housing to serve as counsel to Florida Housing or as Disclosure Counsel pursuant to a contract between the Special Counsel and Florida Housing.

(70)~~(64)~~ "State Board of Administration" or "SBA" means the State Board of Administration created by and referred to in s. 9, Article XII of the State Constitution.

(71)~~(65)~~ "State Bond Allocation" means the allocation of the State private activity bond volume limitation pursuant to Chapter 159, Part VI, Florida Statutes ~~F.S.~~, administered by the Division of Bond Finance and allocated to Florida Housing for the issuance of its Tax-exempt Bonds.

(72)~~(66)~~ "Student" means an individual who is considered a full-time student by the educational institution being attended or will be a full-time student at an educational institution with regular facilities and students other than correspondence school, during five months of the certification year.

(73)~~(67)~~ "Taxable Bonds" means those Bonds on which the interest earned is included in gross income of the owner for federal income tax purposes pursuant to the Code.

(74)~~(68)~~ "Tax-exempt Bonds" means those Bonds on which all or part of the interest earned is excluded from gross income of the owner for federal income tax purposes pursuant to the Code.

(75)~~(69)~~ "TEFRA Hearing" means a public hearing held pursuant to the requirements of the Code and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), at which members of the public or interested persons are provided an opportunity to present evidence or written statements or make comments regarding a requested application for Tax-exempt financing of a Development by Florida Housing.

(76)~~(70)~~ "Total Development Cost" means the sum total of all costs incurred in the construction of a Development, all of which shall be subject to the approval by the Credit Underwriter and shall be approved by Florida Housing as reasonable and necessary. Such costs may include, but not be limited to:

(a) The cost of acquiring real property and any building thereon, including payment for options, deposits, or contracts to purchase properties.

(b) The cost of site preparation, demolition, and development.

(c) Any expenses relating to the issuance of Tax-exempt Bonds or Taxable Bonds by Florida Housing related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, Financial Advisors and Florida Housing. The fees for attorneys and Financial Advisors are limited pursuant to Rule 67-21.002(25), F.A.C.

(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, ad valorem tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction or the Development.

(f) The cost of the construction, rehabilitation, and equipping of the Development.

(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services.

(h) Expenses in connection with initial occupancy of the Development.

(i) Allowances established by Florida Housing for working capital or contingency reserves, and reserves for any anticipated operating deficits during the first two years after completion of construction of the Development.

(j) The cost of other such items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for Bonds.

(77) "Urban In-Fill Development" means a Development (i) in a site or area that is targeted for in-fill housing or neighborhood revitalization by the local, county or state

government as evidenced by its inclusion in a HUD Empowerment/Enterprise Zone, HUD-designated qualified census tracts, Florida Enterprise Zone, areas designated under a Community Development Block Grant (CDBG), areas designated as HOPE VI or Front Porch Florida Communities, and (ii) in a site which is located in an area that is already developed and part of an incorporated area or existing urban service area.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.503, 420.507, 402.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 2-6-97, 1-7-98, Formerly 9I-21.002, Amended 1-26-99, 11-14-99, _____.

67-21.003 Application and Selection Process for Loans.

(1) Florida Housing hereby adopts by reference the Application and its appendices (Form MFMRB2001 ~~MFMRB2000~~) which provide the instructions and forms necessary for submission of an Application for participation in the Program. Said Application package may be obtained from Florida Housing by contacting the Multifamily Bond Program Administrator at 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301. A detailed proposed timeline including deadlines for receipt of information necessary to complete the final Credit Underwriting, shall be provided to all Applicants, as soon as practical, after the cycle has closed. The detailed timeline shall include the deadlines which must be met for those Applicants using either/or ~~both of~~ Florida Housing Guarantee Fund and the HUD Risk-Sharing programs, and may be modified by action of the Board.

(2) An Application may be submitted at any time; however, priority in reviewing and ranking Applications for award of State Bond Allocation for the current ~~a~~ calendar year 2001 shall be given to Applications received by Florida Housing by the deadline specified in the Notice of Funding Availability published in the Florida Administrative Weekly and which received a satisfactory CTC based upon the initial Application, with permitted changes as specified in 67-21.003(4). Any Applications received after the noticed deadline shall not be processed, reviewed, or ranked in any way until such time as the list of Applications received by the noticed deadline has been exhausted. No modifications to Applications will be accepted after the noticed deadline, except for supplemental information to correct identified deficiencies as referenced in Section 67-21.003(4) and except for changes permitted by Section 67-21.003(19). ~~Florida Housing shall set forth in said notice any election to reserve up to 10% of its private activity bond allocation for multifamily revenue bonds for use solely for Demonstration Developments pursuant to rule promulgated by Florida Housing or in connection with HUD multifamily developments.~~ Developments wholly owned by not-for-profit corporations qualifying under Section 501(c)(3) of the Code which are not requesting State Bond Allocation are governed by Rule 67-21.019, F.A.C.

(3) All Applications must be complete, accurate, legible and timely when submitted, and must be accompanied by the applicable Application Fee which includes the estimated costs for the TEFRA and the CTC, ~~Limited Restricted Appraisal, and Market Study~~. An original and three photocopies shall be submitted, except if a ~~Development is proposing to use Florida Housing's Guarantee Fund Program, an original and four photocopies shall be submitted; or if a~~ Development is proposing to participate in HUD Risk Sharing, an original and four ~~five~~ photocopies shall be submitted.

(4) Upon receipt of an Application, all required copies and all applicable fees, staff shall assign a tracking number and a Credit Underwriter for each Application. The Applications shall then be forwarded to the assigned Credit Underwriter for the CTC. Said draft CTC shall be completed by the Credit Underwriter within twenty-one (21) days after receipt from Florida Housing. Florida Housing shall cause a review committee selected by Board to review the draft CTCs, including any noted deficiencies. After modification, if any, of such draft CTC based upon the actions of the review committee, the Credit Underwriter shall forward to each Applicant a list of any deficiencies identified in the CTC. The Applicant will thereupon have seven calendar days from the receipt of such deficiency list to correct any deficiencies, provided that the following information must be clearly provided in the initial Application and may not be modified or supplemented:

(a) County,

(b) Allocation request,

(c) Number of units,

(d) Whether the proposed Development is an Elderly Development, Farmworker Development, Rehabilitation Development, or an Urban In-Fill Development,

(e) The public policy criteria selected and

(f) The proposed financing structure (whether a private placement or credit enhancement, etc.),

(g) The Credit enhancer or,

(h) Any other factor which would otherwise affect an Applicant's ranking. Applicant will not be provided any additional opportunity to cure any deficiency after the expiration of the seven calendar day cure period. Failure to cure any deficiency shall result in such Application failing CTC.

(5) Applications which are deemed by the Credit Underwriter and Florida Housing's review committee to have satisfactorily met the requirements of the Credit and Threshold Review Checklist set forth in the Application after the seven calendar day cure period referenced in Rule 67-21.003(4), shall be ranked by staff subject to review by the review committee using the criteria established by the Board pursuant to Rule 67-21.004, F.A.C.

(6) This initial ranking shall be transmitted to all Applicants along with notice of appeal rights. Following the completion of the informal appeal process, the resultant ranking shall be presented to the Board for approval along with the Hearing Officer's Recommended Orders, if any. The Board shall be asked to issue Acknowledgement Resolutions at this time.

(7) Based on the order of the ranked Applications after informal appeals and the availability of State Bond Allocation designated by the Board for multifamily housing, the Board shall designate those Applications to be offered the opportunity to enter final Credit Underwriting. Notwithstanding the rankings, a portion of the State Bond Allocation~~, at a minimum,~~ equal to the amount of allocation requested in any contested ~~applicant's~~ Program application, including applications from a previous cycle, shall be reserved by the Board for future allocation necessary to resolve administrative proceedings or legal proceedings with respect to Program private activity bond allocations. In the event any such administrative proceedings or legal proceedings remain outstanding on November 15, 2001, ~~June 1 of any year~~ allocation authority subject to any such prior reservation shall be released for application to the current ranked list of Applicants and a new reservation shall be made from the next available allocation authority. Any remaining allocation which as of November 16, 2001 is insufficient to fully fund the next ranked Application shall be offered to the next ranked Applicant, continuing down the Master Waiting List until sufficient to fully fund a proposed Development. Applicants shall be permitted to downsize their allocation request by up to 15% of the original allocation request for the purpose of becoming fully funded but may not reduce the number of units or the unit sizes in the development. Any unused allocation shall be carried over and applied to the 2002 calendar year allocation. ~~In the event any such administrative proceedings or legal proceedings remain outstanding on November 15 of any year, allocation authority subject to any such prior reservation shall be released for application to the current ranked list of Applicants and a new reservation shall be made from the next available allocation authority.~~ The Board may invite up to an additional five Developments into final Credit Underwriting beyond what is expected to be funded with the available State Bond Allocation designated by the Board for multifamily housing. Applicants shall be notified in writing of the opportunity to enter final Credit Underwriting. A detailed timeline for submitting required fees and information to the Credit Underwriter shall be included. Failure to meet the deadlines established by such timeline shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the Master Waiting List ~~ranked list~~. Applicants electing to proceed to final Credit Underwriting do so at their own risk. Any Applicant which declines invitation to final Credit Underwriting shall be removed from the ranked list.

(8) Applications which fail ~~do not receive a satisfactory~~ CTC or are received after the deadline shall remain unranked; however, if there is not a sufficient number of ranked Applications to use the available State Bond Allocation for the Program, Florida Housing shall notify all unranked Applicants and provide a period of 14 days for such Applicants to submit all necessary information and documents to the assigned Credit Underwriter to cure all deficient ~~unsatisfactory~~ items.

(9) At the conclusion of the 14 day cure period referenced in (8) above, the Credit Underwriter shall evaluate the additional information and determine if the Application now meets the requirements set forth in the Completeness and Threshold Review Checklist contained in the Application. This determination must be submitted to FHFC not later than 7 days after the end of the 14 day cure period.

(10) Applications that successfully complete the CTC, as accepted by Florida Housing after review by the review committee after the 14 day cure period referenced in (8) above shall be evaluated and ranked by staff subject to review by the review committee using the criteria established by the Board pursuant to Rule 67-21.004, F.A.C. This ranking shall be presented to the Board for approval and authorization of invitations to Credit Underwriting. In the event that time constraints preclude presentation of this ranking to the Board for approval and authorization of Credit Underwriting, staff shall offer Applicants the opportunity to enter Credit Underwriting at their own risk only to the extent that there is sufficient State Bond Allocation designated by the Board for multifamily housing to fully fund the proposed Developments.

(11) Florida Housing shall initiate TEFRA hearings on the proposed Developments whose Applications were received in response to the NOFA. Neither the TEFRA hearing, the invitation into final Credit Underwriting, nor the Acknowledgment Resolution obligate Florida Housing to finance the proposed Development in any way.

(12) Upon receipt of the Credit Underwriting Report, Florida Housing shall submit the Application to its Financial Advisor for a preliminary recommendation of the method of Bond Sale for each Development pursuant to Rule 67-21.0045, F.A.C.

(13) Proposed Developments that are ranked, but not selected by the Board to enter final Credit Underwriting, shall remain on the Master Waiting List ~~ranking list~~ in the event State Bond Allocation becomes available to fund additional Developments. If the current year's State Bond Allocation is insufficient to fully finance a Development, a new Application must be filed to be eligible for a future year's State Bond Allocation.

(14) Florida Housing shall notify the Applicant, in writing, of the Board's determination related to approval of the final Credit Underwriting Report and require that the Applicant submit one-half of the Good Faith Deposit within 7 calendar days. Developments designated for a portion of the current

year's State Bond Allocation shall be required to close at such time as set forth in such designation. In the event the loan does not close within the designated time frame for reasons other than acts of God, acts of war, riot or insurrection or other matters beyond the control of the Developer or Applicant and the closing date is not extended in writing by FHFC, then the State Bond Allocation shall be forfeited.

(15) Upon favorable recommendation of the final Credit Underwriting report and preliminary recommendation of the method of bond sale from Florida Housing's Financial Advisor, or from the staff, the Board shall designate by resolution the method of bond sale considered appropriate for financing. The Board shall consider authorizing the execution of the Loan Commitment and shall consider final Board approval reserving State Bond Allocation for a Development. Requests for Taxable Bonds shall be considered by the Board in an amount recommended by the Credit Underwriter. The Board shall also assign a bond underwriter, structuring agent, or Financial Advisor and any other professionals necessary to complete the transaction. Staff shall assign FHFC counsel as needed.

(16) Following receipt of one-half of the Good Faith Deposit, Florida Housing's assigned counsel shall begin documenting the terms of the transaction, including the Loan Commitment.

(17) Upon execution of a Loan Commitment Applicant shall pay the balance of the Good Faith Deposit and Florida Housing shall authorize the preparation of the required documents which shall include:

(a) Loan Agreement;

(b) Note;

(c) Mortgage;

(d) Guarantee Instrument Agreements, if any;

(e) Land Use Restriction Agreement;

(f) Trust Indenture;

(g) Preliminary and Final Official Statements, if any;

(h) Financial Monitoring Agreements;

(i) Compliance Monitoring Agreements; and

(j) Such other documents as are necessary to establish and secure the Mortgage Loan and the issuance of the Bonds.

(18) If any Applicant, an Affiliate of an Applicant or a partner of a limited partnership is determined by Florida Housing ~~the Corporation~~ to have engaged in fraudulent actions or to have deliberately misrepresented information within the current Application or in any previous Applications for financing or Housing Credits administered by the Corporation, the Applicant and any of Applicant's Affiliates shall be ineligible to participate in any program administered by the Corporation for a period of up to two ~~fiscal~~ years, which shall begin from the date the Board approves disqualification of the Applicant's Application. Such determination shall be either pursuant to a factual hearing before the Board at which the Applicant shall be entitled to present evidence or as a result of a finding by a court of law or recommended order of an administrative law judge.

(19) If an Applicant or any Principal or Financial Beneficiary of an Applicant or a Developer has any existing developments participating in any Corporation programs that remain in non-compliance with the Code or the applicable Rule Chapter and the cure period granted for correcting such non-compliance has ended, at the time of submission of the Application or at the time of issuance of a final credit underwriting report, the requested allocation will be denied and the Applicant and the affiliates of the Applicant or Developer will be prohibited from new participation in any of the programs for a period of one year and until such time as all of their existing developments participating in any Corporation programs are in compliance.

(20)~~(19)~~ Prior to instituting any change~~, including change orders and other changes~~ resulting in any modification or deviation from the final Credit Underwriting Report as approved by the Board~~,~~ or from the provisions of the Land Use Restriction Agreement, Applicant shall notify Florida Housing ~~Finance Corporation~~. All changes to the Development plans, tenant programs and other specifications which were used to describe the Development in accordance with this Rule Chapter and MFMRB2001 ~~MFMRB2000~~ and represented to the Credit Underwriter and Development servicer are affected by this prior notification requirement. Failure to obtain Florida Housing's ~~FHFC's~~ approval prior to implementing any such changes shall result in the Applicant and any of the Applicant's Affiliates being ineligible to participate in any program administered by the Corporation for a period of two ~~fiscal~~ years, which shall begin from the date the Board approves disqualification of the Applicant and its Application.

(21)~~(20)~~ At no time during the Application, CTC, and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4),(13),(14),(18),(19),(20),(21),(24), 420.508 FS. History–New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.003, Amended 1-26-99, 11-14-99, _____.

67-21.0035 Applicant Administrative Appeal Procedures.

(1) Following the Credit Underwriter's completion and Florida Housing's review and acceptance of the CTC, a notice regarding whether or not the Application received a satisfactory CTC shall be provided to each Applicant.

(2) Applicants who wish to contest the decision relative to the CTC for their own Application must petition for a review of the decision in writing within 21 calendar days of the date of the notice. The request must specify in detail the basis for the appeal and the issues to be appealed. Unless the appeal involves disputed issues of material fact, the appeal shall be conducted on an informal basis. Florida Housing staff shall

review the appeal and shall provide to the Applicant a written position paper which indicates whether a change will be made regarding each issue appealed. If the Applicant disagrees with Florida Housing's position paper, the Applicant shall be given an opportunity to participate in an informal administrative hearing. If the appeal raises issues of material fact, a formal hearing shall be conducted pursuant to Section 120.57(1), Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right of the Applicant to such an appeal.

(3) For purposes of 67-21.035(2) above, the written notification, petition, or request for review is deemed timely filed when it is received by the FHFC prior to 5:00 PM Tallahassee, Florida time of the last day of the designated time period at the following address: Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, Attention: Corporation Clerk. For the purpose of this subsection, "received" means delivery by hand, U.S. Postal Service, or other courier service, or by facsimile. Petitions or requests for review that are not timely filed shall constitute a waiver of the right of the Applicant to such a review.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4),(13),(14),(18),(19),(20),(21),(24), 420.508 FS. History–New 11-14-99, Amended _____.

(Substantive rewording of Rule 67-21.004 as follows. See Florida Administrative Code for present test.)

67-21.004 Federal Set-Aside ~~and Public Policy~~ Requirements.

Each Application shall designate one of the following minimum federal Set-Aside requirements that the Development shall meet commencing with the first day on which at least 10 percent of the units in the property are occupied:

(1) Twenty percent of the residential units in the Development shall be occupied by or reserved for occupancy by one or more persons or a family whose Annual Household Income does not exceed 50 percent of the area median income limits adjusted for family size (the 20/50 Set-Aside); or

(2) Forty percent of the residential units in the Development shall be occupied by or reserved for occupancy by one or more persons or a family whose Annual Household Income does not exceed 60 percent of the area median income limits adjusted for family size, (the 40/60 Set-Aside).

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4),(6),(12),(13),(14),(18),(19),(21), 420.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 9-25-96, 2-6-97, 1-7-98, Formerly 9I-21.004, Amended 1-26-99, 11-14-99, _____.

67-21.0041 Public Policy Criteria Requirements.

(1) All Applicants shall commit to provide at least the following percentages of each unit size in excess of one bedroom and studio units in the Development to be occupied or reserved for occupancy by Lower Income Tenants in proportion to the minimum Set-Aside requirement elected:

(a) if the Development satisfies the 20/50 Set-Aside, 20 percent of such units at or below 50 percent of area median gross income limit, adjusted for family size and determined in accordance with Section 142(d) of the Code, or

(b) If the Development satisfies the 40/60 Set-Aside, 40 percent of such units at or below 60 percent of area median gross income limit, adjusted for family size and determined in accordance with Section 142(d) of the Code, or

(c) In the case of Developments financed solely through the issuance of Taxable Bonds (or for specific cases pursuant to the Code, Tax-exempt Bonds), 20 percent of such units at or below 80 percent of state or county median income limit, whichever is higher, with family size adjustment (or for Developments financed prior to the Code, as amended, without family size adjustment). The foregoing shall not apply to Developments which are also financed with tax-exempt debt in which at least 50 percent of the Bonds issued are tax-exempt in nature.

(2) In addition to satisfying 67-21.004(1) above, a Development Application shall reflect the Applicant's commitment to satisfy a minimum of two of the Public Policy Criteria listed in a-g below.

(a) For Developments other than Elderly Developments, at least 20% of the units in the Development shall constitute three bedroom units or greater.

(b) For Developments other than Elderly Developments, provision of one or more of the following tenant programs identified in the Application: Homeownership Opportunity Program or After School Program for children.

(c) For Developments other than Elderly Developments, provision of two more of the following tenant programs identified in the Application: First Time Homebuyer Seminars, Literacy Training or Job Training.

(d) For Elderly Developments, provision of one or more of the following tenant programs identified in the Application: Meals or Private Transportation.

(e) For Elderly Developments, provision of one or more of the following tenant programs identified in the Application:

1. Daily Activities,

2. Assistance with Light Housekeeping, and

3. Shopping and/or Laundry.

(f) For Elderly Developments, provision of one or more of the following tenant programs identified in the application:

1. Residence Assurance Check-In Program, and

2. Manager on-Call 24 Hours per day.

(g) For any Development, three or more of the following tenant programs identified in the Application: Health Care, Tenant Activities, Financial Counseling, Computer Lab, Day Care or Case Management/Resident Stabilization Services.

(h) For any Development, the Applicant's agreement to a Qualified Project Period that shall extend a minimum of 10 years beyond the period of time provided for in the Code, Section 142(d).

(3) All Public Policy Criteria and factors selected by the Applicant shall be verified beginning with Credit Underwriting and continuing through the Qualified Project Period. Any proposed changes to the Public Policy Criteria selected by the Applicant and identified in its Development Application may be only to other Public Policy Criteria set forth in Rule 67-21.004 and must be submitted to Florida Housing for prior approval. Florida Housing may grant such approval only if it would not alter the Application ranking.

(4) Initial consideration shall be given based on any or all of the criteria set forth below as shall be established by the Board and included in the Application and in such order of priority as set forth in the Application. Such criteria shall be incorporated in the Application as Appendix C.

(a) Developments with no other Florida Housing subsidy (Developments utilizing Florida Housing's Guarantee Fund, HUD Risk-Sharing, Predevelopment Loan Fund or SAIL to the extent specified in the Ranking Criteria shall not be considered as having a Florida Housing subsidy);

(b) The experience of the Developer or Applicant;

(c) Diversification of the Developers receiving funding in a given cycle;

(d) Diversification of the Developers receiving funding in previous cycles;

(e) Developments with the lowest dollar amount of State Bond Allocation per unit financed;

(f) Developments which benefit a specific population, county or other area of the state, including but not be limited to: Urban In-Fill Developments, Farmworker Developments, Rehabilitation Developments, and/or Elderly Developments;

(g) Developments which have special or unique value to a population targeted by the Board;

(h) Developments which target relief in areas of the state affected by a natural disaster;

(i) Developments with the lowest per-unit Developer and General Contractor fee;

(j) Developments with the lowest per unit cost;

(k) Developments with a commitment for credit enhancement;

(l) Developments with credit enhancement not constituting a private placement of Bonds; and

(m) Public Policy Criteria Selected by the Applicant.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4),(6),(12),(13),(14),(18),(19),(21), 420.508 FS. History–New _____.

67-21.0045 Determination of Method of Bond Sale.

(1) Florida Housing may sell Bonds for the purpose of financing a proposed Development through a negotiated sale, competitively bid sale or Private Placement. Prior to the sale of Bonds for a Development, the Board shall authorize a resolution specifying the method of sale.

(2) With the exception of Applicants who are seeking a Private Placement, following receipt of the Credit Underwriting Report, staff shall provide Florida Housing's Financial Advisor copies of such report for review and preparation of a written recommendation for the method of Bond sale.

(3) In preparing a recommendation for the method of sale to the Board, the Financial Advisor shall consider the following:

(a) The cost components of the sale, including interest costs and financing costs. The purpose of the analysis is to determine how these costs are affected by the alternative forms of sale.

(b) The anticipated credit and security structure of the transaction.

(c) The proposed financing structure of the transaction.

(d) The financing experience of the Applicant.

(e) Florida Housing's programmatic objectives.

(f) Market stability.

(g) Other factors identified by staff, counsel, or the Applicant.

(4) The written recommendation shall include an identification of the Development, the recommended method of sale, and a summary statement as to why the particular method of sale is being recommended.

(5) For those transactions that Florida Housing's Financial Advisor recommends as candidates for a competitive sale, Florida Housing shall engage a structuring agent. ~~[~~The Applicant may, at its sole expense, engage a Financial Advisor for the transaction. Any cost to the Applicant for the Financial Advisor in excess of $18,000 must be paid out of Developer Fee, in accordance with 67-21.002(25).~~]~~

(6) For those transactions that Florida Housing's Financial Advisor recommends for a negotiated sale, Florida Housing shall appoint an underwriter.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (13), (19), (20), 420.508, 420.509(12) FS. History–New 1-7-98, Formerly 9I-21.0045, Amended 1-26-99, 11-14-99, _____.

67-21.005 Selection of Qualified Lending Institutions as Credit Underwriters, Originators or Servicers.

(1) Qualified Lending Institutions shall be selected to underwrite, participate in the origination of and service eligible Mortgage Loans.

(2) The criteria which shall be considered for selection of Qualified Lending Institutions to participate in the Program shall include:

(a) The statutory requirement that the lending institution be a bank or trust company, mortgage banker, savings banker, savings bank, credit union, national banking association, building and loan association, insurance company, the Florida Housing Development Corporation, or other financial institution or governmental agency authorized to transact business in the State of Florida and which customarily provides service or otherwise aids in the financing of mortgages on real property located in the State of Florida.

(b) The credit underwriting and loan servicing experience and financial condition of the Qualified Lending Institution.

(c) Marketability of the Bonds using the Qualified Lending Institution as credit underwriter and servicer.

(d) Requirements of any rating agency rating the Bonds applicable to a credit underwriter and servicer.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502(20), 420.507(4),(6),(13),(18),(19),(20),(21), 420.508 FS. History–New 12-3-86, Amended 9-25-96, 1-7-98, Formerly 9I-21.005, Amended 1-26-99, Repromulgated 11-14-99, _____.

67-21.006 Development Requirements.

A Development shall at a minimum meet the following requirements or an Applicant shall be able to certify that the following requirements shall be met with respect to a Development:

(1) Must provide safe, sanitary and decent multifamily residential housing for lower, middle and moderate income persons or families.

(2) Must be owned, managed and operated as a Development to provide multifamily residential rental property comprised of a building or structure or several proximate buildings or structures, each containing four or more dwelling units and functionally related facilities, in accordance with section 142(d) of the Code.

(3) All of the Development shall consist of similar units, containing complete facilities for living, sleeping, eating, cooking and sanitation for a single person or family.

