

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.  
 LAW IMPLEMENTED: Art. IV, Sec. 9 and Art. X, Sec. 16, Fla. Const.  
 IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.  
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, 620 South Meridian Street, Tallahassee, FL 32399-1600  
 THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

## Section II Proposed Rules

**DEPARTMENT OF STATE**

**Division of Elections**

RULE TITLE: RULE NO.:  
 Uniform Primary and General Election Ballot 1S-2.032

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to prescribe a uniform primary and general election ballot for each certified voting system.

SUMMARY: This rule provides guidance on clear and unambiguous ballot instructions and directions, individual race layout and overall ballot layout. In addition, this rule provides a graphic depiction of a sample uniform primary and general election ballot form for each certified voting system.

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: 101.151 FS.

LAW IMPLEMENTED: 101.151 FS.

HEARINGS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIME AND DATE: 5:00 p.m. – 8:00 p.m., January 14, 2002  
 PLACE: Orange County Commission Chambers, 201 S. Rosalind Avenue, Orlando, Florida 32801

TIME AND DATE: 5:00 p.m. – 8:00 p.m., January 15, 2002  
 PLACE: Broward County Main Library Auditorium, 100 S. Andrews Avenue, Ft. Lauderdale, Florida 33301

TIME AND DATE: 5:00 p.m. – 8:00 p.m., January 17, 2002  
 PLACE: R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State, 107 West Gaines Street, Room 100, Tallahassee, Florida 32399, (850)245-6200, or atuck@mail.dos.state.fl.us.

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should contact Amy K. Tuck, (850)245-6200, at least three days in advance of the meeting.

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.032 Uniform Primary and General Election Ballot.

(1) The purpose of this rule is to prescribe a uniform primary and general election ballot for each certified voting system.

(2) The title shall be printed across the top of the ballot.

(a) The title of the presidential preference primary ballot shall read as follows:

Line one – Official Presidential Preference Primary Ballot

Line two – \_\_\_\_\_ Party

Line three – \_\_\_\_\_ County, Florida

Line four – \_\_\_\_\_ (date)

(b) The title of the primary ballot shall read as follows:

Line one – \_\_\_\_\_ Official Primary Ballot

Line two – \_\_\_\_\_ Party

Line three – \_\_\_\_\_ County, Florida

Line four – \_\_\_\_\_ (date)

(c) The title of the general election ballot shall read as follows:

Line one – \_\_\_\_\_ Official General Election Ballot

Line two – \_\_\_\_\_ County, Florida

Line three – \_\_\_\_\_ (date)

(3) Ballot instructions shall be printed directly under the title on the front side of an optical scan paper ballot and on the top of the first screen of a touchscreen ballot.

(a) The ballot instructions for those certified voting systems using ovals to be filled in next to the voters choice, shall read as follows:

1. TO VOTE, BLACKEN THE OVAL ● NEXT TO YOUR CHOICE.

Do not use red ink. If you make a mistake, ask for a new ballot.

2. In a general election, if there are write-in candidates, add the following: To vote for a qualified write-in candidate, blacken the oval, and then write in the candidate's name on the blank line provided.

(b) The ballot instructions for those certified voting systems using an arrow to point to the voter's choice, shall read as follows:

1. TO VOTE, COMPLETE THE ARROW → POINTING TO YOUR CHOICE.

Do not use red ink. If you make a mistake, ask for a new ballot.

2. In a general election, if there are write-in candidates, add the following: To vote for a qualified write-in candidate, complete the arrow, and then write in the candidate's name on the blank line provided.

(c) The ballot instructions for certified touch screen voting systems shall read as follows:

1. TOUCH THE APPROPRIATE SPACE TO SELECT YOUR CHOICE.

2. In a general election, if there are write-in candidates, add the following on top of each screen that contains a write-in candidate: To vote for a qualified write-in candidate, select the "Qualified Write-In" Box. Then type in the candidate's name and select the "Record/Accept Write-In" button.

(4) The marking space for optical scan systems for a voter to mark a choice shall be to the left of the candidate's name or issue.

(5) When required, the appropriate abbreviation of a party name shall be to the right of the candidate's name.

(6) No race shall appear in more than one column on optical scan ballots and no more than one screen on touchscreen ballots.

(7) A primary ballot for certified voting systems using ovals to be filled in next to the voter's choice shall be substantially in accordance with Form DS-DE 30, eff. 11/01. A general election ballot for certified voting systems using ovals to be filled in next to the voter's choice shall be substantially in accordance with Form DS-DE 31, eff. 11/01.

(8) A primary ballot for certified voting systems using an arrow to point to the voter's choice shall be substantially in accordance with Form DS-DE 32, eff. 11/01, or Form DS-DE 33, eff. 11/01. A general election ballot for certified voting systems using an arrow to point to the voter's choice shall be substantially in accordance with Form DS-DE 43, eff. 11/01.