(4) None of the units in the Development shall be used on a transient basis, nor shall they be knowingly leased for a period of less than 180 days unless a determination is made by Florida Housing that there is a specific need in that particular area for leasing arrangements of less than 180 days, but in no event shall a lease be for a period less than 30 days, nor shall a Development be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home or rest home or trailer court or park.

(5) All of the dwelling units shall be rented or shall be available for rent on a continuous basis to members of the general public, and the Applicant shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be occupied in compliance with the Code or are being held for Elderly Persons and Farmworkers ~~older persons in accordance with the Federal Fair Housing Act and approved by Florida Housing~~.

(6) The Applicant shall have no present plan to convert the Development to any use other than the use as a residential rental property.

(7) None of the units shall at any time be occupied by the owner of the Development or an individual related to the owner as such terms are defined by the Code; provided, however, that in Developments containing more than 50 residential units, such owner or related person may occupy up to one unit per each 100 units in a Development and such owner or related person must reside in a unit that is in a building or structure which contains at least five residential units.

(8) Commencing with the date on which at least 10 percent of the units in the Development are occupied:

(a) At least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal Set-Aside, of the occupied and completed residential units in the Development shall be occupied by Lower Income Tenants, prior to the satisfaction of which no additional units shall be rented or leased, except to an individual or family that is also a Lower Income Tenant;

(b) All of the Public Policy Criteria selected in the Application must be met; and

(c) After initial rental occupancy of such residential units by Lower Income Tenants, at least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal Set-Aside, of the completed residential units in the Development at all times shall be rented to and occupied by Lower Income Tenants as required by Section 142(d) of the Code, if the Development is financed with the proceeds of Tax-exempt Bonds, or as required by the Act, if the Development is financed with the proceeds of Taxable Bonds, or held available for rental if previously rented to and occupied by a Lower Income Tenant.

(9) The Applicant shall obtain and maintain on file income certifications from each Lower Income Tenant immediately prior to initial occupancy and at least annually thereafter.

(10) The Applicant shall not take, permit, or cause to be taken any action which would adversely affect the exemption from federal income taxation of the interest on Tax-exempt Bonds, nor shall the Applicant fail to take any action which is necessary to preserve the exemption from federal income taxation of the interest on Tax-exempt Bonds.

(11) The Applicant shall take such action or actions as shall be necessary~~,~~ to comply fully with the Code, Florida Statutes, and Florida Housing Rules.

(12) The Applicant shall execute or cause to be executed a Loan Agreement, Mortgage and such Credit Enhancement or Guarantee Instruments as shall be necessary to secure the Bonds.

(13) The Applicant may limit the leasing of units in a Development to Elderly Persons or Farmworkers as permitted hereby ~~older persons or those persons who qualify pursuant to the Federal Fair Housing Act in conjunction with the required income restrictions~~.

(14) In the event that the Applicant has determined that the market no longer supports the Development as Elderly Housing and desires to rent to younger persons or families, the following criteria must be met:

(a) A viable marketing plan is submitted to and is acceptable to Florida Housing showing a good faith effort to market the unit as Elderly Housing.

(b) The Applicant demonstrates that a good faith effort was made to lease the unit as Elderly Housing and that such effort was made for at least six months after the certificate of occupancy for the relevant unit was issued.

(c) The Applicant has requested and received Board approval.

(15) The Applicant and Developer of a proposed rehabilitation Development shall make every effort to rehabilitate existing housing (i) without displacing existing tenants or (ii) by temporarily moving existing tenants to unaffected units within the Development until the renovation of affected units are completed.

(16) The owner of a Development must notify Florida Housing of an intended change in the management company. Florida Housing must approve, pursuant to Section 67-21.016(3), F.A.C., the Applicant's selection of a management agent prior to such company assuming responsibility for the Development. The Applicant's authorized representative must attend a Florida Housing-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(17) The Applicant shall use cost certifications with respect to each Development as required by the United States Department of Housing and Urban Development ("HUD") in connection with Developments financed by HUD, including the HUD Risk Sharing Program.

(18) The Applicant shall provide annually to the Trustee not later than 120 days after the end of the Applicant's fiscal year, audited financial statements on the Development and any other information required by Florida Housing to comply with continuing disclosure requirements imposed by law.

(19) Unless otherwise approved by the Board, Cross-collateralization shall not be allowed.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(9),(11),(14),(18),(19),(20),(21), 420.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 9-25-96, 1-7-98, Formerly 9I-21.006, Amended 1-26-99, 11-14-99, _____.

67-21.007 Fees.

Florida Housing shall collect the following fees and charges in conjunction with the Program:

(1) Application Package Fee: Each Applicant must obtain an Application package from Florida Housing. A fee of $60 shall be payable to Florida Housing by any person requesting a copy of the Application package, and said fee must be received by Florida Housing prior to the issuance of an Application package.

(2) Application Fee: At the time of submission of the Application, Applicants shall submit a non-refundable Application fee to Florida Housing in the amount of $4,500 ~~11,500~~. This fee includes the minimum estimated costs for the ~~Limited Restricted Appraisal, Market Study,~~ Completeness and Threshold Check~~,~~ and the TEFRA Fee. If actual costs exceed estimated costs for these items, Applicant shall be responsible for payment of the balance due as invoiced.

(3) TEFRA Fee: This fee is included in Application fee. $500 of the Application Fee shall be applied to the actual cost of publishing required newspaper advertisements and Florida Administrative Weekly notices of TEFRA hearings. If the actual cost of the required publishing exceeds $500.00, Applicant shall be invoiced for the difference. If a Local Public Fact Finding Hearing is requested, the Applicant shall be responsible for payment of any fees incurred by Florida Housing. If the first TEFRA approval period has expired and second TEFRA notice and hearing is required, Applicant is responsible for all costs associated with the additional TEFRA process.

(4) Final Credit Underwriting And Appraisal Fee: Applicants shall submit the required non-refundable final Credit Underwriting and Appraisal Fee for each Development to the Credit Underwriter designated by Florida Housing within seven calendar days of the date of the invitation by Florida Housing to enter the final credit underwriting process and prior to final credit review by the Credit Underwriter. The Final Credit Underwriting Fee shall be determined pursuant to a contract between Florida Housing and the Credit Underwriter.

(5) Good Faith Deposit: The Applicant shall pay a total deposit equal to one percent of the aggregate principal amount of proposed Taxable and Tax-Exempt Bonds ~~Bond Amount~~ to Florida Housing, which deposit may be applied toward the Cost of Issuance Fee. The Good Faith Deposit is payable in two equal installments: the first installment (one-half of one percent) is due within seven calendar days of the date the Board approves the final Credit Underwriting Report. The balance is payable no later than the date when the Applicant executes the Loan Commitment ~~which shall be not later than 5 calendar days from receipt of the Loan Commitment~~. In the event the Loan does not close, the unused portion of the Good Faith Deposit shall be refunded to the Applicant. Notwithstanding the foregoing, the Applicant is responsible for all expenses incurred in preparation for loan closing. Any and all costs of FHFC will be deducted from the Good Faith Deposit prior to refunding unused funds to the Applicant. In

the event that additional invoices are received by FHFC subsequent to a determination that the Loan will not close and refunding the unused funds to the Applicant, which invoices relate to costs incurred prior to such determination and refunding, Applicant shall be responsible for payment of the balance due as invoiced.

(6) Cost of Issuance Fee: Florida Housing shall require Applicants or participating Qualified Lending Institutions selected for participation in the Program, to deliver to Florida Housing, or, at the request of Florida Housing, directly to the Trustee, before the date of delivery of the Bonds, a Cost of Issuance Fee in an amount determined by Florida Housing to be sufficient to pay the costs and expenses relating to issuance of the Bonds, which amount shall be deposited into an account to be held by the Trustee. Florida Housing shall provide the Applicant with a good faith estimate of the Cost of Issuance Fee prior to closing. The Applicant shall pay all costs and expenses incurred by Florida Housing in connection with the issuance of the Bonds, the expenditure of the Loan proceeds, and provision of ~~a~~ Credit Enhancement, if any, even if such costs and expenses ~~may~~ exceed the Cost of Issuance Fee. Any amounts remaining in this account at the time the balance is transferred and the account closed pursuant to the Trust Indenture shall be returned to the Applicant.

(7) HUD Risk Sharing Fees: Applicants also using the HUD Risk Sharing Program for the Development shall be responsible for associated fees, as follows:

(a) Format II Environmental Review Fee – The fee to be paid by the Applicant shall be determined by contract between Florida Housing and the environmental professional.

(b) Subsidy Layering Review Fee – The fee to be paid by the Applicant shall be determined by the contract between Florida Housing and the Credit Underwriter.

(c) HUD Endorsement Closing Docket Deposit – At closing, the Applicant shall pay a $10,000 deposit to Florida Housing to be held in escrow pending receipt of documentation required for completion of the HUD Endorsement Closing Docket. Said documentation shall be due no later than 60 days prior to the scheduled endorsement date. If all required documentation is complete and timely submitted, Florida Housing shall return the deposit and interest earned to the Applicant upon Florida Housing's receipt of the HUD Final Endorsement. If all required documentation is not timely submitted or is incomplete, Florida Housing shall retain a daily pro-rata share of the deposit in an amount equal to one-thirtieth of the initial deposit for each day the required documentation remains outstanding. The balance and interest earned, if any, shall be returned to the Applicant upon Florida Housing's receipt of the HUD Final Endorsement.

(d) Fees of the Florida Housing Finance Corporation Affordable Housing Guarantee Program pursuant to Rule 67-39, F.A.C.

(8) Compliance Monitoring Fees: The annual monitoring fee to be paid by the Applicant shall be determined by contract between Florida Housing and the monitoring agent.

(9) Permanent Loan Servicing Fees: The annual servicing fee to be paid by the Applicant shall be determined by contract between Florida Housing and the s~~S~~ervicer.

(10) Financial Monitoring Fees: The annual financial monitoring fee to be paid by the Applicant shall be determined by contract between Florida Housing and the monitoring agent.

(11) Other Florida Housing Program Fees:

(a) Housing Credit Fees – If Housing Credits are used for the Development, the Compliance Monitoring Fee for that program shall be collected from the Applicant in conjunction with the Compliance Monitoring F~~f~~ee for the Program.

(b) Florida Affordable Housing Guarantee Program Fees – If the Guarantee Program is used in the Development, the same fee schedule described in Rule 67-39, F.A.C., shall apply and be paid by the Applicant to Florida Housing.

(12) Development Cost Pro Forma: All of the fees set forth above with respect to the Program and other FHFC programs are part of the Total Development Cost. These costs must be included in the Development cost pro forma.

(13) Failure to ~~timely~~ pay any fee on or before ten days after the due date shall cause ~~the Development to be placed at the bottom of the ranking list and~~ no further processing towards the loan commitment ~~of the Application shall occur~~.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4),(19) FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.007, Amended 1-26-99, 11-14-99, _____.

67-21.008 Terms and Conditions of Loans.

(1) Each Mortgage Loan for a Development made by Florida Housing shall:

(a) Be evidenced by a properly executed Note or other evidence of indebtedness and be secured by a properly recorded Mortgage;

(b) Provide for a fully amortized payment of the m~~M~~ortgage l~~L~~oan in full beginning on the earlier of 24 months after closing or stabilized occupancy and ending no~~t~~ later than the expiration of the useful life of the property ~~financed with the proceeds of the Mortgage Loan~~, and in any event, no~~t~~ later than 45 years from the date of the m~~M~~ortgage l~~L~~oan;

(c) Not exceed 95 percent of the Total Development Cost;

(d) If the Mortgage Loan is to provide financing for the construction of a Development, have each advance thereof secured, insured, or guaranteed in such manner as Florida Housing determines shall protect its interest and those of the Bond holders;

(e) Have the initial review, approval, and origination process accomplished by a Qualified Lending Institution meeting the requirements of Section 420.508, Florida Statutes, ~~section 420.508,~~ which lending institution shall be paid a fee for its services which Florida Housing determines is usual in

the lending industry and that is in accordance with the contract between Florida Housing and the Qualified Lending Institution;

(f) Be serviced by such Qualified Lending Institution or other private entity engaged in the business of servicing mortgage loans in Florida as Florida Housing shall approve, which servicer shall be paid such fees and charges for its services as Florida Housing shall determine is reasonable and usual in the lending industry; and

(g) Require the submission to Florida Housing of an annual audited financial statement for the Development, and ~~or~~ for the Applicant if revenue from multiple projects is being pledged.

(2) Upon approval, execution, and satisfaction of the terms of the Program Documents by the Applicant and Florida Housing, the Bond sale and the Loan shall be scheduled for closing.

(3) The Applicant may obtain construction financing from an alternative source with the Bond proceeds being invested in accordance with an investment agreement subject to the requirements of the Code for Tax-exempt Bonds.

(4) The Applicant shall also establish and maintain escrow deposits sufficient to pay any insurance premiums and applicable taxes.

(5) Florida Housing shall charge such Program administration fees as are required to pay the cost of administering the program during the life of the Bonds and Loan.

(6) The interest rate on the Loan shall be determined by Florida Housing~~,~~ at the time of sale of the Bonds based on the financing structure and the interest rate on the Bonds.

(7) Prepayments shall be permitted only in accordance with the terms and conditions of the Program Documents.

(8) Florida Housing shall appoint a trustee and servicing agent when necessary to administer the Program and service the Loan.

(9) All Florida Housing Loans are contingent upon:

(a) The sale, issuance and delivery of the Bonds and the availability of Bond proceeds.

(b) The Applicant obtaining title insurance on the property.

(c) The Applicant obtaining all governmental approvals for constructing and operating the Development as a multifamily housing Development.

(d) The Applicant providing to Florida Housing and Special Counsel the Note, Mortgage, financing statements, survey, hazard insurance policies, liability insurance policies, escrow agreement, investment agreements, opinions of counsel including preference opinions, if required, and such other documents as are necessary to ensure that Florida Housing has a properly secured Mortgage as required under the Act and to protect the holders of the Bonds.

(e) If required by Bond Counsel in order to deliver their opinion in connection with the issuance of the Bonds or at the request of Florida Housing, the Bonds being validated pursuant to Chapter 75, Florida Statutes, ~~F.S.~~ and a certificate of no appeal issuing.

(f) Receipt of TEFRA approval for Tax-exempt Bonds.

(10) All Loans shall be reviewed and originated by a servicer designated by Florida Housing, in conformance with the Act. ~~Early submission of the Good Faith Deposit to Florida Housing may accelerate work of the attorneys. The costs incurred as a result of early payment of the Good Faith Deposit are not refundable in the event the Development is not funded.~~

(11) The Applicant shall agree to execute or cause to be executed all of the Program Loan Documents required by Florida Housing to secure the unconditional payment of the Loan and to retain the Tax-exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

(12) The Applicant shall, prior to the requested date for funding, supply in draft form to Florida Housing the following documents with respect to the Development being financed, together with any other documents required by the Loan Agreement:

(a) A survey, as described in the Application, dated within 90 days of the date submitted showing the location of all improvements, encroachments, easements and rights-of-way, and a site plan which has been approved by all governmental authorities.

(b) A fully completed, executed and sealed surveyors' certification to Florida Housing.

(c) Written evidence of appropriate zoning and governmental approvals.

(d) Plans and specifications bearing the seal of a licensed engineer.

(e) Policies of insurance and evidence of payment of premiums.

(f) Required opinions of counsel necessary for the issuance of the Bonds.

(g) A commitment for mortgagee title insurance in favor of Florida Housing or its Trustee or designated servicer, with only standard exceptions and such other exceptions as are usually permitted in mortgage loans of this nature. Such policy shall be in an amount not less than the Loan amount plus an amount sufficient to cover any debt service reserve required by Florida Housing.

(h) A copy of the deed or form of deed conveying the land for the Development to the Applicant.

(i) Evidence as to the status of liens, including mechanic's liens, recorded against the property and the permission of Florida Housing to allow any liens to remain recorded against the land or the Development.

(j) Such other documents as shall be reasonably required by Florida Housing, by the Loan Commitment, or by Florida Housing's respective counsel to protect the interests of Florida Housing in the financing.

(13) The Borrower shall not sell, transfer, nor otherwise assign any of its interest in the Development without the prior written consent of Florida Housing.

(14) Florida Housing may require that all Loans be guaranteed or collateralized but shall require all Loans to be secured to the extent necessary to protect Florida Housing and Bond holders.

(15) Any Loan financed with proceeds of Tax-exempt Bonds shall provide that the portion of any debt service reserve fund associated therewith to be financed with Tax-exempt Bonds shall not exceed six months of debt service on the Bonds.

(16) For any Loan financed in part with Tax-exempt Bonds and in part with Taxable Bonds, the taxable portion of the total bond amount shall not exceed 25% of such total.

(17) The Total Development Cost (excluding land cost and the amount of any applicable impact fees) for each Development selected for financing in the Program shall not exceed $70,000 per unit.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(4), (6), (9), (11), (21), 420.508 FS. History–New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.008, Amended 1-26-99, 11-14-99, _____.

67-21.009 Interest Rate on Mortgage Loans.

Florida Housing shall establish the interest rate on Mortgage Loans at the time of sale of the Bonds. The interest rate shall in no event exceed the arbitrage limit which is legally allowed without jeopardizing the tax-exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented Chapter 75, 420.507, 420.508 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.009, Amended 1-26-99, 11-14-99, Repromulgated _____.

67-21.010 Issuance of Revenue Bonds.

Florida Housing shall fund Mortgage Loans with the proceeds from the sale of Revenue Bonds. The issuance and sale of the Bonds shall be governed by resolutions adopted by Florida Housing and by applicable law and rule. If Bonds cannot be sold or cannot be sold in an amount or at an interest rate or under conditions which are in the best interest of Florida Housing, Florida Housing shall terminate its Loan Commitment and such other agreements as were executed in conjunction with the proposed Loan.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(6), 420.508, 420.509 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.010, Amended 1-26-99, 11-14-99, Repromulgated _____.

67-21.011 No Discrimination.

Florida Housing, its staff or agents, Applicants, or participants under the Program shall not discriminate under this Program against any person or family, on the basis of race, creed, national origin, age, religion, handicap, familial status or sex, against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Developer from discrimination based on age in renting Elderly Housing, from compliance with the provisions hereof with respect to a Farmworker Development, or to preclude a Developer from discrimination based on income in renting units Set-Aside for Lower Income Tenants in compliance with the requirements of the Code or with the requirements of section 420.509(19), Florida Statutes, ~~F.S.~~ for Tax-exempt Bonds.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(14) FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 1-7-98, Formerly 9I-21.011, Amended 1-26-99, 11-14-99, _____.

67-21.012 Advertisements.

Florida Housing shall require the Applicant to withdraw from circulation advertisements with respect to the Development determined by Florida Housing to violate or be inconsistent with its policy of providing safe and sanitary affordable housing for low, moderate and middle income persons, families or persons or families with minor children.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(9), (14) FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.012, Amended 1-26-99, 11-14-99, Repromulgated _____.

67-21.013 Private Placements of Multifamily Mortgage Revenue Bonds.

Any issuance of Revenue Bonds by means of a negotiated Private Placement shall be sold only to a Qualified Institutional Buyer. Such Private Placements may only be used to finance single room occupancy Developments wholly owned by a not-for-profit corporation, assisted living facilities, Farmworker Developments and Urban In Fill Developments. Florida Housing shall designate the placement agent with respect to such Bonds, who shall be on Florida Housing's approved bond underwriters list. A Qualified Institutional Buyer who is an underwriter may contract to immediately resell such Bonds to other Qualified Institutional Buyers, which transaction shall continue to constitute a Private Placement. The amount of any placement agent fee and any amounts paid by any third party to an initial Qualified Institutional Buyer which is an underwriter shall be subject to the approval of Florida Housing or its designee. Unless such Bonds are rated in one of the three highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be DTC-Eligible) and shall comply with at least one of the following criteria:

(1) The Bonds shall be issued in minimum denominations of $100,000 and each purchaser of such Bond, including subsequent purchasers unless the requirements of (2) or (3) below are met, shall certify to Florida Housing prior to any purchase or transfer of any Bond that such purchaser is a Qualified Institutional Buyer; or

(2) The Bonds shall be issued in minimum denominations of $250,000 and an investment letter satisfactory to Florida Housing and its counsel shall be obtained from each initial purchaser of the Bonds (including any purchaser purchasing such Bonds in an immediate resale from an underwriter), but shall not be required of subsequent purchasers of the Bonds, to the effect that, among other things, such purchaser is a Qualified Institutional Buyer, is purchasing such Bonds for its own account and not for immediate resale to other than another Qualified Institutional Buyer, and has made an independent investment decision as a sophisticated or institutional investor; or

(3) The Bonds shall be issued in minimum denominations of $250,000 and an investment letter satisfactory to Florida Housing and its counsel shall be obtained from each initial purchaser of the Bonds and from each subsequent transferee of the Bonds prior to any transfer thereof, to the effect that such purchaser is a Qualified Institutional Buyer.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(4), (5), (6), (9), (11), (14), (16), (18), (19), (20), (21) FS. History–New 11-23-94, Amended 1-7-98, Formerly 9I-21.013, Amended 1-26-99, 11-14-99, _____.

67-21.014 Credit Underwriting Procedures.

(1) After the cycle closing date, Florida Housing shall assign and forward all Applications to the Credit Underwriter for the Completeness and Threshold Check.

(a) A statement by Florida Housing's Credit Underwriter as to compliance with the Completeness and Threshold Checklist set forth in the Application shall be required for a Development to be invited to final Credit Underwriting except as provided in 67-21.003(10).

(b) An invitation into final Credit Underwriting shall require that the Applicant submit the Ffinal ~~phase~~ Credit Underwriting and Appraisal Fee and information required to complete the final Credit Underwriting, to the Credit Underwriter in accordance with the schedule established by Florida Housing upon the recommendation of the Credit Underwriter. Failure to submit the Final ~~Phase~~ Credit Underwriting and Appraisal Fee or meet the deadlines established as set forth in the schedule shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list.

(2) The Credit Underwriter shall in final Credit Underwriting analyze and verify all information in the Application package in order to make a recommendation to the Board on the feasibility of the Development, without taking into account the willingness of a credit enhancer to provide Credit Enhancement.

(a) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of normal underwriting procedures, the cost of such expertise shall be borne by the Applicant.

(b) The Credit Underwriter shall review the proposed financing structure to determine whether the Loan is feasible.

(c) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of $200 per unit must be deposited annually in the replacement reserve account for all Developments. An Applicant may choose to fund a portion of the replacement reserves at closing from moneys other than the proceeds of the Bonds. This partial funding cannot exceed 50 percent of the required replacement reserves for two years and must be placed in escrow at closing. Applicants with Credit Enhancement may employ a different replacement reserve structure with Florida Housing's approval.

(d) Florida Housing shall consider the following when determining the need for construction completion guarantees based on the recommendations of the Credit Underwriter:

1. Liquidity of any guarantee provider.

2. Applicant's, Developer's and General Contractor's history in successfully completing Developments of similar nature.

3. The past performance of the Applicant, Developer, General Contractor, or management agent, in developing, constructing or managing Developments financed by Florida Housing or its predecessor, including, by way of example and not limitation, nonpayment of fees and noncompliance with program requirements.

4. Exposure of Florida Housing funds compared to Total Development Costs. At a minimum, the corporate general partner of the borrowing entity shall provide a personal guarantee for completion of construction. In addition, a letter of credit or payment and performance bond shall be required if Florida Housing determines upon recommendation of the Credit Underwriter after evaluation of conditions in paragraphs 1. through 3., above, that additional surety is needed.

(e) The Credit Underwriter shall review and make a recommendation to Florida Housing whether the number of loans and construction commitments of the Applicant and its principals will impede its ability to proceed with the successful development of each proposed Florida Housing Development.

(f) The Credit Underwriter shall consider the appraisal of the Development and other market study documentation to make a recommendation as to whether the market exists to support both the demographic and income restriction Set-Asides committed to within the Application.

(g) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process to complete the Credit Underwriting Report, the Credit Underwriter shall notify Florida Housing and request the information from the Applicant. Such requested information shall be submitted within five business days of receipt of the request therefor.

Failure for any reason to submit required information within ten days of ~~by~~ the specified deadline shall result in the Application being moved to the bottom of the ranked list.

(h) If audited financial statements are unavailable from the Applicant or from those members of the development team that are guaranteeing completion, the Applicant shall submit financial statements or federal tax returns for the past three years to the Credit Underwriter.

(i) Required appraisals, market studies, pre-construction analyses, and environmental studies (other than Phase I Environmental Site Assessments) shall be completed by professionals approved by Florida Housing's Credit Underwriters. Approval of appraisers and contractors to complete market and environmental studies shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(j) A full or self-contained ~~limited restricted~~ appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter from an appraiser qualified for the geographic area and product type ~~as part of the Completeness and Threshold Check or at the request of the Developer, a full or self-contained appraisal may be ordered at such time. A full or self-contained appraisal as defined by the Uniform Standards of Professional AppraisalPractice shall be ordered~~ not later than when an Application enters final Credit Underwriting. ~~The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order, upon notification by the Applicant and at the Applicant's expense, the appraisals of the Development. The Applicant is responsible for notifying the Credit Underwriter of the requested appraiser within 48 hours of when Application enters final Credit Underwriting for purposes of the CTC to ensure the timely delivery of the appraisals.~~ The Credit Underwriter shall review the appraisals to properly evaluate the loan request in relation to the property value.

(k) Appraisals and separate market studies ~~submitted with the Application~~ which have been ordered and submitted by third party credit enhancers or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the Appraisal or market study referenced above.

(3) The Applicant shall review and provide written comments on the draft Credit Underwriting report to Florida Housing and the Credit Underwriter within the time frame established by Florida Housing. Florida Housing shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. The Credit Underwriter shall then review and incorporate Florida Housing's and, if deemed appropriate, the Applicant's comments and release the revised report to Florida Housing and the Applicant. Any additional comments from the Applicant shall be received by Florida Housing and the Credit Underwriter within the established time frame. Then, the Credit Underwriter shall provide a final report, which shall address comments made by the Applicant to Florida Housing.

(4) After approval by the Board of the Credit Underwriter's favorable recommendation from final Credit Underwriting and payment of one-half of the Good Faith Deposit, the Board of Directors, Florida Housing staff and Florida Housing Counsel shall begin negotiations of the Loan Commitment.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508, 420.509 FS. History–New 1-7-98, Formerly 9I-21.014, Amended 1-26-99, 11-14-99, 1-26-00, _____.

67-21.015 Use of Bonds with Other Affordable Housing Finance Programs.

(1) Subject to any ranking criteria which may be imposed pursuant to Rule 67-21.004(4)(a)~~(b),~~ F.A.C., Applicants may use Tax-exempt or Taxable Bond financing in conjunction with other affordable housing finance programs administered by Florida Housing, including, by way of example, and not of limitation, the Housing Credit, the State Apartment Incentive Loan, the Florida Affordable Housing Guarantee, HOME Investment Partnerships Rental Loan, Predevelopment Loan Program and HUD Risk Sharing Programs.

(2) Applicants desiring to apply for financing from multiple programs shall submit separate applications using forms prescribed by each program and shall submit fees as required by the other programs, except that Applicants do not need to submit a separate Application for non-competitive Housing Credits; this Application for Multifamily Bonds shall be used for non-competitive Housing Credits as well as Tax-exempt Bonds.

(3) Applicants that receive funding from other programs and the Multifamily Mortgage Revenue Bond Program shall comply with the requirements of the applicable program rule and this rule.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508 FS. History–New 1-7-98, Formerly 9I-21.015, Amended 1-26-99, 11-14-99, Repromulgated _____.

67-21.016 Compliance Procedures.

(1) Any duly authorized representative of Florida Housing shall be permitted at any reasonable time to inspect and monitor Development and tenant records and facilities. All tenant records shall be maintained by the owner of the Development within 50 miles of the Development site.

(2) Florida Housing or its representative shall conduct on-site Development inspections at least annually.

(3) Florida Housing must approve the selection or replacement of a management company prior to such company assuming responsibility for the Development, using the following criteria:

(a) Review of company information including key management personnel, management experience and procedures;

(b) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;

(c) Key management company representative attendance at a Florida Housing compliance workshop; and

(d) A meeting between Florida Housing compliance staff and the key management company representative after the compliance workshop.

(4) Florida Housing shall document approval of the management company to the owner of the Development after successful completion of items (3)(a)-(d).

(5) The Owner of the Development shall maintain complete and accurate income records pertaining to each tenant occupying a Set-Aside unit. Records for each occupied Set-Aside unit shall contain the following documentation:

(a) The tenant's application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;

(b) An executed lease agreement listing the term of the tenancy and all of the tenants residing in the unit;

(c) Verification of the income of each tenant as is acceptable to prove income under Section 8 of the U.S. Housing Act of 1937, as in effect on the date of this Rule Chapter;

(d) Information as to the assets owned by each tenant; and

(e) Income Certification Form TIC-1 for each tenant. A sample Form TIC-1 can be obtained from Florida Housing.

(6) The Applicant shall submit Program Reports pursuant to the following: The initial Program Report shall be submitted prior to the time of Loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by the certificate of continuing program compliance and copies of all Tenant Income Certifications executed since the last Program Report (to be sent to Florida Housing and the monitoring agent).

(7) The Developer shall, at least monthly, submit to Florida Housing and the Trustee a certificate of continuing program compliance stating the percentage of dwelling units that are:

(a) Occupied by L~~l~~ower-I~~i~~ncome T~~t~~enants.

(b) Being held vacant for occupancy by L~~l~~ower-I~~i~~ncome T~~t~~enants.

(c) Occupied by other persons.

(8) Florida Housing shall monitor compliance of all terms and conditions of the Loan and in the Land Use Restriction Agreement, which Land Use Restriction Agreement shall be recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement shall be recorded first. Violation of any term or condition of the documents evidencing or securing the Loan shall constitute a default during the term of the Loan. Florida Housing shall take legal action to effect compliance if a violation of any term or condition relative to the Set-Aside of units for Lower Income Tenants is discovered during the course of compliance monitoring or by any other means.

(9) Sponsors shall annually certify that the household gross income, adjusted for family size, of each household occupying a unit set aside for Lower Income Tenants meets income requirements specified in the Code. Should the annual recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a qualifying household in order to ensure continuing compliance of the Development.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (13), (14), 420.508, 420.509 FS. History–New 1-7-98, Formerly 9I-21.016, Amended 1-26-99, 11-14-99, _____.

67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of this Section 67-21.017, provided that transfers of the limited partnership interest in the Developer to a tax credit syndicator need not comply with this provision. The determination of whether a transfer of ownership of a Development shall be deemed to take place for purposes of this rule shall be made in accordance with the provisions of the Land Use Restriction Agreement and other Program Documents for such Development. Owners shall advise Florida Housing in writing of any change of ownership of the owner aggregating 50 percent or more of ownership interests in the owner within any six-month period.

(2) A request for transfer of ownership shall be submitted to Florida Housing in writing and include evidence that the current owner has agreed to the proposed sale. A detailed opinion letter from the Applicant's legal counsel describing the scope of the proposed transaction must also be provided. Florida Housing shall notify the current owner and potential purchaser of any additional information necessary for the Board to make an informed decision. ~~A written request for a transfer of ownership (along with additional information requested by Florida Housing for the Board package) which is received by Florida Housing at least 21 days prior to a noticed Board meeting shall be considered at the next Board meeting.~~

(3) Upon demonstration of compliance with the provisions of this Section 67-21.017 and favorable consideration by the Board to a request for transfer, Florida Housing shall assign a Credit Underwriter, Bond Counsel, Special Counsel, and other professionals as needed to effect the transfer.

(4) Prior to the transfer of ownership.

(a) Tthe prospective purchaser and the conditions of the assumption of the Program Documents must be approved by the Credit Underwriter as meeting the terms of its credit underwriting report, Bond Counsel and Special Counsel as complying with all applicable legal requirements, and Florida Housing as meeting the stated purposes of Florida Housing,

(b) Aall outstanding fees owing to Florida Housing shall be paid,

(c) Tthe Development shall be in compliance with all existing regulatory requirements imposed by Florida Housing or its predecessor,

(d) Iif the Set-Aside requirements in the Land Use Restriction Agreement are expired or have less than 12 months remaining, such agreement shall be extended for a minimum of two years from the date of closing. The Credit Underwriter shall conduct a credit underwriting of the new owner upon any transfer of ownership. Additionally, the new owner shall be notified that any refunding of bonds associated with such Development shall require a full Credit Underwriting of the Development. All transfer of ownership transactions shall require a guarantee of recourse obligations and an environmental indemnity from the assuming owner.

(5) The prospective purchaser or current owner shall be responsible for payment of all fees for professional services rendered in association with the transfer of ownership.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508, 420.508(3)(a) FS. History–New 1-7-98, Formerly 9I-21.017, Amended 1-26-99, 11-14-99, _____.

67-21.018 Refundings and Troubled Development Review.

(1) Refunding of previously issued Bonds shall in all instances be at the option of Florida Housing and not an obligation of Florida Housing.

(2) Florida Housing shall endeavor where feasible to refund Bonds which are either in default or face a pending default.

(3) Approval by Florida Housing for a refunding of an issue of Bonds for reasons related to pending default shall be subject to the following:

(a) Ddetermination of the quality of the impending default;

(b) Ssubmission of a sworn certificate of impending default by the Developer or Credit Enhancer;

(c) Ssubmission of sworn certificate from the Developer or Credit Enhancer that conditions causing default are likely to continue;

(d) Ssubmission of certified information from a certified public accountant concerning cash contributions to the Development, financial condition of the Development, including analysis of tax benefits derived from Development losses, and the financial condition of the Developer or Credit Enhancer;

(e) Iindependent evidence of market conditions in the Development location;

(f) Eevidence of effort by the Developer or Credit Enhancer to procure other sources of capital infusion;

(g) Sstatement by the Developer or Credit Enhancer of the continued public purpose to be achieved by refunding;

(h) Aagreement by the Developer or Credit Enhancer to update the Land Use Restriction Agreement, including retention of state and federal income limits;

(i) Nnew Credit Underwriting by Florida Housing, with new Bond amount determined by Florida Housing based upon real estate underwriting criteria and equal to the lesser of the amount determined by Florida Housing or the Credit Enhancer, to provide assurance that a similar default condition will not present itself in the future;

(j) Tthe full risk of refunding is taken by the Credit Enhancer through full indemnification of Florida Housing; with consideration given to personal indemnification from the Developer if sufficient financial strength can be demonstrated;

(k) Aall costs of refunding are paid by the Developer or the Credit Enhancer outside of Bond proceeds, including all applicable fees;

(l) Rretention of annual fees by Florida Housing;

(m) Pprovision of other evidence of the immediacy of default;

(n) Rretention of the Credit Enhancement; and

(o) Mmanagement of the Development is reviewed and approved by Florida Housing.

(4) In connection with all refundings, the following shall apply:

(a) All outstanding fees of Florida Housing shall be paid in connection with the refunding;

(b) The Set-Asides required by the original Land Use Restriction Agreement shall be extended for a period determined by Florida Housing;

(c) A Credit Underwriting and an existing property valuation report shall be required (which may incorporate any Credit Underwriting undertaken within the past twelve months in connection with a transfer of ownership of the same Development);

(d) A guarantee of recourse obligations and an environmental indemnity shall be required;

(e)~~(d)~~ Additional operating deficit or other guarantees and establishment of replacement reserves or increase in existing reserves may be required as specified in the Credit Underwriting report;

(f)~~(e)~~ The loan shall immediately on the earlier of 24 months after closing or stabilized occupancy in the case of major rehabilitation begin full amortization ~~be amortized~~ over the remaining life of the Bonds; and in no event shall exceed the economic remaining life of the property, provided that, in

the case of a refunding relating to a pending default, such amortization may be delayed to the extent recommended in the Credit Underwriting Report;

(g)~~(f)~~ Any material changes to the underlying documents shall be deemed to constitute a refunding for purposes hereof.

(h) Any extension or extensions of maturity cumulatively exceeding 60 months shall be deemed to constitute a refunding for purposes hereof; and

(i)~~(g)~~ The owner of the Development must provide a written request for the refunding and a detailed opinion from Applicant's counsel describing the scope of the transaction. It shall not be necessary to complete an Application in connection with a refunding request.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508 FS. History–New 1-7-98, Formerly 9I-21.018, Amended 1-26-99, 11-14-99, _____.

67-21.019 Issuance of Bonds for 501(c)(3) Corporations.

(1) Florida Housing shall entertain requests for it to serve as the issuer of Tax-exempt Bonds for the acquisition or construction of multifamily housing to be owned by a not-for-profit corporation organized under Section 501(c)(3) of the Code.

(2) In connection with all B~~b~~onds issued pursuant to 67-21.019, F.A.C., Applicants shall be required to comply with the provisions of Rule 67-21.003, 67-21.004 and Rule 67-21.0045 through 67-21.018, F.A.C., as if the 501(c)(3) Bonds are being issued as Tax-exempt Bonds under Section 141 of the Code, except that:

(a) W~~w~~ith respect to Rule 67-21.004, F.A.C., paragraph (4) does not apply;

(b) W~~w~~ith respect to Rule 67-21.007(4), F.A.C., and Rule 67-21.014, F.A.C., no CTC or CTC fee shall be required; and

(c) ~~with respect to Rule 67-21.004 (2), F.A.C.,~~ O~~o~~nly one Public Policy Criteria shall be satisfied in addition to the minimum federal Set-Aside.

(3) In addition, Applicant shall submit the following:

(a) A~~a~~n abbreviated Application using specified forms from MFMRB2001; ~~MFMRB2000~~

(b) A~~a~~n initial bond counsel fee of $1,000 along with IRS Form 1023 and all attachments and correspondence to and from the IRS relative to 501(c)(3) status of the Applicant; and

(c) A~~a~~n opinion from Applicant's counsel (at Applicant's sole expense) evidencing the Applicant's qualifications as a 501(c)(3) and Applicant's authority to incur bond debt for multifamily housing~~.~~;

(d) If the Development is intended to be exempt from ad valorem taxes, evidence that it has notified, on forms provided by Florida Housing, all applicable taxing authorities of the acquisition of the proposed Development by a 501(c)(3) Corporation.

Specific Authority 420.507(12) FS. Law Implemented 420.502, 420.507(14), (24), 420.508 FS. History–New 11-14-99, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Deborah A. Dozier, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mark Kaplan, Chief Executive Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 18, 2000, Corporation Board Meeting

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 26, No. 14, April 7, 2000

Any person requiring special accommodation at this Hearing because of a disability or physical impair should contact Bill Metler at the above address. If you are hearing or speech impaired, please use the Florida Dual Party Relay system which can be reached at 1(800)955-8771 (TDD).

FLORIDA HOUSING FINANCE CORPORATION

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Affordable Multifamily Rental Housing Sail/Home/HC	67-48
RULE TITLES:	**RULE NOS.:**
Purpose and Intent	67-48.001
Definitions	67-48.002
Notice of Funding or Credit Availability	67-48.003
Application and Selection Procedures for Developments	67-48.004
Applicant Administrative Appeal Procedures	67-48.005
Compliance and Reporting Requirements	67-48.006
Fees	67-48.007
No Discrimination	67-48.008
SAIL General Program Procedures and Restrictions	67-48.009
Additional SAIL Application Ranking and Selection Procedures	67-48.0095
Terms and Conditions of SAIL Loans	67-48.010
Sale or Transfer of a SAIL Development	67-48.0105
SAIL Credit Underwriting and Loan Procedures	67-48.012
SAIL Construction Disbursements and Permanent Loan Servicing	67-48.013
HOME General Program Procedures and Restrictions	67-48.014
Match Contribution Requirement for HOME Allocation	67-48.015
Eligible HOME Activities	67-48.017
Eligible HOME Applicants	67-48.018
Eligible and Ineligible HOME Development Costs	67-48.019
Terms and Conditions of Loans for HOME Rental Developments	67-48.020
Sale or Transfer of a HOME Development	67-48.0205
HOME Credit Underwriting and Loan Procedures	67-48.021

HOME Disbursements Procedures and Loan Servicing	67-48.022
Housing Credit General Program Procedures and Requirements	67-48.023
Qualified Allocation Plan	67-48.025
Housing Credit Underwriting Procedures	67-48.026
Tax-Exempt Bond-Financed Developments	67-48.027
Carryover Allocation Provisions	67-48.028
Extended Use Agreement	67-48.029
Sale or Transfer of a Housing Credit Development	67-48.030
Termination of Extended Use Agreement and Disposition of Housing Credit Developments	67-48.031
Minimum Set-Aside for Non-Profit Organizations Under Housing Credits Program	67-48.032

PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, Florida Statutes; and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, Florida Statutes; and

(2) Administer the Application process, determine Housing Credit amounts and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the Code and Section 420.5099, Florida Statutes.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the State of Florida.

SUMMARY: Prior to the opening of an Application Cycle, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Application Cycles to determine what changes or additions should be added to the Rule, Application and/or QAP. The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply in the 2001 Application Cycle.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 420.507 FS.

LAW IMPLEMENTED: 420.5087, 420.5089, 420.5099 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., November 28, 2000

PLACE: Holiday Inn Select, 316 West Tennessee Street, Tallahassee, Florida 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Elizabeth Arthur, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I ADMINISTRATION

67-48.001 Purpose and Intent.

The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, Florida Statutes~~,~~; and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, Florida Statutes; and

(2) Administer the Application process, determine Housing Credit amounts and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the Code and Section 420.5099, Florida Statutes.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the State of Florida.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2), 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.001, Amended 11-9-98, Repromulgated 2-24-00, _____.

67-48.002 Definitions.

(1) "Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, Florida Statutes, as in effect on the date of this Rule Chapter.

(2) "Address" means as assigned by the United States Postal Service and must include address number, street name, city, state and zip code. If address has not yet been assigned, include, at a minimum, street name or closest designated intersection, city, state and zip code.

(3)~~(2)~~ "Adjusted Income" means, with respect to a HOME Development, the gross income from wages, income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by HUD, adjusted for family size, minus the deductions allowable under Section 61 of the Code.

(4)~~(3)~~ "Affiliate" means any person that, (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant, (ii) serves as an officer or director of the Applicant or of any

Affiliate of the Applicant, or (iii) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i) or (ii) above.

(5)~~(4)~~ "Allocation Authority" means the total dollar volume of Housing Credits available for distribution by the Corporation and authorized pursuant to Section 42 of the Code.

(6)~~(5)~~ "Annual Owner Compliance Certification Form" or "Form AOC-1" means, with respect to a Housing Credit Development, a report format which is required to be completed and submitted to the Corporation, pursuant to Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.006(6), and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(7)~~(6)~~ "Applicable Fraction" means the fraction, the numerator of which is the number of Housing Credit Rent-Restricted Units and the denominator of which is the total number of residential rental units less any unit exempted by Internal Revenue Ruling 92-61, or the fraction, the numerator of which is the floor space of the Housing Credit Rent-Restricted Units and the denominator of which is the total floor space of the residential rental units less any unit exempted by Internal Revenue Ruling 92-61, whichever is less. The Applicable Fraction is applied to the eligible basis of a building to determine the qualified basis of a building for Housing Credit purposes.

(8)~~(7)~~ "Applicant" means any person or entity, public or private, for-profit or not-for-profit, proposing to build or rehabilitate affordable rental housing (i) with respect to the SAIL and~~/or~~ HOME Program(s) for Low-Income or Very Low-Income persons or households and (ii) with respect to the HC Program for qualified residents, as defined in Section 42 of the Code.

(9)~~(8)~~ "Application" means the completed forms from the Application Package together with exhibits submitted to the Corporation in accordance with this Rule Chapter in order to apply for the SAIL, HOME and/or HC Program(s).

(10)~~(9)~~ "Application Deadline" means 5:00 p.m., Tallahassee time, on the final day of the Application Period.

(11)~~(10)~~ "Application Package" or "Form CAP01 ~~CAP00~~" means the computer disks, forms, tabs and instructions thereto, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to the Corporation in accordance with this Rule Chapter in order to apply for the SAIL, HOME, and/or HC Program(s). The Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~.

(12)~~(11)~~ "Application Period" means the period during which Applications shall be accepted by the Corporation as described in the Notice of Funding or Credit Availability published in the Florida Administrative Weekly.

(13)~~(12)~~ "Application Tab Kit" means the tabs and form dividers provided by the Corporation which must be used when submitting an Application.

(14) "Assisted Living Facility" or "ALF" means a Florida licensed living facility that complies with Sections 400.401 through 400.454, Florida Statutes and Chapter 58A-5, Florida Administrative Code.

(15)~~(13)~~ "Binding Commitment" means, with respect to a Housing Credit Development, an agreement between the Corporation and an Applicant by which the Corporation allocates and the Applicant accepts Housing Credits from a later year's Allocation Authority in accordance with Section 42(h)(1)(C) of the Code.

(16)~~(14)~~ "Board of Directors" or "Board" means the Board of Directors of the Corporation.

(17)~~(15)~~ "Building Identification Number" means, with respect to a Housing Credit Development, the number assigned by the Corporation to describe each building in a Housing Credit Development, pursuant to Internal Revenue Service Notice 88-91.

(18) "Calendar Days" means, with respect to computing any period of time allowed by this Rule, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

(19)~~(16)~~ "Carryover" means the provision under Section 42 of the Code which allows a Development, under certain conditions allowed by Section 42 of the Code, to receive a Housing Credit Allocation in a given calendar year and be placed in service within a period of two calendar years from the date the Applicant qualifies for Carryover, pursuant to Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.028.

(20) "Categorical Set-Aside" means, with respect to the SAIL Program, the reservation of funds for Commercial Fishing Workers or Farmworkers, Families and Elderly persons, in accordance with Section 420.5087, Florida Statutes. "Categorical Set-Aside" means, with respect to the Housing Credit Program, the amount of Allocation Authority which has been designated by the Corporation and the QAP to be allocated for a specific purpose.

(21)~~(17)~~ "Code" or "IRC" means the Internal Revenue Code of 1986, as in effect on the date of this Rule Chapter, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States.

(22)~~(18)~~ "Commercial Fishing Worker" means a laborer who is employed on a seasonal, temporary, or permanent basis in fishing in saltwater or freshwater and who derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. The term includes a person

who has retired as a laborer due to age, disability, or illness. In order to be considered retired due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a commercial fishing worker. In order to be considered retired due to disability or illness, a person must:

(a) Establish medically that the person is unable to be employed as a commercial fishing worker due to such disability or illness; and

(b) Establish that he or she was previously employed as a commercial fishing worker.

(23)~~(19)~~ "Commercial Fishing Worker Household" means a household of one or more persons wherein at least one member of the household is a Commercial Fishing Worker.

(24)~~(20)~~ "Community Housing Development Organizations" or "CHDO~~'~~s" means private non-profit organizations that are organized pursuant to the definition in the HUD Regulations.

(25)~~(21)~~ "Compliance Period" means, with respect to a SAIL Development, a minimum period of 15 years from the date the first residential unit is occupied; with respect to a HOME Development, a minimum period of 15 years for rehabilitation Developments and 20 years for new construction Developments, beginning from the date the first residential unit is occupied. However, for SAIL and HOME Developments which contain occupied units to be rehabilitated, the Compliance Period shall begin at closing of the SAIL or HOME loan. With respect to any building that is included in a Housing Credit Development, "Compliance Period" means a minimum period of 15 years beginning on the first day of the first taxable year of the Housing Credit Period with respect thereto in which a Housing Credit Development shall continue to maintain the Housing Credit Set-Aside chosen by the Applicant in the Application, pursuant to Section 42 of the Code.

(26)~~(22)~~ "Consolidated Plan" means the plan prepared in accordance with HUD Regulations, 24 CFR § 91 (1994), which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs, including the HOME Program.

(27)~~(23)~~ "Contact Person" means a person with ~~decision making authority for the Applicant, Developer or the owner of the Development with~~ whom the Corporation will correspond concerning the Application and the Development.

(28)~~(24)~~ "Corporation" or "Florida Housing" or "FHFC" means the Florida Housing Finance Corporation created pursuant to the Act.

(29)~~(25)~~ "Credit Underwriter" means the legal representative under contract with the Corporation having the responsibility for providing stated credit underwriting services. Such services shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, the evidence of need for affordable housing in order to determine that the Development meets the program requirements and determine a recommended SAIL or HOME loan amount, housing credit allocation amount or a combined SAIL or HOME loan amount and a housing credit allocation amount, if any.

(30)~~(26)~~ "Default Interest Rate" means 18% per annum.

(31)~~(27)~~ "Department" or "DCA" means the Department of Community Affairs of the State of Florida.

~~(28) "Development Costs" means with respect to the SAIL and HOME Programs the sum total of all costs incurred in the completion of a Development, all of which shall be subject to the approval by the Credit Underwriter and the Corporation as reasonable and necessary. Such costs include, for example, the following:~~

~~(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties.~~

~~(b) The cost of site preparation, demolition, and development.~~

~~(c) Any expenses relating to the issuance of tax-exempt bonds or taxable bonds, if any, related to the particular Development.~~

~~(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, and the Corporation.~~

~~(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Development.~~

~~(f) The cost of the construction, rehabilitation, and equipping of the Development.~~

~~(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services.~~

~~(h) Expenses in connection with initial occupancy of the Development.~~

~~(i) Allowances established by the Corporation for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first 2 years after completion of the Development.~~

~~(j) The cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the Corporation's bonds, as the Corporation shall determine to be reasonable and necessary for the construction or rehabilitation of the Development.~~

(32)~~(29)~~ "Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing pursuant

to this Rule Chapter. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

(33) “Development,” “Project, " or "Property" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

(34)~~(30)~~ "Development Cash Flow" means, with respect to SAIL Developments, actual cash flow of a SAIL Development as calculated in the statement of cash flows prepared in accordance with generally accepted accounting principles and as adjusted for items including but not limited to extraordinary fees and expenses, payments on debt subordinate to the SAIL loan and capital expenditures.

(35) "Development Costs" means with respect to the SAIL and HOME Programs the sum total of all costs incurred in the completion of a Development, all of which shall be subject to the approval by the Credit Underwriter and the Corporation as reasonable and necessary. Such costs include, for example, the following:

(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties.

(b) The cost of site preparation, demolition, and development.

(c) Any expenses relating to the issuance of tax-exempt bonds or taxable bonds, if any, related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, and the Corporation.

(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Development.

(f) The cost of the construction, rehabilitation, and equipping of the Development.

(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services.

(h) Expenses in connection with initial occupancy of the Development.

(i) Allowances established by the Corporation for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first 2 years after completion of the Development.

(j) The cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the Corporation's bonds, as the Corporation shall determine to be reasonable and necessary for the construction or rehabilitation of the Development.

(36)~~(31)~~ "Development Expenses" means, with respect to SAIL Developments, usual and customary operating and financial costs, such as the compliance monitoring fee, the financial monitoring fee, replacement reserves, the servicing fee and the debt service reserves. As it relates to the application of Development Cash Flow described in Fla. Admin. Code Ann. Rule ~~R.~~ 67-48.010(4), the term does not include extraordinary capital expenses, developer fees and other non-operating expenses.