(9) A primary ballot for certified touchscreen voting systems shall be substantially in accordance with Form DS-DE 44, eff. 12/01. A general ballot for certified touchscreen voting systems shall be substantially in accordance with Form DS-DE 45, eff. 12/01.

(10) All other specifications for ballots must comply with the Florida Election Code.

Specific Authority 101.151 FS. Law Implemented 101.151 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: L. Clayton Roberts, Director, Division of Elections, Department of State  
 DATE OF PROPOSED RULE APPROVED BY AGENCY HEAD: November 28, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 18, 2001

**DEPARTMENT OF BANKING AND FINANCE**

**Division of Banking**

RULE TITLE: Disapproval of Directors or Executive Officers

RULE NO.: 3C-100.03852

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to generally give effect to Section 655.0385, F.S., which requires, under certain circumstances, the reporting of changes in directors and executive officers and the establishment of standards for the disapproval of directors or executive officers.

SUMMARY: The rule requires that state financial institutions, within certain specified categories, file notices with the Department prior to adding or replacing members of their boards of directors or prior to employing individuals as executive officers or equivalent positions. The rule sets forth the procedures for providing prior notice to the Department and the standards the Department will use when disapproving the appointment of directors or the employment of executive officers, or equivalent positions.

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(4) FS.

LAW IMPLEMENTED: 655.0385, 658.21, 658.33, 665.013, 667.003 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: 10:00 a.m., January 7, 2002

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda B. Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking, 101 East Gaines Street, Suite 636, 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) Section 655.0385, Florida Statutes, requires state financial institutions to notify the Department of the proposed appointment of any individual to the board of directors or the employment of any individual as an executive officer, or

equivalent position, 60 days before such appointment or employment becomes effective, if the applying financial institution:

(a) Has been chartered for less than two years;

(b) Has undergone a change in control or conversion within the preceding 2 years, ~~and is not exempted under subsection (6) of this rule;~~

(c) Is not in compliance with the minimum capital requirements applicable to such financial institution; or

(d) Is otherwise operating in an unsafe or unsound condition, as determined by the Department, on the basis of such financial institution's most recent report of condition or report of examination.

(2) Notice.

(a) A financial institution shall provide a complete written notice to the Department at least 60 days prior to the effective date of the appointment of a director or the employment of an executive officer, or equivalent position. Each notice shall include a completed Form DBF-C-10 Interagency Biographical and Financial Report, revised 11/97, which is hereby incorporated by reference. Notices shall be submitted to and Form DBF-C-10 may be obtained by request from the Department of Banking and Finance, Division of Banking, Suite 636, Fletcher Building, Tallahassee, Florida 32399-0350. Form DBF-C-10 may also be found at the Department's Internet website: <http://www.dbf.state.fl.us/banking.html> by using the icon "Download Department of Banking and Finance Application Forms" and by selecting the icon "DBF-C-10."

(b) A notice is not complete until the financial institution provides all the information requested in paragraph (2)(a), including complete explanations where material issues arise regarding the competence, experience, character, or integrity of the proposed director or executive officer, or equivalent position, and any additional information that the Department requests following a determination that the financial institution's original submission of the notice was not complete.

(c) Each proposed director or executive officer, or equivalent position, shall make certain that the notice submitted on his or her behalf is accurate.

(3) No change.

(4) Requests ~~f~~For Interim Appointment.

(a) Any financial institution may file a written request with the Department to permit an individual proposed as a director or executive officer, or equivalent position, to assume his or her position on an interim basis prior to the expiration of the 60 day prior notice period.

(b) The Department shall not consider a request for interim appointment or employment of a director or executive officer, or equivalent position, unless the Department has received a completed Form DBF-C-10 for the proposed individual.

(c) The Department shall only grant a request for the interim appointment or employment of a director or officer, or equivalent position, if the interim appointment or employment is not likely to cause a risk of harm to the financial institution or the public interest.

(d) The granting of a request for the interim appointment or employment of an individual to the position of director or executive officer, or equivalent position, shall not affect the Department's ability to subsequently issue a notice of disapproval within the 60 day prior notice period.

(5) Regulatory Standards for Evaluating Requests for Proposed Directors or Executive Officers, or Equivalent Positions.

(a) The financial institution may appoint or employ an individual to begin service as a director or executive officer, or equivalent position, on a permanent basis if:

1. The Department notifies the financial institution of an intent not to disapprove the director or executive officer, or equivalent position; or

2. The 60 day review period expires and during such review period the concerned individual was not disapproved.

(b) The Department shall issue a notice of disapproval if the competence, experience, character, or integrity of the proposed individual to be appointed or employed indicates that it is not in the best interests of the depositors, the members, or the public to permit the individual to be employed by or associated with the state financial institution.