(37)~~(32)~~ "Difficult Development Area" means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with Section 42(d)(5), IRC.

(38) “Document” means any written or graphic matter of any kind whatsoever, however produced or reproduced, including but not limited to records, reports, memoranda, minutes, notes, graphs, maps, charts, contracts, opinions, studies, analysis, photographs, financial statements and correspondence as well as any other tangible thing on which information is recorded.

(39)~~(33)~~ "Draw" means the disbursement of funds to a Development under the SAIL and HOME Programs.

(40)~~(34)~~ "Elderly" means a person 62 years of age or older. With respect to the SAIL, HOME and HC Programs, persons meeting the Federal Fair Housing Act requirements for Elderly shall be considered Elderly.

~~(35) "Elderly Household" describes a household of one or more persons wherein at least one-half of the residents is Elderly.~~

(41)~~(36)~~ "Eligible Persons" or "Eligible Household" means one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the Corporation to be of low or very low income. In determining the income standards of eligible persons for its various programs, the Corporation shall take into account the following factors:

(a) Requirements mandated by federal law.

(b) Variations in circumstances in the different areas of the state.

(c) Whether the determination is for rental housing.

(d) The need for family size adjustments to accomplish the purposes set forth in this Rule Chapter.

With respect to the HC Program, an "Eligible Person" or "Eligible Household" shall mean one or more persons or a family having a combined income which meets the income eligibility requirements of the Program and Section 42 of the Code.

(42)~~(37)~~ "Executive Director" means the Executive Director of the Corporation.

(43)~~(38)~~ "Extended Use Agreement," ~~or~~ "Extended Low-Income Housing Agreement" or "EUA" means, with respect to the HC Program, an agreement between the Corporation and the Applicant which sets forth the Set-Aside requirements and other Development requirements, if any, under the HC Program.

(44)~~(39)~~ "Family" or "Family Household" describes a household composed of one or more persons.

(45)~~(40)~~ "Farmworker" means any laborer who is employed on a seasonal, temporary or permanent basis in the planting, cultivating, harvesting or processing of agricultural or aquacultural products and who has derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. "Farmworker" also includes a person who has retired as a laborer due to age, disability or illness. In order to be considered retired from farmwork due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker immediately preceding retirement. In order to be considered retired from farmwork due to disability or illness, it must be:

(a) Medically established that the person is unable to be employed as a farmworker due to such disability or illness; and

(b) Established that he or she had previously met the definition of Farmworker.

(46)~~(41)~~ "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at time of initial occupancy.

(47)~~(42)~~ "Farmer's Home" or "FmHA" means the Farmer's Home Administration of the United States Department of Agriculture, which is now known as "USDA – Rural Development" or "RD" and formerly known as "Rural Economic and Community Development" or "RECD".

(48)~~(43)~~ "Financial Beneficiary" means one who is to receive a financial benefit of:

(a) 3% or more of total Development Cost (including deferred fees) if total Development Cost is $5 million or less; or ~~and~~

(b) 3% of the first $5 million and 1% of any costs over $5 million (including deferred fees) if total Development Cost is greater than $5 million.

This definition includes any party which meets the above criteria, such as the Developer and its principals and principals of the Applicant entity. This definition does not include third party lenders, third party management agents or companies, Housing Credit Syndicators, Credit Enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or building contractors whose total fees are within the limit described in Rule 67-48.002(52)~~(47)~~, F.A.C.

(49)~~(44)~~ "Final Cost Certification" or "Form FCCA" means, with respect to a Housing Credit Development, that Form FCCA which is adopted and incorporated herein by reference, revised August 2000 ~~1999~~, and which shall be used by an Applicant to itemize all expenses incurred in association with construction or rehabilitation of a Housing Credit Development. Such form will be made available from the Corporation and shall be completed, executed and submitted to the Corporation, as specified in Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.023(7)-(8), along with the recorded Extended Use Agreement, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in FCCA instructions. The Final Housing Credit Allocation will not be issued until such time as all items in the preceding sentence are received and processed by the Corporation. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(50)~~(45)~~ "Final Housing Credit Allocation" means, with respect to a Housing Credit Development, the issuance of Housing Credits by the Executive Director to an Applicant upon completion of construction or rehabilitation of a Development and submission to the Corporation by the Applicant of a completed and executed Form FCCA pursuant to Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.023(7)-(8).

(51)~~(46)~~ "Funding Cycle" means the period of time commencing with the Notice of Funding or Notice of Credit Availability pursuant to this Rule Chapter and concluding with the issuance of Allocations or loans to Applicants who applied during a given Application Period.

(52)~~(47)~~ "General Contractor" means a duly licensed entity which, to be eligible for the maximum 14% fee, must meet the following conditions:

(a) A project superintendent must be employed by the General Contractor and the costs of that employment must be charged to the general requirements line item of the General Contractor's budget;

(b) Development construction trailer and other overhead must be paid directly by the General Contractor and charged to general requirements;

(c) Building permits must be issued in the name of the General Contractor;

(d) Payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit or other acceptable guarantee) must be issued in the name of the General Contractor; and

(e) Not more then 20% of the Development cost is sub-contracted to any one entity unless otherwise approved by the Board for a specific Development.

(53)~~(48)~~ "Geographic Set-Aside" means, with respect to a Housing Credit Development, the amount of Allocation Authority which has been designated by the Corporation to be allocated for Housing Credit Developments located in specific geographical regions within the State of Florida pursuant to the Qualified Allocation Plan.

(54)~~(49)~~ "HC Program" means the Low-Income or Very Low-Income rental housing program administered by the Corporation pursuant to Section 42 of the Code and Section 420.5099, Florida Statutes, under which the Corporation is designated the Housing Credit agency for the State of Florida within the meaning of Section 42(h)(7)(A) of the Code, and this Rule Chapter.

(55)~~(50)~~ "HOME" or "HOME Program" means the HOME Investment Partnerships Program pursuant to the HUD Regulations.

(56)~~(51)~~ "HOME-Assisted Unit" means the specific units that are funded with HOME funds. HOME units shall adhere to rent controls and income targeting requirements pursuant to 24 CFR § 92.252.

(57)~~(52)~~ "HOME Development" means any Development which receives financial assistance from the Corporation under the HOME Program.

(58)~~(53)~~ "HOME Minimum Set-Aside Requirement" means the minimum set-aside requirement of 20% of the HOME-Assisted Units in the Development shall be rented to persons at 50% of the median income adjusted for family size and 80% of the HOME-Assisted Units in the Development shall be rented to persons at 60% of the median income adjusted for family size.

(59)~~(54)~~ "HOME Rental Development" means a Development proposed to be constructed or rehabilitated with HOME funds. A Development which is under construction may be eligible to apply for HOME funds only if the final building permit is dated within 6 months from the Application Deadline and the Development certifies compliance with federal labor standards (if ~~more than~~ 12 or more HOME-Assisted Units).

(60)~~(55)~~ "HOME Rent-Restricted Unit" means the maximum allowable rents designed to ensure affordability on the HOME-Assisted Units:

(a) High HOME rent means 80% of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs) or rents that are 30% for a Family at 65% of median income limit, minus resident-paid utilities.

(b) Low HOME rent means 20% of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs), or 30% of the gross income of a Family at 50% of the area median income, minus resident-paid utilities.

(61)~~(56)~~ "Housing Credit" means the tax credit issued in exchange for the development of rental housing pursuant to Section 42 of the Code and the provisions of this Rule Chapter 67-48, F.A.C.

(62)~~(57)~~ "Housing Credit Allocation" means the amount of Housing Credits determined by the Corporation as necessary to make a Development financially feasible and viable throughout the Development's Housing Credit Compliance Period pursuant to Section 42(m)(2)(A) of the Code.

(63)~~(58)~~ "Housing Credit Extended Use Period" or "Extended Use Period" means, with respect to any building that is included in a Housing Credit Development, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by the Corporation in the Extended Use Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the Code.

(64)~~(59)~~ "Housing Credit Period" means with respect to any building that is included in a Housing Credit Development, the period of 10 years beginning with:

(a) T~~t~~he taxable year in which such building is placed in service, or

(b) A~~a~~t the election of the Developer, the succeeding taxable year.

(65)~~(60)~~ "Housing Credit Development" means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.

(66)~~(61)~~ "Housing Credit Rent-Restricted Unit" means, with respect to a Housing Credit Development, a unit for which the gross rent does not exceed 30% of the imputed income limitation (Low-Income or Very Low-Income) applicable to such unit as chosen by the Applicant in the Application and in accordance with the Code. Gross rent must be determined from the rent charts included in the Application and must correspond to the percentage of area median income committed to by the Applicant in the Application.

(67)~~(62)~~ "Housing Credit Set-Aside" means the number of units in a Housing Credit Development necessary to satisfy the percentage of Low-Income or Very Low-Income units chosen by the Applicant in the Application.

(68)~~(63)~~ "Housing Credit Syndicator" means a person, partnership, corporation, trust or other entity that regularly engages in the purchase of interests in entities that produce Qualified Low Income Housing Projects [(as defined in Section 42(g) of the Internal Revenue Code]) and provides at least one written reference in the Application that such person, partnership, corporation, trust or other entity has performed its obligation under the partnership agreements and is not currently in default under those agreements.

(69)~~(64)~~ "Housing Provider" means, with respect to a HOME Development, local government, consortia approved by HUD under the HUD Regulations, for-profit and non-profit Developers, and qualified CHDO~~'~~s, with demonstrated capacity to construct or rehabilitate affordable housing.

(70)~~(65)~~ "HUD" means the U.S. Department of Housing and Urban Development.

(71)~~(66) "HUD Regulations" means, with respect to the HOME Program, the regulations of HUD in 24 CFR § 92 (1994) issued under the authority of Title II of the~~ National Affordable Housing Act of 1990 (Public Law 101-625, November 28, 1990), together with subsequent amendments thereto, as in effect on the date of this Rule Chapter.

(72)~~(67)~~ "Income Certification", "Tenant Income Certification" or "Form TIC-1" means that Form TIC-1 which is adopted and incorporated herein by reference, revised February 1999, and which shall be used to certify the income of all residents residing in a set-aside unit in a Development. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(73) Land Use Restriction Agreement," or "LURA" means, with respect to the SAIL or HOME Program, an agreement between the Corporation and the Applicant which sets forth the Set-Aside requirements and other Development requirements, if any, under the SAIL or HOME Program.

(74)~~(68)~~ "Local Government" means a unit of local general-purpose government as defined in Section 218.31(2), F.S. (2000)~~(1995)~~.

(75)~~(69)~~ "Low Income" means, with respect to the HOME Program, income which does not exceed 80% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, provided; however, with respect to the HC Program, "Low Income" shall mean income which is at or below 50% or 60% of the area median income, adjusted for family size, whichever is elected.

(76)~~(70)~~ "Match" means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations.

(77)~~(71)~~ "Non-Profit" means a qualified non-profit entity as defined in the HUD Regulations, Section 42(h)(5)(C)~~(c)~~, subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis, which owns at least 51% of the ownership interest in the Development held by the general partner entity and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing. The purpose of the Non-Profit must be, in part, to foster low-income housing and such purpose must be reflected in the Articles of Incorporation of the Non-Profit entity. Qualification as a Non-Profit entity must be evidenced to the Corporation by the receipt from the Applicant, upon Application, of a written opinion from legal counsel. The total cost of securing this written legal opinion will be borne entirely by the Applicant. The IRS determination letter must be submitted during the credit underwriting process. A Non-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit corporation; and shall materially participate in the development and operation of the Development throughout the total affordability period as stated in the Land Use Restriction Agreement and the Extended Use Agreement. If an Applicant submits Application to the Corporation as a Non-Profit entity but does not qualify as such, the Application will be rejected and the Applicant will be disqualified from participation for the current cycle.

(78)~~(72)~~ "Note" means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money for the SAIL or HOME Program loan together with interest on a specified date. The Note will provide the interest rate and will be secured by a mortgage.

(79)~~(73)~~ "Portfolio Diversification" means a distribution of SAIL and HOME Program loans to Developments in varying geographic locations with varying design structures and size and with different types and identity of Sponsors.

(80)~~(74)~~ "Preliminary Allocation" means a non-binding reservation of Housing Credits issued by the Executive Director to a Housing Credit Development which has successfully completed the credit underwriting process and demonstrated a need for Housing Credits.

(81)~~(75)~~ "Preliminary Determination" means an initial determination by the Corporation of the amount of Housing Credits outside the Corporation's Allocation Authority needed from the Treasury to make a Tax-Exempt Bond-Financed Development financially feasible and viable.

(82)~~(76)~~ "Principal" means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

(83)~~(77)~~ "Program" or "Programs" means the SAIL, HOME and/or HC Program(s) as administered by the Corporation.

(84)~~(78)~~ "Program Report" or "Form PR-1" means the report format which is required to be completed and submitted to the Corporation pursuant to Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.006 and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(85)~~(79)~~ "Progress Report" or "Form Q/M Report" means, with respect to a Housing Credit Development, a report format that is required to be completed and submitted to the

Corporation pursuant to Fla. Admin. Code Ann. Rule ~~r~~. 67-48.028(4), and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(86)~~(80)~~ "Project, " "Property" or "Development" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

(87)~~(81)~~ "Qualified Allocation Plan" or "QAP" means, with respect to the HC Program, the Qualified Allocation Plan which is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~, and which was approved by the Governor of the State of Florida on _____ ~~December 16, 1999~~, pursuant to Section 42(m)(1)(B) of the Code and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is included as an attachment to the Application Package.

(88)~~(82)~~ "Qualified Census Tract" means any census tract which is designated by the Secretary of Housing and Urban Development as having 50% or more of the households at an income which is less than 60% of the area median gross income in accordance with Section 42(d)(5), IRC.

(89)~~(83)~~ "Recap of Tenant Income Certification Information" or "Form AR-1" means, with respect to the HOME and/or HC Program(s), a report format which is required to be completed and submitted to the Corporation pursuant to this Rule Chapter and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(90) "Received" as it relates to delivery of a document by a specified deadline means, unless otherwise indicated, delivery by hand, U.S. Postal Service or other courier service, in the office of the Corporation no later than 5:00 p.m., Tallahassee time, on the deadline date.

(91)~~(84)~~ "Rehabilitation" means, with respect to the HOME Program, the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction. "Rehabilitation" means, with respect to the Housing Credit Program, what is stated in Sec. 42(e) of the Code, with the exception of Sec. 42(e)(3) (A)(II) which is changed to read: "II. The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units, in the building, is $20,000 or more."

(92)~~(85)~~ "Return on Equity" means, with respect to SAIL Developments, the amount of income from the SAIL Development that may accrue to the Sponsor as investment earnings on SAIL Equity contributed to the SAIL Development, not to exceed 12% per annum.

(93)~~(86)~~ "Review Committee" means a committee of seven FHFC staff persons appointed by the Board who will oversee the scoring of the Applications. Meetings of the Review Committee shall be at the call of the Chairperson of the Review Committee who shall be appointed by the Executive Director.

(94)~~(87)~~ "Rural Development" or "RD" or "USDA-RD" means (previously called "Farmer's Home Administration" or "FmHA") the United States Department of Agriculture – Rural Development or other agency or instrumentality created or chartered by the United States to which the powers of the RD have been transferred.

(95)~~(88)~~ "SAIL" or "SAIL Program" means the State Apartment Incentive Loan Program created pursuant to Section 420.5087, Florida Statutes.

(96)~~(89)~~ "SAIL Equity" means the cash contributed or anticipated to be contributed towards the development and construction of a SAIL Development available at the time of the SAIL loan closing including bridge loans from syndicators of the HC for the Development ~~and the purchase price of land less any land debt financed~~.

(a) For a public or Non-Profit Sponsor or Developer, an outright grant of funds, not to exceed 15% of Development cost minus SAIL Equity provided as described above, may be considered "SAIL Equity".

(b) For a public or Non-Profit Sponsor or Developer, a loan subordinate to the SAIL loan from a local government may be considered "SAIL Equity". The rate used to calculate Return on Equity on such loan shall not exceed the lesser of the loan rate or 12%.

(97)~~(90)~~ "SAIL Development" means a residential development which provides one or more housing units proposed to be constructed or substantially rehabilitated with SAIL funds for Eligible Persons. A SAIL Development which is under construction, in the process of rehabilitation or which has been completed may be considered for the SAIL Program funding only if:

(a) The pro forma submitted for the SAIL Development in other programs of the Corporation within the last year reflected SAIL funding;

(b) Permanent financing of the costs associated with construction or rehabilitation of the SAIL Development has not closed as of the date the SAIL loan Application was received by the Corporation; and

(c) The Application and attached exhibits demonstrate that SAIL funds will enable the SAIL Development to ~~provide at least 10% lower rents,~~ provide additional amenities, or incorporate some additional features which benefit Very Low-Income persons or households. Developments that are not eligible to obtain SAIL funds are those Developments that have already received funding through the SAIL Program.

(d) Developments that have extraordinary conditions such as acts of God, restrictions of any Governmental Authority, enemy action, civil disturbance, fire, or any other act beyond the reasonable control of the Developer will need to approach the Board to obtain permission to process an Application through SAIL for additional funding.

(98)~~(91)~~ "SAIL Minimum Set-Aside Requirement" means the least number of set-aside units in a SAIL Development which must be held for Very Low-Income persons or households pursuant to the category (i.e., Family~~,~~; Elderly~~,~~; or Farmworker and Commercial Fishing Worker) under which the Application has been made. The SAIL Minimum Set-Aside Requirement shall be either (a) 20% of the SAIL Development's units set-aside for residents (i.e., Family~~,~~; Elderly~~,~~; or Farmworker and Commercial Fishing Worker) with annual household incomes at or below 50% of the area, metropolitan statistical area ("MSA") or state median income, adjusted for family size, whichever is higher, or (b) 40% of the SAIL Development's units set-aside for residents (i.e., Family~~,~~; Elderly~~,~~; or Farmworker and Commercial Fishing Worker) with annual household incomes at or below 60% of the area, MSA or state median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting (b) above only if the SAIL Development is scheduled to be assisted with Housing Credits, in addition to the SAIL loan.

(99) "Scattered Sites" means two or more parcels in the same county, contiguous to one another, sharing at least one common boundary between them, or within such reasonable proximity to each other as to appear to the public to be under the dominion and control of the Applicant.

(100)~~(92)~~ "Section 8 Eligible" means one or more persons or families who have incomes which meet the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as in effect on the date of this Rule Chapter.

(101)~~(93)~~ "Single Room Occupancy" or "SRO" means housing, consisting of single room dwelling units, that is the primary residence of its occupant or occupants. Each unit must contain either food preparation or sanitary facilities (and may contain both) if the Development consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by the residents. An SRO does not include facilities for Students.

~~(94) "Site Control Loans" means, with respect to a HOME Development, funds provided to cover Development expenses necessary to determine Development feasibility, including costs of an initial feasibility study, consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance. General operational expenses of a CHDO are not allowable expenses.~~

(102)~~(95)~~ "Sponsor" means any individual, association, corporation, joint venture, partnership, trust, local government, or other legal entity or any combination thereof which:

(a) Has been approved by the Corporation as qualified to own, construct, acquire, rehabilitate, reconstruct, operate, lease, manage, or maintain a Development; and

(b) Except for a local government, has agreed to subject itself to the regulatory powers of the Corporation.

(103)~~(96)~~ "Student" means, with respect to SAIL and Housing Credit Developments, for the purposes of income certification, any individual who is, or will be, a full-time student at an educational institution during 5 months of the year, or a correspondence school with regular facilities. "Student" shall not be construed to include persons participating in an educational or training program approved by the Corporation.

(104)~~(97)~~ "Substantial Rehabilitation" means, with respect to the SAIL Program, to bring a Development back to its original state with added improvements, where the value of such repairs or improvements (excluding the costs of acquiring or moving a structure) exceeds 40% of the appraised as is value (excluding land) of such Development before repair. For purposes of this definition, the value of the repairs or improvements means the Development Costs, exclusive of the cost of acquiring or moving the structure. To be considered "Substantial Rehabilitation," there must be at least the foundations remaining from the previous structures, suitable to support the proposed construction.

(105)~~(98)~~ "Tax Exempt Bond-Financed Development" means a Development which has been financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the Code.

(106)~~(99)~~ "Treasury" means the United States Department of Treasury or other agency or instrumentality created or chartered by the United States to which the powers of the Department of Treasury have been transferred.

(107) "Urban In-Fill Development" means a Development (i) in a site or area that is targeted for in-fill housing or neighborhood revitalization by the local, county or state government (as evidenced by its inclusion in a HUD

Empowerment/Enterprise Zone, HUD-designated qualified census tracts, Florida Enterprise Zone, areas designated under a Community Development Block Grant (CDBG), areas designated as HOPE VI or Front Porch Florida Communities), and (ii) in a site which is located in an area that is already developed and part of an incorporated area or existing urban service area.

(108)~~(100)~~ "Very Low-Income" means:

(a) With respect to the SAIL Program,

1. I~~i~~f using tax-exempt bond financing for the first mortgage, income which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as in effect on the date of this Rule Chapter; or

2. If using taxable financing for the first mortgage, total annual gross household income which does not exceed 50% of the median income adjusted for family size, or 50% of the median income adjusted for family size for households within the MSA, within the county in which the person or family resides, or within the State of Florida, whichever is greater; or

3. If used in a Development using Housing Credits, income which meets the income eligibility requirements of Section 42 of the Code; or

(b) With respect to the HOME Program, income which does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 50% of the median for the area on a basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(c) With respect to the HC Program, if residing in a Development using the Housing Credit, income which is at or below 40% or 45% of the area median income whichever is selected in the Application.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.002, Amended 11-9-98, 2-24-00, _____.

67-48.003 Notice of Funding or Credit Availability.

(1) Applications shall be received by the Corporation by the deadline noticed in the Florida Administrative Weekly, which notice shall be published at least 45 ~~60~~ C~~c~~alendar D~~d~~ays prior to any such deadline. Such notice shall also be mailed to each person and entity on the Corporation's HOME/SAIL/HC mailing list.

(2) With respect to the SAIL, HOME and HC Programs, funds will initially be allocated as necessary to satisfy any final judgment of a court of law or recommended order of a hearing officer or administrative law judge or settlement agreement which has been adopted by final order approved by the Corporation's Board of Directors in connection with litigation with respect to a previous cycle.

(3) With respect to the HOME Program, said notice shall also set forth the allocation authority available for eligible activities enumerated in Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.018 as follows:

(a) The Corporation shall utilize up to 10% of the HOME allocation for administrative costs pursuant to the HUD Regulations.

(b) The Corporation shall utilize at least 15% of the HOME allocation for CHDOs pursuant to the HUD Regulations, to be divided between the multifamily and single family cycles as approved by the Board of Directors, provided; however, that no single multifamily Application shall be funded in an amount in excess of 25% of the HOME allocation designated for multifamily unless such Application is the only CHDO Application seeking funding in the current Application cycle. In order to apply under the CHDO set-aside, Applicants must have at least 51% ownership interest in the Development held by the General Partner entity.

(c) Within the rental ~~multifamily~~ cycle administered pursuant to Fla. Admin. Code Ann. Rule ~~r.~~ 67-48, the Corporation will distribute funds in the following order:

1. Funds will be allocated to qualified CHDO~~'~~s in order of ranking, until 15% of the available funds have been allocated.

2. The remaining funds will then be allocated to Applications for proposed Developments in order of ranking.

(d) The Board shall determine any geographic or other targeting requirements that will be included in said notice and published in the Florida Administrative Weekly and mailed to all interested parties on the Corporation mailing list.

(4) With respect to the HC Program, said notice shall also set forth the anticipated Allocation Authority and any geographic or other targeting requirements.

(5) After selection of Applications ~~Applicants~~ is made pursuant to Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.004, the availability of any remaining funds or Allocation Authority shall be noticed in the same manner as detailed in subsections (1) and (3) above or offered to a Development as approved by the Board of Directors, or for purposes of the HC Program, in accordance with the QAP.

(6) With respect to the HC Program, the Corporation shall be exempt from the notice requirements in subsections (1) and (4) above if, during any Funding Cycle, the Corporation has not fully used its Allocation Authority for any reason and the Corporation determines that:

(a) A new Funding Cycle is necessary in order for the Corporation to distribute the balance of its Allocation Authority to eligible Applicants ~~Developers~~; and

(b) Due to the shortness of the time remaining in the calendar year, the delay resulting from compliance with the notice requirements in subsections (1) and (4) above would interfere with the ability of the Corporation to distribute the balance of its Allocation Authority.

(7) With respect to the HC Program, in the event there remains Allocation Authority after the Corporation has exhausted its waiting list of Applications ~~Applicants~~ during a Funding Cycle and time requirements preclude an Application Period and notice thereof, the Corporation shall allocate any unused Allocation Authority to any eligible Development meeting the requirements of the Code and in accordance with the Qualified Allocation Plan.

(8) With respect to the SAIL Program, said notice shall also set forth minimum and maximum funding distribution levels by geographic category, as well as information related to demographic distribution objectives.

(9) In the event of a federally declared disaster, any Allocation Authority not preliminarily allocated, as well as any Authority remaining after Preliminary Allocation, can be diverted by the Board of Directors~~, based upon an Executive Order signed by the Governor,~~ to one or more federal~~ly~~ or state declared disaster areas.

(10) Trailers, mobile homes, manufactured housing and other such non-site built housing are not eligible for any FHFC funding. ~~The Notice of Funding or Credit Availability shall reference the amount of allocation to be set aside for Demonstration Developments or in connection with Developments receiving a State Housing Tax Credit allocation authorized by Section 220.185, Florida Statutes.~~

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.003, Amended 11-9-98, 2-24-00, _____.

67-48.004 Application and Selection Procedures for Developments.

(1) The Corporation hereby adopts by reference the Application Package (Form CAP 01 ~~CAP00~~) which provides forms, computer disks, tabs, threshold requirements, instructions and other information necessary for submission of an Application under each Program.

(2) Application Packages may be obtained for a fee in accordance with this Rule Chapter, from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(3) All Applications must be complete, consistent, accurate, legible and timely when submitted, except as described further below. All Applications must be received by the Application Deadline as specified in the Notice of Funding or Credit Availability for each Program. Neither Applications nor any additional information described in paragraph (11) below ~~or replacement items~~ will be accepted by facsimile transmission or other electronic means ~~machine~~. ~~Subject to the limited exceptions contained within Rule 67-48.005, F.A.C., once the Application has been received by the Corporation, no additions, deletions, or changes will be accepted for Application or scoring purposes.~~ Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application. Applications must be submitted on the forms provided in the Application Package or on forms generated by the computer disk(s) provided in the Application Package. Failure to comply with this provision will result in rejection of the Application. ~~Exhibits must be placed behind each form to which they refer. Failure to submit an Application completed in accordance with the Application instructions will result in a reduction of points awarded or rejection in accordance with the instructions in the Application.~~

(4) An original Application and three photocopies ~~of the original Application~~ shall be securely bound in separate three ring binders with numbered index tabs for each form and exhibit with the materials provided in the Application Package when submitted. Exhibits must be placed behind each form to which they refer. The submitted Application which is considered the original shall contain authentic, penned in ink signatures on those forms which specifically request original signatures. Signatures which are faxed, scanned, photocopied, or otherwise duplicated will not be considered acceptable signatures within the original Application and the Corporation will reject ~~will cause rejection of~~ the Application~~, unless the form containing the original signature is located in one of the copies of the Application, in which case the applicable penalty shall be applied in accordance with Application Instructions and forms~~. Each Applicant must submit a computer disk containing all completed forms. Nothing on the computer disk that is not otherwise contained within the original Application will be considered.

(5) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application, imposition of penalties or a score less than the maximum available on each form in accordance with the instructions in the Application and this Rule Chapter.

(6)~~(10)~~ The Review Committee shall review all Applications that are Received by the Application Deadline ~~For the purpose of this subsection "received" means delivery by hand, U.S. Postal Service or other courier service, in the office of the Corporation no later than 5:00 p.m., Tallahassee time, on the Application Deadline~~ as specified in the Notice of Funding or Credit Availability.

(7)~~(13)~~ The Review Committee shall use other Corporation staff to assist in reviewing certain portions of the Application.

(8)~~(11)~~ The Application Package shall be evaluated and preliminarily scored ~~ranked~~ using the factors specified in the Application Package. Preliminary scores shall be transmitted to all Applicants along with the Review Committee's scoring sheets, penalty report and threshold report.

(9) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 10 Calendar Days of the date of receipt of the preliminary scores, a written request for a review of the other Applicant's score. Each request must specify the assigned Application number and the forms and the scores in question, as well as describe the alleged deficiencies in detail. Each request is limited to the review of only one Application's score. Requests which seek the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of requests which may be submitted. The Review Committee will review each written request timely received. Failure to timely and properly file a request shall constitute a waiver of the right of the Applicant to such a review of the preliminary score.

(10) The Corporation shall transmit to each Applicant the notice of possible scoring errors submitted by other Applicants with regard to said Application. Said notice shall also include the Review Committee's position regarding the correctness of the notice of possible scoring errors by other Applicants, along with any other items identified by the Review Committee to be addressed by the Applicant.

(11) Within 15 Calendar Days of the notice set forth in subsection 10 above, each Applicant shall be allowed to submit additional documentation, revised forms and such other information as the Applicant deems appropriate to address the issues raised that could result in rejection of the Application, imposition of penalties or a score less than the maximum available on each form. Where specific pages of the Application are revised, changed or added, each new page(s) must be marked as "revised," and submitted. Failure to mark each new page(s) "revised" will result in the Corporation not considering the revisions, changes or additions to that new page. Pages of the Application that are not revised or otherwise changed may not be resubmitted. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also make such other changes as necessary to keep the Application consistent as revised. The Applicant shall submit an original and three copies of all additional documentation and revisions. Only revisions, changes and other information Received by the deadline set forth herein will be considered. Each Applicant must submit a computer disk containing all revised completed forms. Nothing on the computer disk that is not otherwise contained within the original of the revised forms will be considered.

(12) Within 10 Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in paragraph (11) above, all Applicants may submit to the Corporation a notice of alleged deficiencies in any other Application. Each notice is limited only to issues created by documents revised and/or added by the Applicant submitting the Application. Each request must specify the assigned Application number, the forms and the documents in question, as well as describe the alleged deficiencies in detail. Each notice is limited to the review of only one Applicant's submission. However, there is no limit to the number of notices which may be submitted. Notices which seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Review Committee will only review each written notice timely Received.

(13) The Corporation shall transmit a copy of the notices of alleged deficiencies to the affected Applicant.

(14) Following the receipt and review by the Review Committee of the documentation described in paragraphs (10), (11) and (12) above, the Review Committee shall then prepare pre-appeal scores. In determining such pre-appeal scores, no Application shall be rejected, receive a point reduction or have any penalty imposed as a result of any issues not previously identified in the notices described in paragraphs (8), (9) and (10) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to paragraph (11) above will still be justification for rejection, reduction of points or penalties imposed, as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in paragraph (18) below can be identified at any time prior to preparation of the pre-appeal scores and will result in rejection of the Application. Pre-appeal scores shall then be transmitted to all Applicants, along with notice of appeal rights.

(15)~~(5)~~ Applications shall be limited to one submission per subject property with exception of Tax-Exempt Bond-Financed Developments applying noncompetitively for Housing Credits.

(16)~~(6)~~ If any Applicant or any~~, an~~ Affiliate of an Applicant~~, or a partner of a limited investment partnership~~ is determined by the Corporation to have engaged in fraudulent actions or to have deliberately and materially misrepresented information within the current Application or in any previous Applications for financing or Housing Credits administered by the Corporation, the Applicant and any of Applicant's Affiliates will be ineligible to participate in any program administered by the Corporation for a period of up to two ~~fiscal~~ years, which will begin from the date the Board approves the disqualification of the Applicant's Application. The Applicant or Affiliate of the Applicant determined to be ineligible shall be entitled to file a petition contesting such determination within 21 Calendar Days of notice by the Corporation pursuant to the provisions of Chapter 120, Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right to contest the determination.

(17)~~(7)~~ The Corporation shall reject an Application if, following the submission of the additional documentation, revised forms and other information as the Applicant deems appropriate as described in paragraph (11) above:

~~(a) The Application has not been submitted in accordance with the Application Package and as specified in this Rule Chapter and accompanying instructions provided by the Corporation;~~

(a)~~(b)~~ The Development is inconsistent with the purposes of the SAIL, HOME and/or HC Program(s) or does not conform to the Application requirements specified in this Rule Chapter;

(b)~~(c)~~ The Applicant fails to achieve the threshold requirements as detailed in the Application Package;

~~(d) The Applicant fails to file its Application by the Application Deadline;~~

(c)~~(e)~~ The Applicant fails to provide all required copies and file all applicable ~~the entire~~ Application forms and verification forms which are ~~was~~ provided by the Corporation and adopted under this Rule Chapter;

~~(f) The Application is not accompanied by the correct Application fee as specified in this Rule Chapter;~~

~~(g) The Application is scanned or submitted on altered or retyped forms; or~~

~~(h) The Application fails to score within the funding range for HC if applying for SAIL and HC or HOME and HC. Further, if the Applicant's SAIL or HOME score is not sufficient for SAIL or HOME funding, HC will not be awarded.~~

(d) An Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears for any financial obligation it has to the Corporation. For purposes of the SAIL and/or HOME Program, this Rule subsection does not include permissible deferral of SAIL and/or HOME interest.

(18) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of the Applicant Entity as set forth in Form 1, Section I;

(b) Name of the Developer Entity as set forth in Form 1, Section I;

(c) Program(s) applied for as set forth in Form 1, Page 1;

(d) Designation of Applicant as a Non-Profit or for-profit entity as set forth in Form 1, Page 1;

(e) Site for the Development as set forth in Form 1, Section II;

(f) Type of Development category as set forth in Form 1, Section II;

(g) County as set forth in Form 2, Section I;

(h) Targeted resident population as set forth in Form 16, Sections II and III, and Form 21, Sections I and II;

(i) Total number of units, residential units, set-aside units and demographic commitment as set forth in Form 11, Sections I, III, IV, V and VII for the SAIL Program;

(j) Total number of units and set-aside units as set forth in Form 13, Section III for the HOME Program;

(k) Total number of units, residential units and set-aside units as set forth in Form 19, Sections I, II, III and IV for the HC Program;

(l) Requested amount as set forth in Forms 12, 18, and 23, as applicable; notwithstanding the foregoing, requested amounts exceeding the Corporation and Program funding limits can be reduced by the Applicant to reflect the maximum request amount allowed (and no other changes to this amount will be allowed);

(m) The Applicant fails to file its Application by the Application Deadline;

(n) The Application is not accompanied by the correct Application fee as specified in this Rule Chapter;

(o) The Application is scanned or submitted on altered or retyped forms.

(19)~~(8)~~ A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time~~:~~

~~(a) The Board determines that the Applicant deliberately misrepresented information in its Application in order to obtain points on its Application, or~~

~~(b)~~ t~~T~~he Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(20)~~(9)~~ If an Applicant or any Principal, ~~or~~ Affiliate or Financial Beneficiary of an Applicant or a Developer has ~~failed to place in service a Development which received a HC allocation or has~~ any existing Developments participating in any Corporation programs that remain in non-compliance with the Code or this Rule Chapter and the cure period granted for correcting such non-compliance has ended, at the time of submission of the Application or at the time of issuance of a final credit underwriting report the requested allocation will be denied and the Applicant and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Programs for the subsequent cycle and continuing until ~~a period of one year and until~~ such time as all of their existing Developments participating in any Corporation programs are in compliance.

~~(12) Preliminary scores and rankings shall be transmitted to all Applicants, along with notice of appeal rights. Following completion of appeals, final award of points shall be submitted to the Board for approval.~~

(21)~~(14)~~ With respect to the SAIL, HOME and HC Program Applications, when two or more Applications receive the same numerical score, except as otherwise set forth in the QAP with respect to the HC Program, the Application to be prioritized will be determined by lot ~~which has the higher total score on Forms 3, 4, and 7 shall be ranked higher~~. ~~With respect to the SAIL Program, when two or more Applications receive the same numerical score, the Corporation shall give priority to the Application which conforms to the geographic distribution detailed in section 420.5087(1), Florida Statutes. With respect to the SAIL and HOME Program Applications, if two or more Applications remain tied, the Corporation shall give priority to the Application with the lowest percentage based on the following Form 10 calculation: SAIL or HOME loan amount divided by the lower of Actual Total Development Cost or Threshold Total Development Cost. With respect to the HC Program Applications, if two or more Applications remain tied, the Corporation shall give priority to the Application with the lowest amount of HC requested per set-aside unit, as calculated on Form 10. Finally with respect to the SAIL, HOME and HC Applications, if two or more Applications continue to remain tied, priority will be given to the Application with the lowest number of total residential units.~~

(22)~~(15)~~ At no time during the Application, scoring and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development. At no time from the Application Deadline until the issuance of the pre-appeal scores as set forth in subsection 14 above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Development.

(23)~~(16)~~ The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is mandated by local, state or federal governmental authorities, or otherwise approved by the Corporation. Evidence of such mandate must be submitted to the Corporation within 30 Ccalendar Ddays of notification by the local, state or federal authorities.

(24) Prior to instituting any change resulting in any modification or deviation from the final Credit Underwriting Report, Applicant shall notify the Corporation. All changes to the Development plans, resident programs and other specifications which were used to describe the Development in accordance with this Rule Chapter and CAP01 and represented to the Credit Underwriter and Development servicer are affected by this prior notification requirement. Failure to obtain the Corporation's approval prior to implementing any such changes shall result in the Applicant and any of the Applicant's Affiliates being ineligible to participate in any program administered by the Corporation for a period of two years, which shall begin from the date the Board approves disqualification of the Applicant and its Application.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.004 , Amended 4-7-98, 11-9-98, 2-24-00, _____.

67-48.005 Applicant Administrative Appeal Procedures.

(1) Following the Review Committee's determination of pre-appeal ~~preliminary~~ scores as set forth in Rule 67-48.004(14) ~~and ranking~~, notice of intended funding or denial of funding will be provided to each Applicant with a statement that~~:~~

~~(a)~~ Applicants who wish to contest the decision relative to their own Application must petition the Corporation for review of the decision in writing within 21 Ccalendar Ddays of the date of receipt of the notice. Only petitions Received by the deadline set forth herein will be considered. The petition ~~request~~ must specify in detail each issue, form and score ~~the forms and the scores~~ sought to be appealed. ~~In its petition for review, the Applicant shall have the opportunity to cure transpositional or scrivener's errors that do not otherwise materially affect the Application and correct exhibits to the Application, provided that the original of such exhibit was properly recorded in the public records of its county of origin or was on file with the Secretary of State's Office for the State of Florida at the time the Application was submitted. Notwithstanding the ability to cure, a penalty will be applied in accordance with the Application Instructions and forms.~~ Unless the appeal involves disputed issues of material fact, the appeal will be conducted on an informal basis. ~~The Review Committee will review the appeal and will provide to the Applicant a written position paper which recommends either no change in score or an increase or decrease in a score which it deems to be in error. If the Applicant disagrees with the Review Committee's recommendation, the Applicant will be given an opportunity to participate in the informal administrative appeal hearings scheduled by the Review Committee.~~ If the appeal raises disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right of the Applicant to such an appeal. Written notifications, petitions or requests for review will NOT be accepted via telefax or other electronic means. No Applicant or other person or entity will be allowed to intervene in the appeal of another Applicant.

~~(b) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 21 calendar days of the date of receipt of the notice, a written request for a review of the other Applicant's score. Each request must specify in detail the assigned Application number, the forms and the scores in question. Each request is limited to the review of only one Application's score. Requests which seek the~~

~~review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of requests which may be submitted. The Review Committee will review each written request timely received and will prepare a written position paper, which will be provided to each Applicant who timely filed a notification and to the Applicant whose score has been questioned, which recommends either no change in score or an increase or decrease in a score which it deems to be in error. Failure to timely and properly file a request shall constitute a waiver of the right of the Applicant to such a review.~~

~~(2) Notice will be provided to all Applicants whose score is reduced or whose Application is deemed ineligible pursuant to 67-48.005(1)(b) that they may contest the decision relative to their own Application by petitioning for review of the decision in writing within 21 calendar days of the date of receipt of the notice. The request must specify in detail the forms and the scores sought to be appealed. In its petition for review, the Applicant shall have the opportunity to cure transpositional or scrivener's errors that do not otherwise materially affect the Application and correct exhibits to the Application, provided that the original of such exhibit is properly recorded in the public records of its county of origin or is on file with the Secretary of State's Office for the State of Florida. Notwithstanding the ability to cure, a penalty will be applied in accordance with the Application Instructions and forms. Unless the appeal involves disputed issues of material fact, the appeal will be conducted on an informal basis. The Review Committee will review the appeal and will provide to the Applicant a written position paper which recommends either no change in score or an increase or decrease in a score which it deems to be in error. If the Applicant disagrees with the Review Committee's recommendation, the Applicant will be given an opportunity to participate in the informal administrative appeal hearings scheduled by the Review Committee. No Applicant or other person or entity will be allowed to intervene in the appeal of another Applicant. If the appeal raises issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right of the Applicant to such an appeal.~~

~~(3) For purposes of 67-48.005(1)-(2) above, the written notification, petition, or request for review is deemed timely filed when it is received by the Executive Director, prior to 5:00 p.m. Tallahassee time of the last day of the designated time period, at the following address: Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, Attention: Corporation Clerk. For the purpose of this subsection, "received" means delivery by hand, U.S. Postal Service, other courier service, or by telefax. Petitions or requests for review that are not timely filed shall constitute a waiver of the right of the Applicant to such a review.~~

(2) Following the entry of all final orders in all appeals resolved pursuant to Section 120.57(2), Florida Statutes, the Corporation shall prepare post-appeal scores and a final ranking. For those Applicants with Section 120.57(1), Florida Statutes, appeals that have not yet had final orders entered as of the date of the final ranking, the Corporation shall, if any such Applicant ultimately obtains a final order that would have put its Application in the funding range had it been entered prior to the final ranking, provide the requested funding and allocation (as applicable) from the next available funding and allocation (as applicable), whether in the current year or a subsequent year. Applications that have applied for both Housing Credits and SAIL or HOME will only be funded at such time as funds and credits are both available together. Nothing contained herein shall affect any applicable credit underwriting requirements.

Specific Authority 420.507 FS. Law Implemented 120.57, 420.5087, 420.5089(1), 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.005, Amended 4-7-98, 11-9-98, 2-24-00, _____.

67-48.006 Compliance and Reporting Requirements.

(1) Any duly authorized representative of the Corporation or the Treasury shall be permitted at any time during normal business hours to inspect and monitor Development and resident records and facilities. All resident records shall be maintained by the owner of the Development within 50 miles of the Development site.

(2) The Corporation or its representative shall conduct on-site Development inspections at least annually. The on-site inspections for RD (formerly FmHA) Developments participating in the HC Program are performed by RD periodically in conjunction with RD regulations.

(3) The Corporation must approve the selection or replacement of a management company prior to such company assuming responsibility for the Development, using the following criteria:

(a) Review of company information including key management personnel, management experience and procedures;

(b) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;

(c) Key management company representatives attendance at a Corporation compliance workshop; and

(d) A meeting between Corporation compliance staff and the key management company representative after the compliance workshop;

(4) The Corporation will document approval of the management company to the owner of the Development after successful completion of items (3)(a)-(d).

(5) The owner of the Development shall maintain complete and accurate income records pertaining to each resident occupying a Low-Income or Very Low-Income unit. Records for each occupied Low-Income or Very Low-Income unit shall contain the following documentation:

(a) The resident's rental application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;

(b) An executed lease agreement listing the term of the tenancy and all of the residents residing in the unit;

(c) Verification of the income of each resident as is acceptable to prove income under Section 8 of the U.S. Housing Act of 1937, as in effect on the date of this Rule Chapter;

(d) Information as to the assets owned by each resident; and

(e) Income Certification Form TIC-1 for each resident. A sample Form TIC-1 can be obtained from the Corporation.

(6) The Applicant shall submit Program Reports pursuant to the following:

(a) The initial HC Program Report shall be submitted within 10 days following the end of the calendar quarter during which the issuance of the Final Housing Credit Allocation was made. Subsequent Program Reports shall be submitted each year of the Housing Credit Compliance Period and shall be due no later than on one of the following dates assigned by the Corporation: January 10, April 10, July 10 or October 10. The Program Reports shall be accompanied by:

1. Recap of Tenant Income Certification Information Form AR-1;

2. Copies of Tenant Income Certifications executed since the last Program Report for at least 10% of the Housing Credit Set-Aside units in the Development (to be sent to the monitoring agent only); and

3. With respect to the HC Program, the Annual Owner Compliance Certification Form to be signed by the owner of the Development certifying that for the preceding 12 month period the Development met its Housing Credit Set-Aside requirements (to be sent to the Corporation only). Forms PR-1, AOC-1 and AR-1 shall be provided by the Corporation and shall be submitted for all Developments receiving Housing Credit Allocations since January 1, 1987.

(b) The initial HOME Program Report shall be submitted prior to the time of loan closing, if occupied, or within 10 days following the end of the calendar quarter during which leasing of any HOME-Assisted Units occurred. Subsequent Program Reports shall be submitted annually on one of the following due dates assigned by the Corporation: January 10, April 10, July 10 or October 10. The Program Reports shall be accompanied by:

1. Recap of Tenant Income Certification Information Form AR-1; and

2. Copies of Tenant Income Certification executed since the last Program Report for at least 10% of the HOME-Assisted Units in the Development (to be sent to the monitoring agent only).

(c) The initial SAIL Progam Report shall be submitted prior to the time of loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by copies of all Tenant Income Certifications executed since the last Program Report (to be sent to the Corporation and the monitoring agent).

(7) HC Developments will submit copies of each building's completed IRS Low-Income Housing Credit Allocation Certificate Form 8609, Rev. 8/96, and Schedule A, Annual Statement, Rev. 8/96 (Form 8609) for the first year housing credits are claimed to the Compliance Section of Florida Housing Finance Corporation. These forms are incorporated by reference and are due at the same time they are filed with the Internal Revenue Service. Form 8609 and Schedule A (Form 8609) can be obtained from the Internal Revenue Service by calling 1-800-829-4477. Additionally, correspondence shall accompany these forms which indicates what the first month of the first taxable year is.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.006 , Amended 11-9-98, 2-24-00, _____.

67-48.007 Fees.

The Corporation shall collect via check or money order only the following fees and charges in conjunction with the SAIL, HOME and/or HC Program:

(1) Application Package Fee: Each Applicant must obtain an Application Package from the Corporation. A fee of $80 ~~$60~~ shall be payable to the Corporation by any person requesting a copy of the Application Package, and said fee must be received by the Corporation prior to the issuance of an Application Package. Application Packages without form and exhibit tabs may be obtained for a fee of $50 ~~$40~~.

(2) Application Tab Kit Fee: Each person requesting additional form and exhibit tabs for the Application shall remit a fee of $30 ~~$20~~ per Application Tab Kit, payable to the Corporation prior to the issuance of the Application Tab Kit.

(3) Application Fee:

(a) SAIL and HC Applicants shall submit to the Corporation at the time of submission of the Application a non-refundable Application fee of:

1. $500 ~~$250~~ per Application per Program if Applicant or Applicant's General Partner qualifies as a Non-Profit entity; ~~pursuant to HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida,~~ and

2. $1,000 ~~$500~~ per Application per Program for all others.

(b) HOME Applicants shall submit to the Corporation at the time of submission of the Application a non-refundable fee of:

1. $100 ~~$50~~ if Applicant ~~qualifies~~ or Applicant's g~~G~~eneral p~~P~~artner qualifies as a Non-Profit entity; ~~pursuant to HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida Corporation, or organized under similar state law if organized in jurisdiction other than Florida,~~ and

2. $250 ~~$100~~ for all others.

(4) Credit Underwriting Fees: With respect to the SAIL and the HC Programs, the Applicant shall submit the required underwriting fee for each Development to the Credit Underwriter designated by the Corporation within 7 C~~c~~alendar D~~d~~ays of the date of the invitation by the Corporation to enter credit underwriting. The credit underwriting fee shall be determined pursuant to the contract between the Corporation and the Credit Underwriter and shall be set forth in the Application Package. If a Housing Credit Development involves scattered sites of units within a single market area, a single credit underwriting fee shall be charged. Any Housing Credit Development requiring further analysis by the Credit Underwriter pursuant to Section 42(m)(2) of the Code, as well as any SAIL Development requiring further analysis by the Credit Underwriter pursuant to this Rule Chapter, will be subject to a fee based on an hourly rate determined pursuant to contract between the Corporation and the Credit Underwriter. All Credit Underwriting fees which are listed in the Application Package shall be paid by the Applicant prior to the performance of the analysis by the Credit Underwriter.

(5) Administrative Fees: With respect to the HC Program, each Applicant to whom a Preliminary Allocation, ~~a~~ Binding Commitment, or Preliminary Determination is granted shall submit to the Corporation a non-refundable administrative fee in the amount of 8% of the first annual Housing Credit Allocation amount to be received. However, such fee shall be 5% for Applicants that qualify or whose g~~G~~eneral p~~P~~artner qualifies as a Non-Profit entity pursuant to Rule 67-48.002(77)~~(71)~~, F.A.C., HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida. Notwithstanding the foregoing, the fee for a Development of 4 units or less shall not exceed $250 per unit. The administrative fee must be received by the Corporation within 7 C~~c~~alendar D~~d~~ays of the date of the Preliminary Housing Credit Allocation, the Binding Commitment or the Preliminary Determination, whichever is applicable.

(6) Commitment Fees: With respect to the SAIL Program, each Applicant to whom a firm commitment is granted shall submit to the Corporation a non-refundable commitment fee of 1% of the SAIL loan amount upon acceptance of the firm commitment. An extension fee of .5% ~~.05%~~ of the SAIL loan amount will be charged if a request ~~the Corporation is asked~~ to extend the SAIL loan commitment is approved by the Board [see Rule 67-48.012(6)] ~~beyond the period outlined in this Rule Chapter~~. All requests for extension must be submitted in writing to the program administrator and contain the specific reasons for the extension and the date needed by which to close the loan.

(a) Non-Profit sponsors who provide a certification indicating that funds will not be available prior to closing shall be permitted to pay the commitment fee at closing.

(b) All Applicants ~~Sponsors~~ shall remit the commitment fee payable to the Florida Housing Finance Corporation.

(7) Compliance Monitoring Fees: With respect to the HC Program, the total monitoring fee to be paid by the Applicant for the Housing Credit Compliance Period must be submitted to the Corporation prior to the issuance of a Final Housing Credit Allocation. The total monitoring fee is based upon a quarterly payment stream which shall be discounted at 2.75% for the full Housing Credit Extended Use Period to provide a present value to be paid by the Applicant and shall be listed in the Application Package. With respect to the SAIL Program, the annual monitoring fee to be paid by the Applicant shall be determined by contract between the Corporation and the monitoring agent and shall be listed in the Application Package.