(c) Unless the Department finds, in writing, that the proposed individual has shown rehabilitation, the proposed director or executive officer, or equivalent position, shall not be eligible for appointment or for permanent or interim employment, if the individual:

1. Has been convicted of or has entered a plea of guilty or nolo contendere, regardless of adjudication, to a felony or of an offense involving moral turpitude, dishonesty, a breach of trust, a violation of state or federal financial institution law, the Florida Financial Institutions Codes, or fraud;

2. Has been removed by any regulatory agency as a director, officer, or employee of any financial institution;

3. Has performed acts of fraud or dishonesty, or has failed to perform duties, resulting in a loss to a financial institution; ~~or~~

4. Has been convicted or found guilty, regardless of adjudication, of a violation of Section 655.50, Florida Statutes, relating to the Florida Control of Money Laundering in Financial Institutions Act; Chapter 896, ~~Florida Statutes~~, relating to offenses related to financial transactions; or any similar state or federal law;

5. Has had a professional license suspended or revoked by the applicable licensing authority or has been sanctioned by such licensing or regulatory authority for violations of any statutes, rules or policies; or

~~6(d)~~ If an individual proposed as a director or executive officer, or equivalent position, ~~H~~has demonstrated a lack of responsibility in relation to financial matters which is reflected by the credit-payment history and/or bankruptcy of the person or by the person’s business history, ~~it shall be permissible to consider such conditions in evaluating the character and integrity of the individual.~~

~~(d)(e)~~ Material errors or omissions in any information submitted to the Department regarding an individual shall be grounds for a finding by the Department that the individual fails to meet the requisite standards for service as a director or executive officer, or equivalent position, of a state financial institution.

~~(e)(f)~~ If an individual is proposed for the position of chief executive officer, president, or equivalent position, he or she shall have had at least 1 year of direct experience as an executive officer, financial institution regulator, or director of a financial institution within the last 3 years. A financial institution may request a waiver of this requirement by writing to the Director of the Division of Banking detailing why the proposed officer’s overall experience and expertise compensates for the lack of recent, direct financial institution or financial institution regulator experience. The Department shall grant a request for a waiver only when it is clear that the proposed officer’s overall experience and expertise suggests he or she will perform satisfactorily in office.

~~(f)(g)~~ If the proposed executive officer, president, or equivalent position is to be employed by a state financial institution that does not meet the minimum capital requirements or is otherwise operating in an unsafe or unsound condition, the Department shall, based on the unique needs of the financial institution, require more extensive financial institution experience.

~~(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”, 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, letters of understanding and agreement, and any other equivalent action initiated by a financial 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”, 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, 12-28-00, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Linda Charity, Chief, Bureau of Financial Institutions, District I, Division of Banking

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alex Hager, Director, Division of Banking

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 9, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 21, 2001

**DEPARTMENT OF BANKING AND FINANCE**

**Division of Securities and Finance**

RULE TITLE: Preneed Sales Agent Renewal  
RULE NO.: 3D-30.060

PURPOSE AND EFFECT: The purpose of the proposed rule is to provide for the biennial renewal of registration for preneed sales agents pursuant to § 497.439, Florida Statutes.

SUMMARY: This rule provides the procedure for Preneed Sales Agents to renew their sales licenses biennially as required by Section 497.439(10), Florida Statutes. The rule requires that all active preneed sales agents renew their licenses before March 1 of each even-numbered calendar year. The rule requires payment of the statutorily required renewal fee and incorporates Form DBF-PNSR-1 Preneed Sales Agent Renewal Application by reference. The rule also clarifies that a license that is not renewed before the March 1 renewal period expires effective on the last day of February of each even-numbered calendar year.

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: 497.103, 497.105 FS.

LAW IMPLEMENTED: 497.439 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: 4:00 p.m., January 8, 2002

PLACE: Room 547, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tim Wheaton, Room 636, Fletcher Building, 101 East Gaines Street, Tallahassee, FL 32399-0350, (850)410-9898

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-30.060 Preneed Sales Agent Renewal.

(1) Each active preneed sales agent registration shall be renewed for the biennial period beginning March 1 of each even-numbered year upon receipt of the statutory nonrefundable renewal fee required by Section 497.439(10), Florida Statutes, and a completed renewal application. Form DBF-PNSR-1 Preneed Sales Agent Renewal Application, revised 09/00, 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) The received date shall be the date stamped on the application when received by the Department's cashier office in Tallahassee, Florida.

(3) Renewal filings must be received by the Department on or before the last day of February of each even-numbered year. If the last day of February of the renewal year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, Florida Statutes, renewal applications received on the next business day will be considered timely received.

(4) A preneed sales agent registration that is not renewed as required in Subsection (1) prior to March 1 of the renewal year shall automatically expire on the last day of February of the renewal year.

(5) Engaging in preneed sales with an expired license is a violation of Chapter 497 and is subject to disciplinary action.