(8) Loan Servicing Fees: With respect to the SAIL Program, the servicing fee to be paid by the Applicant shall be determined by contract between the Corporation and the monitoring agent and shall be listed in the Application Package.

(9) Financial Monitoring Fees: With respect to the SAIL Program, the annual financial monitoring fee to be paid by the Applicant shall be determined by contract between the Corporation and the monitoring agent and shall be listed in the Application Package.

~~(10) Housing Credit Development List: The Corporation shall prepare a Housing Credit Development list which shall include Housing Credit data for all Applicants and Developments from January 1, 1987, to the present. A fee of $5 per yearly list shall be payable to the Corporation by any person requesting a copy of any portion or all of the Development list prior to issuance of a Development list by the Corporation.~~

(10)~~(11)~~ Tax-exempt Mortgage Financing: If Corporation tax-exempt mortgage financing is used for the first mortgage loan, the same fee schedule as described above shall be applied to both the first mortgage loan and the SAIL loan. Additional legal, cost of issuance, bond underwriting, credit enhancement, liquidity facility and servicing fees associated with the financing shall also be paid by the Applicant.

(11)~~(12)~~ Development Cost Pro Forma: All of the fees set forth above with respect to the SAIL Program are part of Development cost and can be included in the Development cost pro forma and paid with SAIL loan proceeds. Failure to pay any fee shall cause the firm loan commitment under any Program to be terminated or shall constitute a default on the respective loan documents.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.007, Amended 11-9-98, 2-24-00, _____.

67-48.008 No Discrimination.

The Corporation, its staff or agents, Applicants, or participants in any Program shall not discriminate under that Program against any person or family, on the basis of race, creed, color, national origin, age, sex, religion, marital or familial status, or handicap, or against persons or families on the basis of their having minor children.

Specific Authority 420.507(12) FS. Law Implemented 420.501, 420.5089(10) FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.008, Repromulgated 11-9-98, Amended 2-24-00, _____.

PART II STATE APARTMENT INCENTIVE LOAN PROGRAM

67-48.009 SAIL General Program Procedures and Restrictions.

In order for a Development to qualify for SAIL funds, it shall, at a minimum, meet or comply with the following:

(1) In the Application, each Applicant must select the category in which to apply and must specify the SAIL Minimum Set-Aside Requirement with which the Development will comply.

(2) Loans shall be in an amount not to exceed 25% of the total Development cost or the minimum amount required to make the Development economically feasible, whichever is less, as determined by the Credit Underwriter.

(3) The following types of Sponsors are eligible to apply for loans in excess of 25% of total Development cost pursuant to 420.507(22), Florida Statutes:

(a) Non-Profit and public Sponsors which are able to secure grants, donations of land, or contributions from other sources collectively totaling at least 10% of total Development cost; or

(b) Sponsors that maintain an occupancy of a minimum of 80% of qualified Commercial Fishing Workers or Farmworkers.

(4) At a minimum, the percentage of set-aside units committed to in the Application must be held for Very Low-Income persons or households for a period of time equal to the greater of the following:

(a) The term of the SAIL loan; or

(b) 12 years; or

(c) Such longer term agreed to by the Applicant in the Application Package.

(5) Applicants cannot request additional SAIL funding for the same Development ~~within the SAIL Program with the exception of those Developments which comply with the requirements in Fla. Admin. Code Ann. r. 67-48.002(90)(a)-(c)~~.

~~(6) Applicants cannot request additional funding for the same Development within the SAIL Program in order to obtain their Developer fee.~~

(6)~~(7)~~ Developer fee shall be limited to 16% of Development cost excluding land and building acquisition costs. A Developer fee on the building acquisition cost shall be limited to 4% of the cost of the building exclusive of land. A total Developer fee of 18% of Development cost, excluding land and building acquisition costs, shall be allowed if the proposed Development is qualified for Housing Credits pursuant to Rule 67-48.027 pertaining to Tax-Exempt Bond-Financed Developments.

(7)~~(8)~~ In no event can the amount of the Developer's fee increase over what Developer fee is shown in the Application.

(8)~~(9)~~ The General Contractor's fee shall be limited to a maximum of 14% of the total construction cost.

(9)~~(10)~~ SAIL loans proceeds shall not be used to fund any contingency reserves.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.009, Amended 11-9-98, 2-24-00, _____.

67-48.0095 Additional SAIL Application Ranking and Selection Procedures.

(1) During the first six months following the publication date of the first Notice of Funding Availability published each ~~fiscal~~ year within the State of Florida, SAIL funds shall be allocated based upon the requirements specified in Section 420.5087 (3), Florida Statutes, which specifies the required funding within the three demographic categories of (a) Family, (b) Elderly, and (c) Commercial Fishing Workers and Farmworkers.

(2) 10% of the funds reserved for Applicants designating a SAIL Minimum Set-Aside Requirement in the Elderly category shall be reserved to provide loans to Sponsors of housing for the Elderly for the purpose of making life-safety or security-related repairs or improvements to such housing which are required by federal, state or local regulation, as further specified in Section 420.5087, Florida Statutes.

(3) The Corporation shall, within each demographic category, rank Applications in order of total points assigned, with the highest point total being ranked first.

(4) The Corporation shall then assign, in order of ranking, tentative loan amounts to the Applications in each demographic category, up to the total amount available. However, the Corporation shall make adjustments to ensure that minimum and maximum funding distribution levels by

geographic category are met, as required by Section 420.5087(1), Florida Statutes, and further described in the SAIL Notice of Funding Availability.

(5) To the extent that funds are available in the 10% amount reserved for counties with a population of 100,000 or less, those Applicants that have successfully competed for HC in the same cycle and require SAIL for financial feasibility will receive SAIL funds in conjunction with the requirements of Section 67-48.009, F.A.C., if the Development has no more than 60 total units.

(6) In the event that the 10% of program funds required to be allocated to counties with a population of 100,000 or less remains unallocated at the conclusion of a successive three-year cycle, the unallocated funds shall be carried forward and shall be added to the funds reserved for counties with a population of 100,000 or less for the next successive three-year period.

(7)~~(5)~~ After the six-month period has expired, the Corporation shall allocate SAIL funds to Applicants meeting threshold requirements, without regard to demographic category.

(8)~~(6)~~ Based upon fund availability, the Corporation shall notify Applicants of selection for participation in the SAIL Program in rank order within each set-aside category, as clarified in (4) above. When the amount of an Applicant's loan request exceeds the remaining funds available, the Corporation shall offer the Applicant a tentative loan amount equal to the remaining funds. Rejection of such offer will cause the Corporation to make the offer to the next highest ranked Applicant within the category. This process shall be followed until all funds in the category are either committed in this category or combined with available funds from other categories and offered to the next highest scorer in any category.

(9)~~(7)~~ Selection for SAIL Program participation is contingent upon fund availability after determination of final loan amounts and the appeals process as set forth in Rule 67-48.005, F.A.C.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0095, Amended 11-9-98, 2-24-00, _____.

67-48.010 Terms and Conditions of SAIL Loans.

(1) The proceeds of all SAIL loans shall be used for new construction or Substantial Rehabilitation of affordable, safe and sanitary rental housing units.

(2) The SAIL loan must be in a first or second lien position (provided that two prior mortgages which secure the same indebtedness and credit enhancement fees shall be deemed a single prior position) and shall not share priority with any other liens unless approved by the Board. For purposes of this rule, mortgages securing a letter of credit as credit enhancement for the bonds financing the first mortgage shall be considered a contingent liability and part of the first mortgage lien, provided that the Applicant's counsel furnishes an opinion regarding the contingent nature of such mortgage satisfactory to the Corporation and its counsel.

(3) The loans shall be non-amortizing and shall have interest rates as follows:

(a) 3% interest on loans to Developments that maintain an 80% occupancy of residents qualifying as Commercial Fishing Workers or Farmworkers over the life of the loan;

(b) 9% simple interest per annum for all other loans;

(c) Payment on the loans shall be based upon the actual Development Cash Flow. Interest may be deferred as set forth in Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.010(6) without constituting a default on the loan.

(4) The loans described in Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.010(3)(a) and (b) above shall be repaid from all Development Cash Flow, and if the SAIL loan is not a first mortgage loan, each year, subject to the provisions of paragraph (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and debt service;

(b) Development Expenses ~~including the servicing fee~~ on the SAIL loan;

(c) Base interest payment on SAIL loan balance equal to 1% on the 3% loan as stated in (3)(a) above and equal to 3% on the 9% loan as stated in (3)(b) above over the life of the SAIL loan;

(d) ~~Any SAIL loan~~ B~~b~~ase interest payment deferred from previous years;

(e) Mandatory payment on subordinate mortgages;

(f) 12% Return on Equity to Applicant ~~Sponsor~~;

(g) Any other unpaid SAIL interest deferred from the current and previous years;

(h) Any unpaid Return on Equity deferred from previous years; and

(i) Remaining monies to be equally divided between the Applicant ~~Developer~~ and the Corporation with the Corporation receiving no more than the stated interest rate on the SAIL loan. After the full SAIL loan interest has been paid, the Applicant ~~Sponsor~~ shall retain all remaining monies, unless the Applicant ~~Sponsor~~ chooses to prepay a portion of the loan balance.

(5) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of paragraph (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and base interest payment on SAIL loan balance equal to 1% on the 3% loan as stated in (3)(a) above and equal to 3% on the 9% loan as stated in (3)(b) above over the life of the SAIL loan;

(b) Development Expenses ~~including the servicing fee~~ on the SAIL loan;

(c) Any other unpaid SAIL interest deferred from the current and previous years;

(d) Mandatory payment on subordinate mortgages;

(e) 12% Return on Equity to Applicant ~~Sponsor~~;

(f) Any unpaid Return on Equity deferred from previous years; and

(g) Remaining monies to be equally divided between the Applicant ~~Developer~~ and the Corporation with the Corporation receiving no more than the stated interest rate on the SAIL loan. After the full SAIL loan interest has been paid, the Applicant ~~Sponsor~~ shall retain all remaining monies, unless the Sponsor chooses to prepay a portion of the loan balance.

(6) The determination of Development Cash Flow, determination of payment priorities, and payment of interest on SAIL loans shall occur annually. Any payments of accrued and unpaid interest due annually on SAIL loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this Rule Chapter. If Development Cash Flow is under-reported and such report causes a deferral of SAIL interest, such under-reporting shall constitute an event of default on the SAIL loan. A penalty of 5% of any required payment shall be assessed.

(a) By May 31 ~~April 15~~ of each year of the SAIL loan term, the Applicant ~~Developer~~ shall provide the Corporation and its servicer with a certification detailing the information needed to determine the annual payment to be made. However, this certification requirement will be waived until May 31 ~~April 15~~ following the calendar year within which the first unit is occupied. The certification shall require submission of audited financial statements and the SAIL annual reporting form, Cash Flow Reporting Form SR-1, Rev. 1/98. Form SR-1 can be obtained from the assigned servicer. The financial statements are to be prepared in accordance with generally accepted accounting principles for the 12 months ended December 31 and shall include:

1. Comparative Balance Sheet with prior year and current year balances;

2. Statement of revenue and expenses which compares budgeted amounts to actual performance;

3. Statement of changes in fund balances or equity;

4. Statement of cash flows; and

5. Notes.

The financial statements referenced above should also be accompanied by a certification of the Applicant ~~Developer~~ as to the accuracy of such financial statements. The Applicant ~~Developer~~ shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant's ~~Developer's~~ principal financial or accounting officer, covering such financial matters as the Corporation or its servicer may reasonably request, including without limitation, monthly statements with respect to the Development. A late fee of $500 will be assessed by the Corporation for failure to submit the required financial certification by May 31 ~~April 15~~ of each year of the SAIL loan term. Failure to submit the required financial certification by May 31 ~~April 15~~ of each year of the SAIL loan term shall constitute an event of default on the SAIL loan.

(b) The Corporation servicer shall issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by July 31 ~~May 31~~ of each calendar year of the SAIL loan.

(c) The Applicant ~~Developer~~ shall remit the interest due to the Corporation servicer no later than August 31 ~~June 30~~ of each year of the SAIL loan term. The first payment of SAIL base interest ~~on 9% loans~~ will be due no later than August 31 ~~June 30~~ following the calendar year within which the first unit is occupied. The first payment of base interest shall include all base interest for the period which begins accruing on the date of the first draw and ends on December 31 of the calendar year during which the first unit is occupied. Any payment not paid when due shall bear interest at the Default Interest Rate (18%) from the due date until paid. Unless the Corporation has accelerated the SAIL loan, the Developer shall pay the Corporation a late charge of 5% of any required payment which is not received by the Corporation within 15 days of the due date.

(7) If, in its Application, the Applicant agrees to a Very Low-Income set-aside for a term longer than that required by law, the deferred SAIL interest due pursuant to this Rule Chapter shall be forgiven in an amount equal to the amount of interest due pursuant to Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.010, multiplied by .05 multiplied by the number of years, not to exceed 15, that such set-aside for Very Low-Income persons or households was extended beyond that required by law.

(a) The amount of interest to be forgiven shall be determined upon maturity of the Note.

(b) Only interest which is in excess of the base interest rates specified in Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.010 shall be eligible for forgiveness.

(8) Any sale, conveyance, assignment, or other transfer of or the grant of a security interest in all or any part of the title to the Development other than a superior mortgage shall be subject to the Corporation's prior written approval.

(9) The final billing for the SAIL loan shall also include a billing for compliance fees to cover monitoring of SAIL Program requirements beyond the maturity date of the Note, as applicable. Such fees shall be computed by determining the present value of the annual compliance monitoring fee and multiplying that by the number of years for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. For Developments with perpetual set-asides, the period for which compliance fees shall be collected shall be limited to 50 years. The present value discount rate shall be 2.75% per annum.

Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Development provided:

(a) The compliance monitoring fee covers some or all of the period following the anticipated SAIL loan repayment date; and

(b) The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another Corporation program for which the compliance monitoring fee was collected.

(10) The SAIL loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.

(11) The Corporation shall monitor compliance of all terms and conditions of the SAIL loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement and recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement will be recorded first. Violation of any term or condition of the documents evidencing or securing the SAIL loan shall constitute a default during the term of the SAIL loan. The Corporation shall take legal action to effect compliance if a violation of any term or condition relative to the set-asides of units for Very Low-Income persons or households is discovered during the course of compliance monitoring or by any other means.

(12) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective May 27, 1997.

(13) The SAIL loan shall be for a period of not more than 15 years. However, if both a SAIL loan and federal housing credits are to be used to assist a Development, the Corporation may set the SAIL loan term for a period commensurate with the investment requirements associated with the Housing Credit syndication. The loan term may also exceed 15 years as required by the Federal National Mortgage Association whenever it is participating in the financing of the Development.

(14) Upon maturity of the SAIL loan, the Corporation may renegotiate and extend the loan in order to extend the availability of housing for the target population. Such extensions shall be based upon:

(a) Performance of the Sponsor during the SAIL loan term;

(b) Availability of similar housing stock for the target population in the area;

(c) Documentation and certification by the Sponsor that funds are not available to repay the Note upon maturity;

(d) A plan for the repayment of the loan at the new maturity date; and

(e) Assurance that the security interest of the Corporation will not be jeopardized by the extension.

(15) The Applicant ~~Developer~~ shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the SAIL mortgage without prior approval of the Corporation's Board of Directors.

(a) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in 67-48.010(15)(a) are met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance, the following calculation shall be used: divide the amount of the original SAIL mortgage by the combined amount of the original SAIL mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage after deducting refinancing costs. For example, if the amount of the original SAIL mortgage is $2,000,000, the original superior mortgage is $4,000,000, the proposed new superior mortgage is $5,000,000, and refinancing costs are $200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be $800,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance would be $266,667.

(c) The Board shall deny requests for mortgage loan refinancing which require extension of the SAIL loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in 67-48.010(15)(a) are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant ~~Developer~~ agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

(16) All SAIL loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR 100, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35. The Corporation shall allow units dedicated to

occupancy by the Elderly in a Development designed for occupancy by Elderly Households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR 100.

(17) Rent controls shall not be allowed on any Development except as required in conjunction with the issuance of tax-exempt bonds or federal Housing Credits; however, rents must be determined to be reasonable by the Credit Underwriter.

(18) The documents creating, evidencing or securing each SAIL loan must provide that any violation of the terms and conditions described in Fla. Admin. Code Ann. Rule ~~r~~. 67-48 constitutes a default under the SAIL loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(19) Applicants ~~Sponsors~~ shall annually certify that the household gross income, adjusted for family size, of each household occupying a unit set aside for Very Low-Income persons or households meets income requirements specified in Section 142(d)(3)(B) of the Code. Should the annual recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a household qualifying under the provisions of Section 420.5087(2), Florida Statutes, in order to ensure continuing compliance of the Development.

(20) The Corporation must approve the Applicant's ~~Developer's~~ selection of a management company prior to such company assuming responsibility for the Development. The Applicant, its designated representative, ~~Developer~~ or the managing agent of the Development must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(21) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the SAIL loan.

(22) If, after a four-month rent-up period commencing after issuance of the last certificate of occupancy on the units, a Sponsor is unable to meet the agreed-upon categorical set-aside for Family, Elderly, Farmworker or Commercial Fishing Worker, the Sponsor may request to rent such units to Very Low-Income persons or households without categorical restriction.

(a) The written request must provide documentation of marketing efforts implemented over the past four-month period which demonstrate the inclusion of sources of potential residents, advertising to be used, other means of encouraging residents to rent at the Development, and priority to the original targeted group of residents. If the Corporation determines that prior marketing efforts were insufficient, a revised plan which is satisfactory to the Corporation must be submitted and implemented for a four-month period prior to reconsideration.

(b) The Board will require Applicants ~~Sponsors~~ to provide additional amenities or resident programs suitable for the proposed resident population.

(c) The Board will require Applicants ~~Sponsors of Developments~~ with 3% loans, as described in 67-48.010(3)(a), to modify loan documents to conform to the terms and conditions of 9% loans, as described in 67-48.010(3)(b) or to accelerate payments of SAIL loan principal or interest.

(23) The Applicant ~~Developer~~ shall provide to the Corporation and its servicer a certified annual budget of income and expenses for the Development no later than 30 days prior to the beginning of the Development's ~~Project's~~ fiscal year.

(24) Failure to provide the Corporation and its servicer with the SAIL available Cash Flow Statement detailing the information needed to determine the annual payment to be made pursuant to this Rule Chapter shall constitute a default on the SAIL loan.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.010, Amended 11-9-98, 2-24-00, _____.

67-48.0105 Sale or Transfer of a SAIL Development.

(1) The SAIL loan shall be assumable upon ~~Development~~ sale, transfer or refinancing of the Development if the following conditions are met:

(a) The proposed transferee meets all specific Applicant ~~Sponsor~~ identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the SAIL loan for the period originally specified or longer; and

(c) The proposed transferee receives a favorable recommendation from the Credit Underwriter and approval by the Board of Directors of the Corporation.

(2) If the Development is sold and the buyer does not meet the criteria for assumption of the SAIL loan, the SAIL loan (principal and any deferred interest) shall be repaid from Development Cash Flow and from the proceeds of the sale in the following order of priority:

(a) First mortgage debt service, first mortgage fees, SAIL compliance and loan servicing fees;

(b) An amount equal to the present value of the compliance monitoring fee, as computed by the Corporation and its servicer, times the number of payment periods for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. The present value discount rate shall be 2.75% per annum. For Developments with set-asides in perpetuity, the period for which compliance fees shall be collected shall be limited to 50 years. Such amount shall be reduced by the amount of any compliance monitoring fees collected by the Corporation for the Development, provided:

1. The compliance monitoring fee covers some or all of the period following the anticipated SAIL repayment date; and

2. The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another program of the Corporation for which the compliance monitoring fee was collected.

(c) Unpaid principal balance of the SAIL loan;

(d) Any current and deferred base interest due on the SAIL loan;

(e) Any other SAIL interest deferred from the current and previous years;

(f) Expenses of the sale;

(g) Any deferred or currently due Return on Equity;

(h) Remaining funds to be equally divided between the Applicant ~~Developer~~ and the Corporation, with the Corporation receiving no more than the stated interest on the SAIL loan plus the principal;

(i) If, on its Application, the Applicant ~~Developer~~ agreed to a set-aside for Very Low-Income persons or households for a period longer than that required by law, the deferred interest due herewith shall be forgiven in an amount equal to the amount of interest due under the Note multiplied by .05 multiplied by the number of years, not to exceed 15 years, that the set-aside for Very Low-Income persons or households was extended beyond that required by law. Only the amount of interest which is in excess of the base interest rate shall be eligible for forgiveness;

(j) If there will be insufficient funds available from Development Cash Flow and from the proposed sale of the Development, the SAIL loan shall not be satisfied until the Corporation has received:

1. An appraisal prepared by an appraiser selected by the Corporation or the Credit Underwriter indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

2. A certification from the Applicant ~~Developer~~ that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the Development Cash Flow reported to the Corporation during the term of the SAIL loan was true and accurate;

3. A certification from the Applicant ~~Developer~~ that there are no Development funds available to repay the SAIL loan and the Applicant ~~Developer~~ knows of no source from which funds could or would be forthcoming to pay the SAIL loan; and

4. A certification from the Applicant ~~Developer~~ detailing the information needed to determine the final billing for SAIL loan interest. Such certification shall require submission of financial statements and other documents that may be required by the Corporation and its servicer.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0105, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

67-48.012 SAIL Credit Underwriting and Loan Procedures.

(1) Following the appeals process, the Corporation shall issue preliminary commitment letters to those Applicants whose Developments were awarded final scores and rankings which placed them into the funding range in each set-aside category.

(a) The preliminary commitment shall be subject to a positive recommendation by the Corporation's Credit Underwriter and approval by the Corporation's Board of Directors.

(b) The invitation to credit underwriting shall require that the Applicant submit the credit underwriting fee to the Credit Underwriter within seven calendar days of the date of the invitation. The Corporation will, within the specified seven calendar days, submit a copy of the Applicant's Application Package to the Credit Underwriter. Unless a written extension is obtained from the Corporation, failure to submit the fee by the specified deadline shall result in rejection of the Application.

(2) The Credit Underwriter shall verify all information in the Application Package, including information relative to the Applicant, Developer, Syndicator, General Contractor and other members of the Development team.

(a) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(b) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services ~~cost of providing such expertise~~ shall be borne by the Applicant.

(c) The Credit Underwriter shall review the interest rate and terms of other proposed financing as provided in the Application Package to determine whether or not such loans are feasible and to determine if a SAIL loan is needed.

(d) Required appraisals and environmental studies shall be completed by professionals approved by the Corporation's Credit Underwriters. Approval of appraisers and contractors to complete environmental studies shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(e) An appraisal shall be required during the credit underwriting process. The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order, at the Applicant's expense, the appraisal of the subject Pproperty. The Credit Underwriter shall use the same appraiser as the first mortgage lender provided the appraisal has not been ordered. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value.

(f) Except as provided in Section 420.5087(5), Florida Statutes, the amount of any superior mortgages combined with the SAIL mortgage shall be less than the appraised value of the Development. Any debt service reserve requirement associated with a superior mortgage shall be excluded from the amount of the superior mortgage for purposes of this calculation.

(g) The minimum combined debt service coverage shall be 1.10 and the maximum debt service coverage shall be 1.50, including the SAIL mortgage and all other superior mortgages. In extenuating circumstances, such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis.

(h) In addition to an operating expenses reserve, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of $200 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

(i) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

1. Liquidity of the gGuarantor.

2. Developer and General Contractor's history in successfully completing Developments of similar nature.

3. Problems encountered previously with Developer or cContractor.

4. Exposure of Corporation funds compared to total Development Ccosts.

At a minimum, the Credit Underwriter shall require a pPersonal gGuarantee for completion of construction from the principal individual or the cCorporate gGeneral pPartner of the borrowing entity. In addition, a letter of credit or pPayment and pPerformance bBond will be required if the Credit Underwriter determines after evaluation of 1.-4. above that additional surety is needed. However, a completion guarantee will not be required if SAIL funds are not drawn until construction is complete, as evidenced by final certificates of occupancy.

(j) The Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and SAIL loan.

(k) Contingency reserves shall not be paid from SAIL funds. However, contingency reserves which total no more than 3% of hard and soft costs may be included within the total Development cost.

(l) The Credit Underwriter shall review and determine if the number of loans and/or construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation Development.

(m) The Credit Underwriter shall consider the appraisal of the Development and other market study documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(n) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation's Board and the Credit Underwriter, shall result in rejection of the Application. If the Application is rejected, the Corporation will select additional Application(s) ~~Applicant(s)~~ in order of scoring.

(o) If audited financial statements are unavailable from the Applicant, the Credit Underwriter shall request federal tax returns for the past two years.

(3) Any changes in a firm commitment from any other source of the funding shall be consistent with the underwriting assumptions made in connection with the SAIL loan. All items on the Credit Underwriting Checklist Form CU-1, Rev. 11/99, with the exception of the appraisal, survey and final plans must be provided to the Credit Underwriter within 35 Ccalendar Ddays of the date of the preliminary SAIL commitment. The appraisal, survey and final plans shall be due to the Credit Underwriter within 60 calendar days from the date of the preliminary SAIL commitment. The Credit Underwriter shall advise the Corporation in writing of all items not received within 35 calendar days of the date of the preliminary SAIL commitment. Such form is included as an attachment to the Application Package.