Specific Authority 497.103, 497.105 FS. Law Implemented 497.439 FS. History—New.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tim Wheaton, Fletcher Building, Room 636, 101 East Gaines Street, Tallahassee, FL 32399-0350, (850)410-9898

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Diana Evans, Chief of Funeral and Cemetery Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 10, 2001

**DEPARTMENT OF INSURANCE**

**Division of Treasury**

RULE TITLE: The Plan; Prescribed Forms  
RULE NO.: 4C-6.003

PURPOSE, EFFECT AND SUMMARY: The rule adopts an amended version of DI4-1176, the State of Florida Employees Deferred Compensation Plan, which contains several changes in response to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The amendments also prohibit transfer fees imposed on participants moving accounts from one provider to another, make various technical changes, and adopt forms revised to conform to EGTRRA.

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: 112.215(11) FS.

LAW IMPLEMENTED: 112.215 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., January 8, 2002

PLACE: Room 415, Hermitage Center, 1801 Hermitage Boulevard, Tallahassee, Florida

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 the person listed above.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kandi Winters, Financial Administrator, Deferred Compensation Section, Division of Treasury, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0346, (850)413-3400

THE FULL TEXT OF THE PROPOSED RULE IS:

4C-6.003 The Plan; Prescribed Forms.

(1) Form DI4-1176 (rev. 1/02) (~~5/98~~), State of Florida Employees Deferred Compensation Plan, is hereby established and incorporated into this rule by reference as the plan contemplated in section 112.215, Florida Statutes.

(2) The forms listed below are incorporated into and made a part of this rule chapter by reference and shall take effect on the effective date of these rules. The forms can be obtained from investment providers servicing the plan. A listing of authorized investment providers can be obtained from the Deferred Compensation Section, Division of State Treasury, 200 East Gaines Street, Tallahassee, Florida 32399-0346.

- (a) Form DI4-1163 (rev. 01/02 ~~3/98~~) Participant Action Form
- (b) Form DI4-1164 (rev. 01/02 ~~3/98~~) Enrollment Information Form
- (c) Form DI4-1165 (rev. 01/02 ~~3/98~~) Company to Company Transfer and/or Replacement Authorization
- (d) Form DI4-1166 (rev. 01/02 ~~4-95~~) Company to Company Transfer Invoice
- (e) Form DI4-1167 (rev. 01/02 ~~3/98~~) Form for Transferring Funds out of Florida Plan
- (f) Form DI4-1168 (rev. 01/02 ~~3/98~~) Form for Transferring Funds into Florida Plan
- (g) Form DI4-1169 (rev. 01/02 ~~4-95~~) Plan to Plan Transfer Invoice
- (h) Form DI4-1152 (rev. 01/02 ~~3/98~~) Application to Participate in the Standard Catch-Up Provision
- (i) Form DI4-1170 (rev. 01/02 ~~4-95~~) Unforeseeable Emergency – Request for Distribution/Suspension Form
- (j) Form DI4-1171 (rev. 01/02 ~~4-95~~) Request for Unforeseeable Emergency Withdrawal
- (k) Form DI4-1172 (rev. 01/02 ~~3/98~~) Request for Distribution (~~or Delayed Distribution~~)
- (l) Form DI4-1173 (rev. 01/02 ~~3/98~~) Deferrals from Special Supplemental Pay
- (m) Form DI4-1174 (rev. 01/02 ~~4-95~~) Commonly Asked Questions with Answers
- (n) Form DI4-1175 (rev. 01/02 ~~4-95~~) Forms Procedures
- (o) Form DI4-1525 (rev. 01/02) Purchase of Prior Service Credits
- (p) Form DI4-1526 (rev. 01/02) Rollover Form

(3) The state of Florida Employees Deferred Compensation Plan shall be construed to conform to the requirements of 26 USC 457 (2001 ~~1997~~) and 26 CFR 1.457 (~~4-1-97 Edition~~), which is ~~are~~ hereby incorporated by reference into this rule.

(4) No change.

(5) This amendment becomes effective January 1, 2002.

Specific Authority 112.215(11) FS. Law Implemented 112.215 FS. History—New 1-1-87, Amended 10-7-87, 2-14-88, 2-19-89, 6-21-89, 8-7-95, 9-21-98,

NAME OF PERSON ORIGINATING PROPOSED RULE: Kandi Winters, Financial Administrator, Deferred Compensation Section, Department of Insurance  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Bud Cain, Director, Division of Treasury, Department of Insurance  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 31, 2001  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 2, 2001

**DEPARTMENT OF COMMUNITY AFFAIRS**

**Division of Housing and Community Development**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Prototype Plan Review and Approval	9B-74
RULE TITLES:	RULE NOS.:
Definitions	9B-74.010
Administration; Fees	9B-74.020
Plan Review and Approval	9B-74.030
Applicable Standards	9B-74.040
Challenges to Plans Approval	9B-74.050

PURPOSE, EFFECT AND SUMMARY: These rules implement a system whereby building plans for buildings which are intended to be replicated around the state could be reviewed and approved on a statewide basis. These rules designate the qualifications of the administrative entity who is to operate the program and describes the responsibilities for said entity. These rules provide that the Florida Building Commission maintains the actual authority to approve plans.

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: 553.77(5) FS.

LAW IMPLEMENTED: 553.77(5) FS.