(4) The Credit Underwriter shall complete and make a written draft report and recommendation to the Corporation within 80 Ccalendar Ddays from the date of the preliminary commitment letter. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours of receipt. After the 48

hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(5) After approval of the Credit Underwriter's recommendation by the Board of Directors or a committee appointed by the Board, the Corporation shall issue a firm SAIL loan commitment.

(6) Other mortgage loans related to the Development and the SAIL loan must close within 60 Ce~~a~~lendar Dd~~a~~ys of the date of the firm SAIL loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board of Directors for consideration. The Corporation shall charge an extension fee of one-half of one percent ~~.05%~~ of the SAIL loan amount if the Board approves the requested extension to extend the SAIL commitment beyond the period outlined in this Rule Chapter.

(7) If the Development is financed with bonds issued or to be issued on behalf of the Corporation, adjustments to the SAIL loan amounts shall be made by the Credit Underwriter based upon actual terms of the bond issue.

(8) The Corporation's servicer shall conduct at the Applicant's expense a preconstruction analysis and review of all the Development's ~~Project's~~ costs prior to the closing of the SAIL loan.

(9) It is the responsibility of the Applicant to comply with any part of this section and to request in writing and show cause for any waiver. Failure to comply will result in the disqualification of the Applicant and withdrawal of the SAIL commitment. The Corporation shall then offer a preliminary SAIL commitment to the next eligible Applicant or, with approval of the Board, retain available funds for use in the next Application Period.

(10) At least five Calendar Days prior to attending any closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and draw schedule.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.012, Amended 11-9-98, 2-24-00, _____.

67-48.013 SAIL Construction Disbursements and Permanent Loan Servicing.

(1) SAIL loan proceeds shall be disbursed during the construction phase in an amount per draw which does not exceed the ratio of the SAIL loan to the total Development cost, unless approved by the Credit Underwriter.

(2) Ten business days prior to each advance, the Applicant ~~Developer~~ shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant ~~Developer~~ for an advance.

(a) A copy of the request for an advance shall be delivered to the Corporation (Attention: SAIL Program Administrator) simultaneously with the delivery of the request to the Corporation's servicer.

(b) The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.

(3) The Corporation and its servicer shall review the request for advance, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current advance and increasing the insurance coverage to an amount equal to the sum of all prior advances and the current advance, without additional exceptions, except those specifically approved in writing by the Corporation.

(4) The Corporation will disburse construction draws through Automatic Clearing House (ACH). The Applicant may request disbursement of construction draws via a wire transfer. The Applicant will be charged a fee of $10 for each wire transfer requested. This charge will be netted against the draw amount.

(5)~~(4)~~ The Corporation shall elect to withhold any Draw ~~advance~~ or portion of any Draw ~~advance~~, notwithstanding any documentation submitted by the Applicant ~~Developer~~ in connection with the request for an advance, if

(a) The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs from that as shown on the loan documents; or

(b) The percentage of progress of construction of the improvements differs from that ~~as~~ shown on the request for a Draw ~~an advance~~.

(6)~~(5)~~ The servicer may request submission of revised construction budgets.

(7)~~(6)~~ If the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Dd~~r~~aw, the Applicant shall pay to the Credit Underwriter

a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter, which shall be listed in the Application Package.

(8)~~(7)~~ Retainage in the amount of 10% per D~~d~~raw shall be held by the servicer during construction until the Development is 50% complete. At 50% completion, no additional retainage shall be held from the remaining draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the SAIL loan agreement.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.013, Amended 11-9-98, 2-24-00, _____.

PART III HOME INVESTMENT PARTNERSHIPS PROGRAM

67-48.014 HOME General Program Procedures and Restrictions.

In order for a Development to qualify for HOME funds, it shall, at a minimum, meet or comply with the following:

(1) The maximum per-unit subsidy amount of HOME funds that the Corporation may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established pursuant to the HUD Regulations.

(2) The minimum amount of HOME funds that must be invested in a Rental Development is $1,000 times the number of HOME-Assisted Units in the Development.

(3) A Development qualifies as affordable housing and for HOME funds if, with respect to income and occupancy:

(a) 80% of the HOME-Assisted Units are occupied by families who annual income does not exceed 60% of the median family income for the area, as determined by HUD, with adjustments for family size, and

(b) 20% of the HOME-Assisted Units are occupied by families whose annual income does not exceed 50% of the median family income for the area, as determined by HUD, with adjustments of family size.

(c) When the income of a resident increases above 80% of area median income, the next unit that becomes available in the Development must be rented to a HOME income-eligible resident. If the income of a Very Low-Income household increases above the limits for a Very Low-Income household, then the Developer must rent the next available unit to a Very Low-Income household. The amount of rent the resident whose income has increased must pay is the lesser of the amount payable by resident under state or local law or 30% of the adjusted monthly income for rent and utilities.

(d) With respect to rent limits, the HOME Rent Chart at 65% or 50%, or the Fair Market Rent, less the applicable utility allowance, is the maximum rent that can be charged for a HOME Rent-Restricted Unit. HOME-Assisted Units with Section 8 subsidy must compare the Section 8 gross rent (resident rent, subsidy amount, and utility allowance) to the maximum applicable HOME high or low rent limit minus utilities. However, Developments with project-based rental assistance may utilize the project-based rents as compared to the HOME High and Low rents. Compliance with the HOME rent restrictions will take precedence over the Developer's acceptance of a full Section 8 (resident-based) subsidy for the HOME-Assisted Units.

(e) The minimum period of affordability for rehabilitation Developments is 15 years.

(f) The minimum period of affordability for newly-constructed rental housing is 20 years. The period of affordability will be extended until the loan is repaid as enumerated in Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.020(1).

(g) The minimum percentage of HOME-Assisted Units within a Development must be at least equal to the percentage (ratio) calculated by dividing the HOME loan amount by the total Development C~~c~~ost. This percentage will be utilized to determine the minimum number of HOME-Assisted Units required within a Development. HOME-Assisted Units must be identified at the time of Application. For purposes of meeting affordable housing requirements for a Development, the HOME-Assisted Units counted may be changed over the Compliance Period, so long as the total number of HOME-Assisted Units remains the same, and the substituted units are, at a minimum, comparable in terms of size, features, and number of bedrooms to the original HOME-Assisted Units.

(h) The Development will remain affordable, pursuant to commitments documented within the executed Land Use Restriction Agreement without regard to the term of the mortgage or to transfer of ownership.

(4) The Development must comply with all provisions of 24 CFR.

(5) Any contract for the development (rehabilitation or new construction) of affordable housing with 12 or more HOME-Assisted Units under the HOME Program must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. § 276a-265-a-5 (1994), will be paid to all laborers and mechanics employed for the construction or rehabilitation of the Development, and such contracts must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327-332 (1994) and the Copeland Act (Anti-Kickback Act), 40 U.S.C. § 276c (1994).

(6) All HOME Developments must conform to the following federal requirements:

(a) Equal Opportunity and Fair Housing as enumerated in 24 CFR § 92.202 and 92.250, 42 U.S.C. 2000d et seq., 42 U.S.C. 3601-3620, 42 U.S.C. 6101, and 24 CFR 5.105(a).

(b) Affirmative Marketing as enumerated in 24 CFR § 92.351.

(c) Environmental Review as enumerated in 24 CFR § 92.352, 24 CFR Part 58 and National Environmental Policy Act of 1969.

(d) Displacement, Relocation, and Acquisition as enumerated in 24 CFR § 92.353, 42 U.S.C. 4201-4655, 49 CFR Part 24, 24 CFR Part 42 (Subpart B), and Section 104(d) "Barney Frank Amendments."

(e) Labor Standards as enumerated in 24 CFR § 92.354, 40 U.S.C. 276a-276a-5, 24 CFR Part 70 (volunteers), and 40 U.S.C. 276c.

(f) Lead-based Paint as enumerated in 24 CFR § 92.355, 42 U.S.C. 4821 et seq., 24 CFR Part 35 and 24 CFR § 982.401(j) (except paragraph 982.401(j)(1)(i)).

(g) Conflict of Interest as enumerated in 24 CFR § 92.356, 24 CFR 85.36 and 24 CFR 84.42.

(h) Debarment and Suspension as enumerated in 24 CFR Part 5.

(i) Flood Insurance as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106).

(j) Handicapped Accessibility as enumerated in 24 CFR Part 8 and 24 CFR § 100.205.

(k) Equal Opportunity Employment as enumerated in 41 CFR Part 60.

(l) Economic Opportunity as enumerated in 24 CFR Part 135.

(m) Minority/Women Employment as enumerated in 24 CFR § 85.36(e).

(n) Site and Neighborhood Standards as enumerated in 24 CFR 893.6(b).

Specific Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.014, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

67-48.015 Match Contribution Requirement for HOME Allocation.

(1) The Corporation is required by HUD to match non-federal funds to the HOME allocation as specified in the HUD Regulations. One of the criteria for selecting HOME Developments will be its ability to obtain a non-federal local match source pursuant to HUD Regulations.

(2) A Match Credit Fund funded by the State of Florida has been appropriated to the Corporation. The funds are to be used for demonstration Developments and pilot programs selected and approved by the Corporation's Board of Directors. Such pilot programs shall be counted as the Corporation's required match for HUD purposes and may be any eligible activity acceptable to HUD regulations and approved by the Corporation's Board of Directors.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(4) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.015, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

67-48.017 Eligible HOME Activities.

HOME funds may be used for the following activities: acquisition (must include new construction and/or rehabilitation), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities pursuant to the HUD Regulations. In addition, HOME funds may be used for any activity found to be eligible by HUD in Match Credit and/or Disaster Developments.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.017, Amended 11-9-98, Repromulgated 2-24-00, _____.

67-48.018 Eligible HOME Applicants.

Applicants for HOME loans may include CHDO's, public housing authorities, local governments, Non-Profit organizations, and private for-profit organizations (including partnerships and sole proprietorships). The Applicant must be a legally-formed, existing entity at the time of Application. Documentation evidencing the same shall be required as part of the Application as set forth at Fla. Admin. Code Ann. Rule ~~r.~~ 67-48.004. Pursuant to the HUD Regulations, Applicants may not request additional HOME funding during the period of affordability. However, additional funds may be committed to a Development up to one year after Development completion provided the amount does not exceed the maximum per-unit subsidy and the additional amount is not used to pay for Developer fees.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.018, Amended 11-9-98, Repromulgated 2-24-00, _____.

67-48.019 Eligible and Ineligible HOME Development Costs.

(1) HOME funds may be used to pay for the following eligible costs as numerated in the HUD Regulations:

(a) Development hard costs as they directly relate to the identified HOME Assisted Units only for:

1. New construction, the costs necessary to meet local and State of Florida building codes and the Model Energy Code referred to in the HUD Regulations;

2. Rehabilitation, the costs necessary to meet local and State of Florida rehabilitation building codes and at a minimum, the Section 8 Housing Quality Standards under the HUD Regulations;

3. Both new construction and rehabilitation, costs to demolish existing structures, improvements to the Development site and utility connections;

(b) The cost of acquiring improved or unimproved real property. A HOME Development and HOME loan that involves acquisition must include rehabilitation or new construction in order to be an eligible Development.

(c) Soft costs as they relate to the identified HOME-Assisted Units. The costs must be reasonable, as determined by the Corporation and the Credit Underwriter, and associated with the financing, development, or both. These costs may include:

1. Architectural, engineering or related professional services required to prepare plans, drawings, specifications or work write-ups;

2. Costs to process and settle the HOME financing for a Development, such as credit reports, fees for evidence of title, recordation, building permits, attorney fees, cost certifications, and estimates;

3. Developer fee shall be limited to 16% of Development Ceost excluding land and building acquisition costs. A Developer fee on the building acquisition cost shall be limited to 4% of the cost of the building exclusive of land. In no event can the amount of the Developer fee increase over what Developer fee is shown in the Application.

4. Impact fees;

5. Costs of Development audits required by the Corporation;

6. Affirmative marketing and fair housing costs;

7. Temporary relocation costs as required under HUD Regulations;

8. The General Contractor's fee shall be limited to a maximum of 14% of the total construction cost.

(2) HOME funds shall not be used to pay for the following ineligible costs:

(a) Development reserve accounts for replacements, unanticipated increases in operating costs, or operating subsidies, except as described in Fla. Admin. Code Ann. Rule r. 67-48.019(1)(c)8.;

(b) Resident-based rental assistance except for pilot or demonstration Developments as approved by the Board of Directors;

(c) Public housing;

(d) Administrative costs;

(e) Developer fees unless the HOME funds include rehabilitation or new construction.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.019, Amended 11-9-98, 2-24-00, Repromulgated .

67-48.020 Terms and Conditions of Loans for HOME Rental Developments.

All HOME Rental Development loans shall be in compliance with the Act, the HUD Regulations and, at a minimum, contain the following terms and conditions:

(1) The HOME loan must be in a first or second lien position (provided that two prior mortgages which secure the same indebtedness and credit enhancement fees shall be deemed a single prior position) and shall not share priority with any other liens unless approved by the Board. The term of the loan shall be for a period of 15 years for Rehabilitation Developments and 20 years for new construction Developments. The term of the HOME loan may be extended to coterminate with the first mortgage term upon the recommendation of the Credit Underwriter and approval by the Corporation.

(2) The annual interest rate will be determined by the following:

(a) All for-profit Applicants that own 100% of the ownership interest in the Development held by the gGeneral pPartner entity will receive a 3% per annum interest rate loan.

(b) All qualified non-profit Applicants that own 100% of the ownership interest in the Development held by the gGeneral pPartner entity will receive a 0% interest rate loan. For purposes of determining the annual HOME interest rate, the definition of Non-Profit found at Rule 67-48.002, F.A.C., shall not apply; instead, qualified non-profit Applicants shall be those entities defined in the HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida corporation, or organized under similar state law if organized in a jurisdiction other than Florida.

(c) All Applicants consisting of a non-profit and for-profit partnership will receive a 0% interest rate loan on the portion of the loan amount equal to the qualified non-profit's ownership interest in the Development held by the gGeneral pPartner entity. A 3% interest rate shall be charged for loans on the portion of the loan amount equal to the for-profit's interest in the Development held by the gGeneral pPartner entity. After closing, should the Applicant sell any portion of the Development ownership, the loan interest rate ratio will be adjusted to conform with the new percentage of ownership.

(3) The loans shall be non-amortizing and repayment of principal shall be deferred until maturity, unless otherwise recommended by the Credit Underwriter and approved by the Corporation. Interest payments on the loan shall be paid to the Corporation's servicer annually on the date specified in the Note.

(4) As approved by the Board of Directors, loans which finance demonstration Developments or Developments located in a state or federally declared disaster area may be provided with forgivable terms.

(5) The accumulation of all Development financing, including the HOME loan and all existing debt within a Development, may not exceed the total Development Ceost, as determined and certified by the Credit Underwriter.

(6) Before disbursing any HOME funds, there must be a written agreement with the Applicant Developer ensuring compliance with the requirements of the HOME Program pursuant to this Rule Chapter and the HUD Regulations.

(7) A representative of the Applicant ~~The Developer~~ and the managing agent of the Development must attend a Corporation-sponsored training session on income certification and compliance procedures.

(8) If the Development has 12 or more HOME-Assisted Units, the General Contractor and all available subcontractors shall attend a Corporation-sponsored preconstruction conference regarding federal labor standards provisions.

(9) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Section 101.17 of the Federal National Mortgage Association Multifamily Conventional Selling Eligibility Requirements for rental properties.

(10) All loans must provide that any violation of the terms and conditions described in this Rule Chapter or the HUD Regulations constitute a default under the HOME loan documents allowing the Corporation to accelerate its loan and seek foreclosure as well as any other remedies legally available to it.

(11) If a default on a HOME loan occurs, the Corporation will commence legal action to protect the interest of the Corporation. The Corporation shall acquire real and personal property or any interest in the Development if that acquisition is necessary to protect any HOME loan; sell, transfer, and convey any such property to a buyer without regard to the provisions of Chapters 253 and 270, Florida Statutes; and, if that sale, transfer, or conveyance cannot be consummated within a reasonable time, lease the Development for occupancy by Eligible Persons.

(12) The Corporation or its servicer shall monitor the compliance of each Development with all terms and conditions of the HOME loan and shall require that such terms and conditions be recorded in the public records of the county where the Development is located. Violation of any term or condition shall constitute a default during the term of the HOME loan. The Corporation shall take legal action to effect compliance if a violation of any term or condition concerning the set-aside of units for Low and Very Low-Income households is discovered during the course of compliance monitoring or by any other means.

(13) The Applicant ~~Developer~~ shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the HOME mortgage without prior approval of the Corporation's Board of Directors.

(a) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in 67-48.020(13)(a) are met, the original combined loan to value ratio for the superior mortgage and the HOME mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding HOME loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance, the following calculation shall be used: divide the amount of the original HOME mortgage by the combined amount of the original HOME mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage after deducting refinancing costs. For example, if the amount of the original HOME mortgage is $2,000,000, the original superior mortgage is $4,000,000, the proposed new superior mortgage is $5,000,000, and refinancing costs are $200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be $800,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance would be $266,667.

(c) The Board shall deny requests for mortgage loan refinancing which require extension of the HOME loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in 67-48.020(13)(a) are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant ~~Developer~~ agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(7),(8),(9) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.020, Amended 11-9-98, 2-24-00, _____.

67-48.0205 Sale or Transfer of a HOME Development.

(1) The HOME loan shall be assumable upon Development sale, transfer or refinancing if the following conditions are met:

(a) The proposed transferee meets all specific Applicant ~~Sponsor~~ identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the HOME loan for the period originally specified; and

(c) The proposed transferee and Application receives a favorable recommendation from the Credit Underwriter and approval by the Corporation's Board of Directors.

(2) If the Development is sold and the proposed transferee does not meet the criteria for assumption of the loan, the HOME loan shall be repaid from the proceeds of the sale. If there will be insufficient funds available from the proposed sale of the Development, the HOME loan shall not be satisfied until the Corporation has received:

(a) An appraisal prepared by an appraiser selected by the Corporation indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

(b) A certification from the Applicant ~~Developer~~ that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the income reported to the Corporation during the term of the loan was true and accurate; and

(c) A certification from the Applicant ~~Developer~~ that there are no Development funds available to repay the loan and the Applicant ~~Developer~~ knows of no source from which funds could or would be forthcoming to pay the loan.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(7),(8),(9) FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0205, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

67-48.021 HOME Credit Underwriting and Loan Procedures.

(1) After the administrative appeal procedures have been completed, the Corporation shall assign a tentative loan amount to the Applicants in each set-aside category with the highest point totals on their A~~a~~pplications for funding, up to the amount available in the category.

(2) Based upon availability of funds, the Corporation shall issue a preliminary commitment notifying each Applicant of selection for participation in the HOME Program in the order of each Applicant's ranking within each set-aside category. When an Applicant's tentative loan amount exceeds the remaining fund availability, the Corporation shall offer the Applicant a tentative loan amount equal to the remaining funds. Rejection of such an offer will cause the Corporation to make the offer to the next highest ranked Applicant within the category. This process shall be followed until all funds for the set-aside category are committed.

(a) The preliminary commitment letter shall be subject to a positive recommendation by the Corporation's Credit Underwriter, approval by the Corporation's Board of Directors, and a certification by the Corporation of the HUD Environmental Review pursuant to 24 CFR § 92.352 (1994).

(b) The preliminary commitment letter shall require that the Applicant submit the information required from the Credit Underwriter's checklist Form (CU-1) to the Credit Underwriter within 35 Calendar D~~d~~ays of notification. The appraisal, survey and final plans shall be submitted within 60 Calendar D~~d~~ays of the preliminary commitment. Unless a written extension is obtained from the Board, failure to submit the required information by the specified deadline shall result in rejection of the Application. The Corporation shall select the Credit Underwriter for each Development.

(c) The Credit Underwriter shall verify all information in the Application Package, including information relative to the Applicant, Developer, Syndicator, General Contractor and other members of the Development team. The Credit Underwriter shall complete its analysis and submit a written draft report to the Corporation within 80 calendar days from the date of the preliminary commitment letter. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours after receipt. After the 48-hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(d) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected. The Corporation shall bear the cost of the underwriting review under contract with the Credit Underwriter. However, if the HOME commitment is canceled for failure to adhere to rule deadlines or for reasons within Applicant's control, the Development will be responsible for reimbursing the Corporation for fees incurred for credit underwriting and environmental review processing.

(e) The Credit Underwriter shall use the following procedures during the underwriting evaluation:

1. Minimum debt service coverage of 1.10 and maximum debt service coverage of 1.50 for the HOME loan and all other superior mortgages. In extenuating circumstances such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis.

2. Minimum replacement reserve of $200 per unit for all Developments. However, the amount may be increased based on a physical needs analysis. An Applicant may choose to fund

a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

3. Require audited financial statements and, if unavailable from the Applicant or Affiliates, the Credit Underwriter shall request federal tax returns for the past two years.

4. Review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation-funded Development.

5. The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

a. Liquidity of the gGuarantor.

b. Developer and General Contractor's history in successfully completing Developments of similar nature.

c. Problems encountered previously with Developer.

d. Problems encountered previously with cContractor.

e. Exposure of Corporation funds compared to total Development Ccosts. At a minimum, the Credit Underwriter shall require a pPersonal gGuarantee for completion of construction from the principal individual or the cCorporate gGeneral pPartner of the borrowing entity. In addition, a letter of credit or pPayment and pPerformance bBond will be required if the Credit Underwriter determines after evaluation of a.-e. above that the additional surety is needed.

6. Require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and HOME loan.

7. Any contingency reserves shall not be paid from HOME funds.

8. Review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(f) An appraisal shall be required during the credit underwriting process. The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order the appraisal for the subject Ppproperty. The Credit Underwriter shall use the same appraiser as the first mortgage lender provided the appraisal has not been ordered. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value.

(g) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation, shall result in the Application being rejected and the Corporation selecting additional Applications ~~Applicants~~ in order of scoring.

(h) A preconstruction analysis and review of the Development's costs shall be required prior to the closing of the HOME loan.

(i) The Applicant will bear the cost of all documentation submitted to the Credit Underwriter for review (i.e., appraisal, credit report, environmental study, etc.). The Applicant may reimburse itself for these costs with HOME funds from the first Draw.

(j) After approval of the Credit Underwriter's recommendation by the Board of Directors, or a committee appointed by the Board, the Corporation shall issue a firm HOME loan commitment.

(k) The HOME loan shall close within 60 Ccalendar Ddays from the date of the firm commitment letter.

(l) The Applicant must submit a written request for any extensions needed or any changes to the Development or its financing from the original Application. All requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request must be submitted to the Corporation Board of Directors for consideration.

(3) At least 5 Calendar Days prior to attending any closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and draw schedule.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.021, Amended 11-9-98, 2-24-00, _____.

67-48.022 HOME Disbursements Procedures and Loan Servicing.

(1) HOME loan proceeds shall be disbursed during the construction/rehabilitation phase in an amount per Draw on a pro-rata basis with the other financing unless otherwise approved by the Corporation or the Credit Underwriter.

(2) Ten business days prior to each Draw, the Applicant ~~borrower~~ shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant ~~borrower~~ for a Draw in a form and substance acceptable to the Corporation's servicer.

(3) A copy of the request for a Draw shall be delivered to the Corporation, Attention: HOME Rental Program Administrator, simultaneously with the delivery of the request to the Corporation's servicer and its inspector.

(4) The request shall set forth the amount to be paid and shall be accompanied by documentation as specified by the Corporation's servicer. Such documentation shall include invoices for labor and materials to date of the last inspection.

(5) The Corporation's servicer and the Corporation shall review the request for Draw and the Corporation's servicer shall provide the Corporation with approval of the request or an alternative recommendation of an amount to be paid after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation. For all Developments consisting of 12 or more HOME-Assisted Units, the borrower shall submit weekly payrolls of the General Contractor and subcontractors in accordance with Federal Labor Standards as enumerated in 24 CFR 92.354.

(6) Retainage in the amount of 10% per Ddraw shall be held by the servicer during construction until the Development is 50% complete. At 50% completion, no additional retainage shall be held from the remaining draws. Release of funds held as retainage shall occur in accordance with the HOME loan documents.

(7) The Corporation or its servicer shall elect to withhold any Draw or portion of any Draw, in addition to the retainage, notwithstanding any documentation submitted by the borrower in connection with a request for a Draw, if:

(a) The Corporation or the servicer determines at any time that the actual cost budget or progress of construction differs from that shown on the loan documents.

(b) The percentage of progress of construction of improvements differs from that shown on the request for a Draw.

(c) Developments subject to and not in compliance with Federal Labor Standards.

(8) To the extent excess HOME funds in the budget remain unused, the Corporation has the right to reduce the HOME loan by that amount.

(9) If 100% of the loan proceeds have not been expended within six months prior to the HUD deadline pursuant to 24 CFR § 92.500 (1994), the funds shall be recaptured and reallocated to any eligible HOME Development on any Corporation waiting list or eligible HOME Developments, as selected by the Board.

(10) The request for final disbursement of HOME funds, excluding retainage, shall be submitted within 60 days of completion of construction as evidenced by certificates of occupancy.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(1) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.022, Amended 11-9-98, 2-24-00, _____.

PART IV HOUSING CREDIT PROGRAM

67-48.023 Housing Credits General Program Procedures and Requirements.