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

TIME AND DATE: 9:00 a.m, Tuesday, January 8, 2002

PLACE: Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824, at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-74.010 Definitions.

For the purpose of this chapter, the following words, unless the context does not permit, shall have the meanings indicated:

(1) Prototype buildings – Public and private buildings or structures that will be replicated throughout the state.

(2) Administrator – shall be a public or private entity qualified to review plans for compliance with the Florida Building Code and certified as per Chapter 468, Florida Statutes.

(3) Plans examiner – means a plan examiner who is under contract with the program Administrator and certified as per Chapters 468 or 633, Florida Statutes, or both Chapters 468 and 633.

(4) Licensed design professional – means certified in accordance with 471 or registered architect as per Part 1 of Chapter 481, Florida Statutes.

(5) Commission – means the Florida Building Commission.

(6) Department – means the Florida Department of Community Affairs.

(7) Prototype plans – means plans reviewed by the Administrator delegated by the Commission for code compliance with the Florida Building Code and Florida Fire Prevention Code.

Specific Authority 553.77(5) FS. Law Implemented 553.77(5) FS. History–New \_\_\_\_\_.

9B-74.020 Administration and Fees.

(1) The Florida Building Commission shall select a qualified “Administrator” for the statewide plans review and approval system for structures intended for repetitive, site-built construction. The Administrator shall at a minimum, provide for the following services:

(a) Receive and review plans for completeness.

(b) Provide for an automated plans record keeping system in accordance with public record law.

(c) Provide for plans review tracking system unitizing the Department’s Building Code Information System (BCIS). The program plans review tracking system shall delineate the number of times the plans are used or revised.

(d) Coordinate with and make available financial records and record keeping for inspection by the Commission on quarterly bases.

(e) Retain and deliver archived record to the successive administrator.

(f) Utilize an approved plans examiner for review of each plan submitted.

(g) Issue an identification number for each approved building plan. The identification number shall be used to track approved plans for replication and dissemination to local governments.

(h) Provide prototype plans to the jurisdiction having authority for permitting purposes and as required by Chapter 120, Florida Statutes.

(2) The Administrator shall be funded through fees collected from the user of the program.

(3) The plan examiner shall be reimbursed for his or her services by the Administrator.

(4) Oversight and supervision shall be by a licensed Building Official.

Specific Authority 553.77(5) FS. Law Implemented 553.77(5) FS. History–New \_\_\_\_\_.

9B-74.030 Plans Review and Approval.

(1) The proposed plans shall be reviewed by the plans examiner for compliance with the Florida Building Code and the Florida Fire Prevention Code as adopted by the State Fire Marshal.

(2) The plans review time frame shall be established by the Commission and shall be in accordance with Chapter 120, Florida Statutes.

(3) Plans review procedure shall, at a minimum, be in accordance with the plans review criteria of the Florida Building Code and shall provide for the plans examiner’s name and license number.

(4) The prototype plans shall be subjected to a new plans review process when the Florida Building Code is amended.

(5) The Commission shall be the authority having jurisdiction to approve plans for compliance with the Florida Building Code and coordinate with the State Fire Marshal for approval for compliance with the Fire Prevention Code. Delegation of the authority to the Administrator shall be by action of the Commission.

Specific Authority 553.77(5) FS. Law Implemented 553.77(5) FS. History–New \_\_\_\_\_.

9B-74.040 Applicable Standards.

Plans shall be reviewed in accordance with the Florida Building Code and the Florida Fire Prevention Code as adopted by the State Fire Marshal.

Specific Authority 553.77(5) FS. Law Implemented 553.77(5) FS. History--New

9B-74.050 Challenges to Plans Approval.

The Administrator shall investigate all plans on the basis of a written complaint. Prototype Advisory Committee: The Commission chair shall appoint an advisory committee to assist the Commission and Administrator in resolving challenges and provide recommendations to the Commission for action. The program advisory committee shall consist of the following seven members represented: Building Official, Fire Marshal, plans examiner, BOMA representative, architect, engineer, and contractor. It is at the Commissions chair's discretion to appoint either the architect, engineer or contractor to represent the manufactured building industry.

Specific Authority 553.77(5) FS. Law Implemented 553.77(5) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Shirley Collins, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 7, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 22, 2001

**LAND AND WATER ADJUDICATORY COMMISSION**

**Indigo Community Development District**

RULE CHAPTER TITLE: Indigo Community Development District

RULE CHAPTER NO.: 42U-1

RULE TITLE: Boundary

RULE NO.: 42U-1.002

PURPOSE, EFFECT AND SUMMARY: The purpose of this proposed rule amendment is to amend the boundaries of the Indigo Community Development District ("District"), a Community Development District (CDD) established in 1995 pursuant to Chapter 190, F.S. The petition to amend the boundaries submitted by the Indigo CDD requests that the Florida Land and Water Adjudicatory Commission (the "Commission") amend Florida Administrative Code Chapter 42U-1 by deleting approximately 38.7 acres (the contraction parcel) from the existing boundaries. After contraction, the proposed amended District will consist of approximately 2,513

acres. The contraction parcel is generally located on East of the Tomoka River and South of the 234 foot Florida Power & Light easement recorded in official records of Volusia County at Book 511, page 86, and Book 1335, page 500. There are no out parcels within the contraction parcel, or the proposed amended boundaries of the District, that are to be excluded from the amended District. The filing of the contraction petition by the Board of Supervisors of the Indigo CDD constitutes consent of the landowners within the District. Additionally, the District has written consent to amend the District from the owners of 100% of the real property to be deleted from the District.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The statement of estimated regulatory costs (SERC) supports the petition to amend the District. The complete text of the SERC is contained as Exhibit 6 to the petition to amend the boundaries of the District. The scope of the SERC is limited to evaluating the regulatory cost consequences of approving the proposal to amend the District. The requirements for a SERC are found in Section 120.541(2), F.S. A SERC must contain (a) a good faith estimate of the number and types of individuals likely to be required to comply with the rule or who will be affected; (b) a good faith estimate of the costs to any state and local government entities of implementing and enforcing the proposed rule, and any anticipated affect on state and local revenues; (c) a good faith estimate of the transactional costs likely to be incurred by individuals and entities; (d) an analysis of the impact on small businesses, small counties, and small cities; (e) any additional information that the agency determines may be useful; and (f) any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement rejecting the alternative in favor of the proposed rule. Addressing section (a), the principal entities that are likely to be required to comply with the rule include the District, the State of Florida, Volusia County and the City of Daytona Beach. Under section (b), the FLWAC and State of Florida incur minimal one-time administrative costs. Volusia County also incurred minimal administrative costs. Adoption of the proposed rule amendment to approve amending the boundaries of the District is not anticipated to cause any significant impact on State and local revenues. Addressing section (c), those individuals or businesses who may ultimately reside of operate on the lands to be contracted from the District will not be required to pay District assessments and fees over and above their City and other local taxes. Under section (d), approval of the petition to amend the District boundaries will have only an incidental impact on small businesses. Also, impacts on small counties and cities as defined in Section 120.52, F.S., is not expected as Volusia County is not a small county and the City of Daytona Beach is not a small city, as defined. Addressing section (e), the Statement of Estimated



Regulatory Costs was prepared based on common logic and basic economic theory as it relates to the analysis of costs and benefits.

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: 190.005 FS.

LAW IMPLEMENTED: 190.004, 190.005 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, A HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., Wednesday, January 16, 2002

PLACE: Room 1702A, The Capitol, Tallahassee, Florida

Any person requiring a special accommodation to participate in the workshop because of a disability should contact Barbara Leighty, (850)488-7793, at least 5 business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jonathan T. Johnson, Hopping Green & Sams, P.A., Post Office Box 6526, Tallahassee, Florida 32314, telephone (850)222-7500 or Barbara Leighty, Florida Land and Water Adjudicatory Commission, The Capitol, Room 2105, Tallahassee, Florida 32399-0001, telephone (850)488-7793

THE FULL TEXT OF THE PROPOSED RULE IS:

42U-1.002 Boundary.

The boundaries of the district are as follows

A portion of Sections 8, 9, 16, 17, 20, 21, 22, 27, 28, 29, 32, 33, and 34, all being in Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: As a Point of Reference, commence at a concrete monument marking the West one-quarter corner of said Section 9, being also the East one-quarter corner of said Section 8; thence run North 00°46'29" West, along the West line of said Section 9, being also the East line of said Section 8, a distance of 55.73 feet to a point in the Southerly right-of-way line of the 125-foot wide right-of-way of Eleventh Street, as shown on the State of Florida, Department of Transportation (F.D.O.T.) Right-of-Way Map, Section 79507-2602, sheet 11, revision dated October 29, 1974, said point being the POINT OF BEGINNING of this description, said point also lying in a curve, concave Southeasterly, and having a radius of 75.00 feet; thence run Northerly and Easterly, along said curve, a distance of 85.25 feet (85.22 feet per F.D.O.T. map), or through a central angle of 65°07'49" (65°06'15" per F.D.O.T. map), having a chord distance of 80.73 feet and a chord bearing of North 31°47'25" East, to the Point of Tangency thereof; thence run North 64°21'19" East (North 64°17'40" East per F.D.O.T. map), along said Southerly right-of-way