In order for a Development to qualify for Housing Credits it shall, at a minimum, meet or comply with the following:

(1) Each Applicant shall comply with this Rule Chapter and with Section 42 of the Code and federal regulations issued pursuant thereto and in effect at the time of the Funding Cycle. Noncompliance by an Applicant, or any Principal, Affiliate or Financial Beneficiary of an Applicant or Developer in a Funding Cycle shall result in disqualification from participation in the current HC Funding Cycle and for a period of not less than one year Program ineligibility for the Applicant in that Funding Cycle. The Applicant and its Principals, Affiliates and Financial Beneficiaries will continue to be ineligible to participate in future HC Funding Cycles until such time as all noncompliance issues are cured.

(2) Each Housing Credit Development shall comply with the minimum Housing Credit Set-Aside provisions, as specified in Section 42(g)(1) of the Code, with respect to the reservation of 20% of the units for occupancy by persons or families whose income does not exceed 50% of the area median income, or the reservation of 40% of the units for occupancy by persons or families whose income does not exceed 60% of the area median income. Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.

(3) The gross monthly rents for the Housing Credit Set-Aside units shall not exceed 30% of the imputed income limitation applicable to such unit. The monthly rents used must correspond to the Housing Credit Set-Aside (Low-Income or Very Low-Income) chosen by the Applicant in the Application as shown on the rent charts provided by FHFC included in the Application Package.

(4) The Development shall provide safe, sanitary and decent residential rental housing and shall be developed, constructed and operated in accordance with the commitments made and the facilities and services described in the Application at the time of submission to the Corporation. Applications will not be considered approved to receive an allocation of Housing Credits until Florida Housing issues a Preliminary Allocation/Preliminary Determination to the Applicant and all contingencies of such documents are satisfied. Allocations are further contingent on the Applicant complying with its Application commitments, Chapter 67-48, F.A.C., and Section 42, IRC.

(5) Applicants are prohibited from requesting an additional or increased Housing Credit Allocation for the sole purpose of obtaining Developer's fees.

(6) All of the dwelling units within a Development shall be rented or available for rent on a continuous basis to members of the general public. The owner of the Development shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the

extent that dwelling units are required to be rented to Eligible Persons. All Developments must comply with the Fair Housing Act as implemented by 24 CFR 100, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35.

(7) Each Housing Credit Development shall complete the Final Cost Certification Form FCCA-2001 ~~2000~~, which is incorporated by reference, by the earlier of the following two dates. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(a) T~~t~~he date that is 60 C~~c~~alendar D~~d~~ays after all the buildings in the Development have been placed in service, or

(b) T~~t~~he date that is 30 C~~c~~alendar D~~d~~ays before the end of the calendar year for which the Final Housing Credit Allocation is requested.

(8) The completed Final Cost Certification Form FCCA-2001 ~~2000~~ shall include an unqualified audit report prepared by an independent certified public accountant. The Corporation will issue only one complete set of Forms 8609 per Development which will be no earlier than total Development completion and the Corporation's acceptance and approval of the Development's Final Cost Certification.

(9) After the final evaluation and determination of the Housing Credit Allocation amount has been made by the Executive Director~~,~~ and the recorded Extended Use Agreement has been received in accordance with 67-48.029, the Forms 8609 are issued to the Applicant of the Housing Credit Development.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.023, Amended 11-9-98, 2-24-00, _____.

67-48.025 Qualified Allocation Plan.

(1) Pursuant to Section 420.507(12), Florida Statutes, the Corporation is responsible for the allocation and distribution of H~~h~~ousing C~~c~~redits in this state. As the allocating agency for the state, distribution of h~~H~~ousing c~~C~~redits to Applicants shall be in accordance with the Corporation's Qualified Allocation Plan.

(2) The specific criteria of the Qualified Allocation Plan as mandated by Congress and addressed at Section 42(m)(1)(B) of the Internal Revenue Code, as amended, are hereby approved by the Governor on ~~December 16, 1999~~, and adopted by reference herein.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.025, Amended 11-9-98, 2-24-00, _____.

67-48.026 Housing Credit Underwriting Procedures.

(1) After the administrative appeal procedures have been completed, the Corporation shall offer all Applicants within the funding range the opportunity to enter credit underwriting.

(2) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter not later than 7 ~~seven~~ C~~c~~alendar D~~d~~ays after the date of the letter of invitation.

(3) If the credit underwriting invitation is accepted:

(a) The Applicant shall submit the credit underwriting fee in accordance with 67-48.007(4) to the Credit Underwriter within 7 ~~seven~~ C~~c~~alendar D~~d~~ays of the date of the letter of invitation, and

(b) The Applicant shall submit the information required from the Credit Underwriter's checklist Form (CU-1) to the Credit Underwriter within 35 C~~c~~alendar D~~d~~ays of the date of the invitation to enter credit underwriting. The Credit Underwriter shall complete its report within 56 C~~c~~alendar D~~d~~ays from the date of the credit underwriting invitation. The appraisal, survey and final plans are acceptable contingency items to the credit underwriting report.

(4) Unless a written extension is obtained from the Board, failure to submit the required credit underwriting information or fees by the specified deadline shall result in rejection of the Application.

(5) The Corporation shall select the Credit Underwriter for each Development.

(6) The Credit Underwriter shall verify all information in the Application Package, including information relative to the Applicant, Developer, Syndicator, General Contractor and other members of the Development team.

(7) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(8) The Credit Underwriter shall use the following procedures during the underwriting evaluation:

(a) The Credit Underwriter, in determining the amount of housing credits a Development is eligible for when using the q~~Q~~ualified b~~B~~asis c~~C~~alculation, shall use a housing credit percentage of:

1. Thirty (30) basis points over the percentage as of the date of i~~I~~nvitation to c~~C~~redit u~~U~~nderwriting up to nine percent (9%) for nine percent (9%) credits for new construction and rehabilitation Developments;

2. Fifteen (15) basis points over the percentage as of the date of i~~I~~nvitation to c~~C~~redit u~~U~~nderwriting up to four percent (4%) for four percent (4%) credits for acquisition and federally subsidized Developments. A percentage of fifteen (15) basis points over the percentage as of the date of i~~I~~nvitation to f~~F~~inal

cCredit uUnderwriting up to four percent (4%) will be used for Developments receiving FHFC tax-exempt bonds in calendar year 2000 or later.

(b) Review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of the proposed Corporation-funded Development.

(c) Developer fee shall be limited to 16% of Development cost excluding land and building acquisition cost. A Developer fee on the building acquisition cost shall be limited to 4% of the cost of the building exclusive of land. A total Developer fee of 18% of Development cost, excluding land and building acquisition costs, shall be allowed if the proposed Development is qualified for Housing Credits pursuant to Rule 67-48.027 pertaining to Tax-Exempt Bond-Financed Developments.

(d) In no event can the amount of the Developer fee increase over what Developer fee is shown in the Application.

(e) The General Contractor's fee shall be limited to a maximum of 14% of the actual ~~total~~ construction cost.

(f) Costs such as syndication fees and brokerage fees cannot be included in eEligible bBasis. All consulting fees must be paid out of the Developer fee. Consulting fees cannot cause the Developer fee to exceed the maximum allowable fee as set forth in (c)~~(d)~~ above.

(g) All contracts for hard or soft Development costs must be itemized for each cost component.

(h) An appraisal shall be required during the credit underwriting process. The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order the appraisal for the subject Pproperty. The Credit Underwriter shall use the same appraiser as the first mortgage lender provided the appraisal has not been ordered.

(i) The Credit Underwriter shall review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(j) A separate market study shall be required if the appraisal does not adequately address the market for the proposed Development.

(k) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(m) In addition to an operating expenses reserve, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of $200 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment.

(n) The Corporation's assigned Credit Underwriter shall conduct, at the Applicant's sole expense, a pre-construction analysis and review of all the Development's costs. In addition, the Credit Underwriter shall analyze the physical needs assessment submitted as part of the Application. If the Credit Underwriter determines that the submitted physical needs assessment is insufficient, the Credit Underwriter shall order a new physical needs assessment at the Applicant's sole expense.

(o) Contingency reserves which total no more than 5% of hard and soft costs may be included within the Total Development cost for Application and underwriting purposes.

(p)~~(k)~~ If the Credit Underwriter requires additional clarifying ~~clarying~~ materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same.

(9) After the completion of its analysis, the Credit Underwriter shall submit its draft recommendation including a detailed report of the Development's ~~Project's~~ credit worthiness, feasibility, ability to proceed and viability to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours. After the 48 hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(10) If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the Executive Director shall determine the cCredit amount, if any, necessary to make the Development financially feasible and viable throughout the Housing Credit Extended Use Period and shall issue a Preliminary Allocation Certificate or a Preliminary Determination of Housing Credits in the case of Tax-Exempt Bond-Financed Developments. If the Credit Underwriter recommends that no cCredits be allocated to the Development and the Executive Director accepts the recommendation, the Applicant shall be notified that no Housing Credits will be allocated to the Development for the current cycle. No Preliminary Allocation Certificate shall be issued on a RD (formerly FmHA) Development which has not received an Obligation of Funding (RD or FmHA Form 1944-51), which Obligation of Funding is incorporated by reference. A copy of the obligation for funding can be obtained from the U.S. Department of Agriculture, P. O. Box 147010, Gainesville, FL

32614-7010. All contingencies required in the Preliminary Allocation shall be met or satisfied by the Applicant within 45 Calendar D~~d~~ays from the date of issuance or as otherwise indicated on the Certificate unless an extension of this deadline is requested in writing by the Applicant and is granted by the Corporation in writing for good cause.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.026, Amended 11-9-98, 2-24-00, _____.

67-48.027 Tax-Exempt Bond-Financed Developments.

(1) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the Code, seeking to obtain Housing Credits from the Treasury, receiving the bonds from Florida Housing in calendar year 2000 or later and not competing for Housing Credits under the State of Florida Allocation Authority shall:

(a) Have 50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

(b) Make Application for Housing Credits using Florida Housing's Form MFMRB-2001 ~~2000~~, which form is incorporated by reference. The Form MFMRB-2001 ~~2000~~ can be obtained from Florida Housing's Multifamily Mortgage Revenue Bond Program;

(c) Be subject to the Form MFMRB, monitoring and credit underwriting fees as stated in Rule 67-21, F.A.C.;

(d) Be deemed to have met all HC Program scoring threshold requirements upon the closing of the bonds with Florida Housing;

(e) Receive a Preliminary Determination from the Corporation upon Florida Housing's issuance of a loan commitment in reference to the tax-exempt bonds;

(f) Be subject to Parts I and IV of this Rule Chapter, except for Sections 67-48.026 and 67-48.028, ~~the administrative fee specified in this Rule Chapter which is payable prior to or si3multaneous with the closing of Florida Housing's tax-exempt bonds;~~ and

~~(g) Be subject to the Developer fee limitations as set forth in this Rule Chapter;~~

~~(h) Be subject to the provisions in this Rule Chapter, pertaining to the required Extended Use Agreement; and~~

(g)~~(i)~~ Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification requirements of Rule 67-48.023.

(2) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the Code, seeking to obtain Housing Credits from the Treasury receiving the bonds from Florida Housing prior to calendar year 2000 or receiving bonds from another source other than Florida Housing, and not competing for Housing Credits under the State of Florida Allocation Authority shall:

(a) Have 50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

~~(b) After bonds are issued to the Development, make Application to the Corporation as required in Fla. Admin. Code Ann. r. 67-48.004 and Fla. Admin. Code Ann. r. 67-48.026. Applications for these Developments shall be received by the Corporation no later than July 1 of the year the Development is placed in service.~~

(b)~~(c)~~ Be subject to the Application fee specified in this Rule Chapter;

(c)~~(d)~~ Meet the HC Program threshold requirements pursuant to the Qualified Allocation Plan and shall have completed loan closings on all required financing;

(d)~~(e)~~ Participate in the credit underwriting process pursuant to this Rule Chapter, unless such Development has received its tax-exempt bond financing through the Corporation, in which case the Development must be underwritten to the extent necessary to determine Development feasibility and housing credit need;

(e)~~(f)~~ Be subject to the credit underwriting fees as set forth in this Rule Chapter;

(f) Be subject to the administrative fee specified in this Rule Chapter;

(g) Receive a Preliminary Determination from the Corporation upon satisfying the requirements of sections (a) through (f) above.~~:~~ A Development may receive a Preliminary Determination prior to the bonds being issued and the submission of an Application, if the Corporation receives a credit underwriting report prepared by one of the Corporation's contracted Credit Underwriters which recommends a Housing Credit allocation and the issuance of tax-exempt bonds, and receives evidence of a loan commitment in reference to the tax-exempt bonds. The administrative fee must be paid within seven days of the date of the Preliminary Determination;

~~(h) Be subject to the administrative fee specified in this Rule Chapter;~~

(h)~~(i)~~ Be subject to a Developer fee limitation as specified in this Rule Chapter;

(i)~~(j)~~ Be subject to the provisions in this Rule Chapter, pertaining to the required Extended Use Agreement;

(j)~~(k)~~ Be subject to the monitoring fee specified in this Rule Chapter unless such Development has received tax-exempt bond financing through the Corporation; ~~and~~

(k) After bonds are issued to the Development, make Application to the Corporation as required in Fla. Admin. Code Ann. Rule 67-48.004 and Fla. Admin. Code Ann. Rule 67-48.026. An original and one photocopy of each Application for these Developments shall be received by the Corporation no later than July 1 of the year the Development is placed in service; and

(l) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification requirements of Rule 67-48.023.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.027, Amended 11-9-98, 2-24-00, _____.

67-48.028 Carryover Allocation Provisions.

(1) If an Applicant cannot complete its Development by the end of the year in which the Preliminary Allocation is issued, the Applicant must enter into a Carryover Allocation Agreement with the Corporation pursuant to the Code. The Carryover Allocation allows the Applicant up to the end of the second year following the Carryover Allocation to have the Development placed-in-service.

(2) In order to qualify for Carryover, an Applicant shall have tax basis in the Housing Credit Development which is greater than 10% of the reasonably expected basis in the Housing Credit Development by the close of the calendar year in which the Preliminary Allocation is made pursuant to section 42(h)(1)(E) of the Code. Certification that the Applicant has met the greater than 10% basis requirement shall be signed by the Applicant's attorney or certified public accountant.

(3) All Carryover documentation and the signed certification evidencing the required basis, must be submitted to the Corporation no later than the close of business on November 28 ~~14~~ of the applicable calendar year.

(4) The Applicant for each Development qualifying for Carryover shall submit quarterly progress reports to the Corporation using Progress Report Form Q/M Report Rev. 8/97, which is incorporated by reference and which will be provided by the Corporation. If the Form Q/M Report does not demonstrate continuous and adequate development and construction progress, the Corporation will require monthly submission of Form Q/M Report until satisfactory progress is achieved, until the Development is placed in service, or until a determination is made by the Corporation that the Development cannot be placed in service by the Carryover deadline and the Housing Credits are returned to the Corporation in accordance with the terms of the Carryover Allocation Agreement. Form Q/M Report shall include a written statement describing the current status of the Development; the financing, construction and syndication activity since the last report; the reasons for any changes to the anticipated placed-in-service date; and any other information relating to the status of the Development which the Corporation may request. The first report shall be due to the Corporation by the first Monday in April of the calendar year following Carryover qualification. Such form is included as an attachment to the Application package.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.028, Amended 11-9-98, 2-24-00, _____.

67-48.029 Extended Use Agreement.

(1) Pursuant to Section 42(h)(6) of the Code, the Applicant and the Corporation shall enter into an Extended Use Agreement. The purpose of the Extended Use Agreement is to set forth the Housing Credit Eextended Uuse Pperiod, the Compliance Period, and to evidence commitments made by the Applicant in the Application. Such commitments, for example, include the Housing Credit Set-Aside commitment, resident programs, and Development amenities.

(2) The following provisions shall be included in the Extended Use Agreement:

(a) The Applicable Fraction for Housing Credit Set-Aside uUnits for each taxable year in the extended use period shall not be less than the Applicable Fraction;

(b) Eligible Persons occupying Set-Aside uUnits shall have the right to enforce in any State of Florida court the extended use requirement for Set-Aside uUnits;

(c) The Extended Use Agreement shall be binding on all successors and assigns of the Applicant; and

(d) The Extended Use Agreement shall be executed and recorded pursuant to Florida law as a restrictive covenant prior to the issuance of a Final Housing Credit Allocation to an Applicant.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.029, Amended 11-9-98, 2-24-00, Repromulgated _____.

67-48.030 Sale or Transfer of a Housing Credit Development.

An owner of a Housing Credit Development, its successor or assigns which has ~~have~~ been granted a Final Housing Credit Allocation shall not sell the Housing Credit Development without having first notified the Treasury of the impending sale and complying with the Treasury's procedure or procedures for completing the transfer of ownership and utilizing the Housing Credit Allocation. The owner of a Housing Credit Development shall notify the Corporation in writing of an impending sale and of compliance with any requirements by the Treasury for the transfer of the Housing Credit Development. The owner of a Housing Credit Development shall notify the Corporation in writing of the name and address of the party or parties to whom the Housing Credit Development was sold within 14 Calendar Ddays of the transfer of the Housing Credit Development.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.030, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

67-48.031 Termination of Extended Use Agreement and Disposition of Housing Credit Developments.

The Housing Credit Eextended Uuse Ppperiod for any building shall terminate upon the date a building is acquired through foreclosure or instrument in lieu of foreclosure or if no buyer can be found who is willing to maintain the Housing Credit Set-Aside of the Development. In the event the Applicant is

unable to locate a buyer willing to maintain the s~~S~~et-a~~A~~side provisions of the Extended Use Agreement, the following steps shall be taken, as set forth in Section 42(h)(6) of the Code, before a building is converted to market-rate use:

(1) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, an Applicant may submit a written request to the Corporation to find a buyer to acquire the Applicant's interest in the Housing Credit Set-Aside portion of the building.

(2) The Corporation shall have one year from the receipt of the request to obtain a qualified buyer for the Development.

(3) The Corporation shall actively seek to obtain a qualified buyer for acquisition of the Housing Credit Set-Aside portion of the building for an amount not less than the Applicable Fraction as specified in the Extended Use Agreement of:

(a) The sum of the outstanding indebtedness secured by the building;

(b) The adjusted investor equity in the building; and

(c) Other capital contributions not reflected in the amounts above, and reduced by cash distributions from the Development.

(4) In the event no buyer is found to acquire the Housing Credit Set-Aside portion of the building within one year, the Housing Credit Extended Use Period shall be terminated, and the units converted to market-rate.

(5) Pursuant to Section 42(h)(6)(E)(ii) of the Code, the termination of an Extended Use Agreement shall not be construed to permit the termination of a tenancy, the eviction of any existing resident of any s~~S~~et-a~~A~~side u~~U~~nit, or any increase in the gross rent with respect to any s~~S~~et-a~~A~~side u~~U~~nit before the close of the three-year period following such termination. In no case shall any portion of a Housing Credit Development be disposed of prior to the expiration of the Extended Use Agreement.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.031, Amended 11-9-98, Repromulgated 2-24-00, _____.

67-48.032 Minimum Set-Aside for Non-Profit Organizations Under Housing Credits Program.

~~(1) For each calendar year, not less than 10% of the Corporation's total yearly Allocation Authority shall be set aside by the Corporation for issuance to qualified Non-Profit organizations.~~

~~(2) To ensure that the minimum 10% is set aside, the Corporation has determined that an initial allocation of 12% to qualified Non-Profits will be met. In order to achieve the initial 12% set aside, Applications from Applicants that qualify or whose General Partner qualifies as a Non-Profit entity pursuant to Rule 67-48.002(71), F.A.C., HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, or organized under similar state law if organized in a jurisdiction other than Florida and meet scoring threshold requirements shall be moved into the funding range, in order of their comparative scores, with Applicants whose Non-Profit entity is organized under Florida law receiving priority over Non-Profit entities of other jurisdictions, until the 12% set-aside is achieved. The last Non-Profit Development that is moved into the funding range in order to achieve the 12% initial set-aside shall be fully funded even though that may result in a higher Non-Profit set-aside. This will be accomplished by removing the lowest scored Application of a for-profit Applicant from the funding range and replacing it with the highest scored Non-Profit Application below the funding range within the applicable Geographic Set-Aside pursuant to the QAP. This procedure will be used again on or after October 1, if necessary, to ensure that the Agency allocates at least 10% of its Allocation Authority to qualified Non-Profit Applicants. Any for-profit Applicant so removed from the funding range will NOT be entitled to any consideration of priority for the receipt of current or future Housing Credits other than placement on the current ranking and scoring list in accordance with its score. Binding Commitments for Housing Credits from a future year will not be issued for Applicants so displaced.~~

~~(3) After the full Non-Profit set-aside amount has been allocated, remaining Applications from Non-Profit organizations shall compete with all other Applications in the HC Program for remaining Allocation Authority.~~

~~(4) Qualification as a Non-Profit entity must be evidenced to the Corporation by the receipt from the Applicant, upon Application to the HC Program, of a written opinion from legal counsel. The total cost of securing this written legal opinion will be borne entirely by the Applicant. The IRS determination letter must be submitted during the credit underwriting process. A Non-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit corporation; and shall materially participate in the development and operation of the Development throughout the Extended Use Period. If an Applicant submits Application to the HC Program as a Non-Profit entity but does not qualify as such, the Applicant will be disqualified from participation in the HC Program for the current Cycle.~~

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.032, Amended 11-9-98, 2-24-00, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gayle White, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mark Kaplan, Executive Director, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 25, 2000
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 26, No. 12, March 24, 2000

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF INSURANCE

RULE NO.:	RULE TITLE:
4-136.034	Uniform Certificate of Authority Expansion Application

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., Florida Statutes, published in Vol. 26, No. 38, September 22, 2000, of the Florida Administrative Weekly:

Subparagraph (1) – in the first sentence "July 31, 2000 is changed to read August 1, 2000".

Subparagraph (2)(a) – "July 31, 2000 is changed to read August 1, 2000".

Subparagraph (3)(a) – add at the end "rev. 8/00".

Subparagraph (3)(b) – delete "as revised July 31, 2000" and add "rev. 8/00".

Subparagraph (3)(c) – add at the end "rev. 8/00".

Subparagraph (3)(d) – add at the end "rev. 8/00".

Subparagraph (3)(e) – add at the end "rev. 8/00".

Subparagraph (3)(f) – add at the end "rev. 8/00".

Subparagraph (3)(g) – add at the end "rev. 8/00".

Subparagraph (3)(h) – add at the end "rev. 8/00".

Subparagraph (3)(i) – add at the end "rev. 8/00".

Subparagraph (3)(p) – add at the end "rev. 8/00".

Add to Law Implemented 624.316(2)(b), 624.321(1)(a)

The remainder of the rule reads as previously published.

DEPARTMENT OF REVENUE

NOTICE OF CABINET AGENDA ON NOVEMBER 29, 2000

The Governor and Cabinet, on November 29, 2000, sitting as head of the Department of Revenue, will consider the proposed amendments to Rules 12B-4.013, F.A.C. (Conveyances Subject to Tax), 12B-4.014, F.A.C. (Conveyances Not Subject to Tax), 12B-4.052, F.A.C. (Computation of Tax; Definitions), 12B-4.053, F.A.C. (Taxable Documents), and 12B-4.054, F.A.C. (Exempt Transactions). The first Notice of Rule Development Workshop was published in the February 4, 2000 edition of the Florida Administrative Weekly (Vol. 26, No. 5, pp. 424-425), and the workshop was held on February 22, 2000. No testimony was received at the first workshop, and no written comments were submitted. An expanded version of these proposed rule changes, incorporating issues from the 2000 Legislature, was noticed for a second rule development workshop in the July 28, 2000 edition of the Florida Administrative Weekly (Vol. 26, No. 30, pp. 3425-3426), and the second workshop was held on August 14, 2000. No testimony was received at the second workshop, and no written comments were submitted. A Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on September 29, 2000 (Vol. 26, No. 32, pp. 4485-4488), and a public hearing was conducted on October 24, 2000. No testimony was received at the public hearing, and no written comments were submitted.

DEPARTMENT OF REVENUE

NOTICE OF CABINET AGENDA ON NOVEMBER 29, 2000

The Governor and Cabinet, on November 29, 2000, sitting as head of the Department of Revenue, will consider the proposed amendments to Rules 12C-3.0015, F.A.C. (Documents, Extensions, and Due Dates for Filing), 12C-3.0035, F.A.C. (Calculation of Tax upon Resident Decedent Estates), 12C-3.0045, F.A.C. (Calculation of Tax upon Nonresident Decedent Estates), 12C-3.0055, F.A.C. (Calculation of Tax upon Nonresident Alien Decedent Estates), 12C-3.008, F.A.C. (Forms), 12C-3.012, F.A.C. (Releases), and 12C-3.013, F.A.C. (Protest Procedures). The first Notice of Rule Development Workshop was published in the February 4, 2000 edition of the Florida Administrative Weekly (Vol. 26, No. 5, pp. 427-430), and the workshop was held on February 22, 2000. No testimony was received at the first workshop, and no written comments were submitted. An amended version of these proposed rule changes was noticed for a second rule development workshop in the July 28, 2000 edition of the Florida Administrative Weekly (Vol. 26, No. 30, pp. 3426-3430), and the second workshop was held on August 14, 2000. No testimony was received at the second workshop, and no written comments were submitted. A Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on September 29, 2000 (Vol. 26, No. 32, pp. 4488-4492), and a public hearing was conducted on October 24, 2000. No testimony was received at the public hearing, and no written comments were submitted.

DEPARTMENT OF CITRUS

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
20-14	Methods to Determine Compliance
RULE NO.:	RULE TITLE:
20-14.001	Methods to Determine Compliance

HEARING DATE CORRECTION NOTICE

The Department of Citrus announces the date correction of a public hearing for the above proposed rule sections which was published in Vol. 26, No. 41, of the Florida Administrative Weekly, October 13, 2000