line, a distance of 1250.13 feet to a point therein; thence, departing said Southerly right-of-way line of Eleventh Street, run Southerly and Easterly, along a curve, concave Easterly, and having a radius of 397.81 feet; thence run Southerly and Easterly, along said curve, a distance of 268.87 feet, or through a central angle of 38°43'28", having a chord distance of 263.78 feet and a chord bearing of South 44°06'11" East to the Point of Tangency thereof; thence run South 24°44'27" East a distance of 230.27 feet; thence run South 39°17'04" East a distance of 192.82 feet to the Point of Tangency of a curve to the left, said curve having a radius of 4703.96 feet and a central angle of 04°07'28"; thence run Southerly and Easterly, along said curve, a distance of 338.61 feet, having a chord distance of 338.53 feet and a chord bearing of South 19°03'59" East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 1638.51 feet and a central angle of 12°20'12"; thence run Southerly and Easterly, along said curve, a distance of 352.80 feet, having a chord distance of 352.12 feet and a chord bearing of South 27°17'49" East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 471.84 feet and a central angle of 27°19'26"; thence run Southerly and Easterly, along said curve, a distance of 225.02 feet, having a chord distance of 222.89 feet and a chord bearing of South 47°07'39" East to the Point of Reverse Curvature of a curve to the right, said curve having a radius of 27654.59 feet and a central angle of 01°08'14"; thence run Southerly and Easterly, along said curve, a distance of 548.95 feet, having a chord distance of 548.94 feet and a chord bearing of South 60°13'14" East to the Point of Compound Curvature of a curve to the right, said curve having a radius of 817.82 feet and a central angle of 19°47'54"; thence run Southerly and Easterly, along said curve, a distance of 282.59 feet, having a chord distance of 281.19 feet and a chord bearing of South 49°45'10" East to the Point of Compound Curvature of a curve to the right, said curve having a radius of 689.52 feet and a central angle of 30°16'48"; thence run Southerly and Easterly, along said curve, a distance of 364.40 feet, having a chord distance of 360.18 feet and a chord bearing of South 24°42'50" East, to the Point of Reverse Curvature of a curve to the left, said curve having a radius of 44977.15 feet and a central angle of 00°54'22"; thence run Southerly and Easterly, along said curve, a distance of 711.30 feet, having a chord distance of 711.29 feet and a chord bearing of South 10°01'37" East to the Point of Reverse Curvature of a curve to the right, said curve having a radius of 85351.12 feet and a central angle of 00°15'35"; thence run Southerly and Easterly, along said curve, a distance of 386.86 feet, having a chord distance of 386.86 feet and a chord bearing of South 10°21'01" East to the Point of Reverse Curvature of a curve to the left, said curve having a radius of 2145.74 feet and a central angle of 09°15'55"; thence run Southerly and Easterly, along said curve, a distance of 346.99 feet, having a chord distance of 346.61 feet and a chord bearing of South 14°51'11" East, to the Point of Compound Curvature of a curve to the left, said curve having a radius of 881.18 feet

and a central angle of  $21^{\circ}38'42''$ ; thence run Southerly and Easterly, along said curve, a distance of 332.89 feet, having a chord distance of 330.91 feet and a chord bearing of South  $30^{\circ}18'29''$  East, to the Point of Reverse Curvature of a curve to the right, said curve having a radius of 634.07 feet and a central angle of  $24^{\circ}08'12''$ ; thence run Southerly and Easterly, along said curve, a distance of 267.11 feet, having a chord distance of 265.14 feet and a chord bearing of South  $29^{\circ}03'44''$  East to the Point Reverse Curvature of a curve to the left, said curve having a radius of 7337.11 feet and a central angle of  $02^{\circ}02'20''$ ; thence run Southerly and Easterly, along said curve, a distance of 261.10 feet, having a chord distance of 261.08 feet and a chord bearing of South  $18^{\circ}00'48''$  East to the Point of Tangency thereof; thence run South  $75^{\circ}29'28''$  East a distance of 61.32 feet; thence run South  $45^{\circ}02'04''$  East a distance of 70.58 feet; thence run South  $55^{\circ}22'59''$  East a distance of 74.58 feet; thence run South  $53^{\circ}54'44''$  East a distance of 123.51 feet; thence run South  $53^{\circ}27'15''$  East a distance of 110.00 feet; thence run South  $25^{\circ}20'31''$  East a distance of 199.03 feet; thence run South  $61^{\circ}52'08''$  West a distance of 217.66 feet; thence run South  $21^{\circ}39'56''$  East a distance of 456.10 feet; thence run North  $70^{\circ}19'19''$  East a distance of 249.84 feet; thence run South  $07^{\circ}17'17''$  East a distance of 254.15 feet; thence run South  $01^{\circ}10'43''$  East a distance of 246.45 feet; thence run South  $28^{\circ}04'00''$  West a distance of 57.51 feet; thence run South  $27^{\circ}37'10''$  West a distance of 91.14 feet; thence run South  $29^{\circ}24'23''$  West a distance of 101.59 feet; thence run South  $28^{\circ}22'25''$  West a distance of 56.54 feet; thence run South  $23^{\circ}10'06''$  West a distance of 116.83 feet to a point, said point lying in a curve, concave Easterly, said curve having a radius of 2566.72 feet and a central angle of  $04^{\circ}16'12''$ ; thence run Southerly and Easterly, along said curve, a distance of 191.29 feet, having a chord distance of 191.24 feet and a chord bearing of South  $02^{\circ}24'11''$  East, to the Point of Compound Curvature of a curve to the left, said curve having a radius of 3397.22 feet and a central angle of  $14^{\circ}20'40''$ ; thence run Southerly and Easterly, along said curve, a distance of 850.52 feet, having a chord distance of 848.30 feet and a chord bearing of South  $11^{\circ}42'37''$  East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 1230.00 feet and a central angle of  $25^{\circ}00'33''$ ; thence run Southerly and Easterly, along said curve, a distance of 536.88 feet, having a chord distance of 532.63 feet and a chord bearing of South  $31^{\circ}23'13''$  East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 1009.14 feet and a central angle of  $12^{\circ}59'42''$ ; thence run Southerly and Easterly, along said curve, a distance of 228.88 feet, having a chord distance of 228.39 feet and a chord bearing of South  $50^{\circ}23'21''$  East, to the Point of Tangency thereof; thence run South  $56^{\circ}53'12''$  East a distance of 101.20 feet to the Point of Curvature of a curve to the right, said curve having a radius of 405.47 feet and a central angle of  $53^{\circ}07'57''$ ; thence run Southerly and Easterly, along said curve, a distance of 376.01 feet, having a chord distance of 362.68 feet and a chord

bearing of South  $30^{\circ}19'14''$  East, to the Point of Compound Curvature of a curve to the right, said curve having a radius of 834.58 feet and a central angle of  $26^{\circ}48'32''$ ; thence run Southerly and Westerly, along said curve, a distance of 390.50 feet, having a chord distance of 386.95 feet and a chord bearing of South  $09^{\circ}39'01''$  West to the Point of Reverse Curvature of a curve to the left, said curve having a radius of 540.74 feet and a central angle of  $53^{\circ}48'25''$ ; thence run Southerly and Easterly, along said curve, a distance of 507.81 feet, having a chord distance of 489.36 feet and a chord bearing of South  $03^{\circ}50'55''$  East to the Point Reverse Curvature of a curve to the right, said curve having a radius of 7495.84 feet and a central angle of  $02^{\circ}38'23''$ ; thence run Southerly and Easterly, along said curve, a distance of 345.34 feet, having a chord distance of 345.31 feet and a chord bearing of South  $29^{\circ}25'57''$  East to the Point of Compound Curvature of a curve to the right, said curve having a radius of 623.80 feet and a central angle of  $27^{\circ}41'49''$ ; thence run Southerly and Easterly, along said curve, a distance of 301.55 feet, having a chord distance of 298.62 feet and a chord bearing of South  $14^{\circ}15'51''$  East to the Point of Reverse Curvature of a curve to the left, said curve having a radius of 2412.56 feet and a central angle of  $07^{\circ}28'54''$ ; thence run Southerly and Easterly, along said curve, a distance of 315.03 feet, having a chord distance of 314.81 feet and a chord bearing of South  $04^{\circ}09'23''$  East, to the Point of Compound Curvature of a curve to the left, said curve having a radius of 1127.49 feet and a central angle of  $10^{\circ}57'01''$ ; thence run Southerly and Easterly, along said curve, a distance of 215.48 feet, having a chord distance of 215.16 feet and a chord bearing of South  $13^{\circ}22'20''$  East, to a point; thence run South  $30^{\circ}31'09''$  West a distance of 635.44 feet; thence run South  $12^{\circ}13'30''$  East a distance of 98.61 feet; thence run South  $16^{\circ}03'21''$  East a distance of 72.06 feet; thence run South  $17^{\circ}09'45''$  East a distance of 11.25 feet; thence run South  $17^{\circ}05'17''$  East a distance of 60.81 feet; thence run South  $18^{\circ}02'24''$  East a distance of 72.04 feet; thence run South  $19^{\circ}05'10''$  East a distance of 72.08 feet; thence run South  $20^{\circ}02'54''$  East a distance of 71.99 feet; thence run South  $21^{\circ}05'34''$  East a distance of 72.08 feet; thence run South  $22^{\circ}53'29''$  East a distance of 108.95 feet; thence run South  $04^{\circ}10'49''$  West a distance of 45.54 feet to a point, said point lying in a curve, concave Northeasterly, said curve having a radius of 4147.11 feet and a central angle of  $00^{\circ}38'03''$ ; thence run Southerly and Easterly, along said curve, a distance of 45.90 feet, having a chord distance of 45.90 feet and a chord bearing of South  $23^{\circ}57'44''$  East to a point; thence run South  $73^{\circ}04'08''$  West a distance of 247.53 feet; thence run South  $16^{\circ}55'52''$  East a distance of 69.97 feet; thence continue South  $16^{\circ}55'52''$  East a distance of 1234.58 feet; thence run South  $67^{\circ}37'05''$  West a distance of 94.86 feet to a point in the Southerly right-of-way line of a 50-foot wide State of Florida Outfall Ditch Easement, as described in deed from Tomoka Land Company, dated June 16, 1941, and recorded in Deed Book 291, Page 272, of the Public Records of Volusia County, Florida; thence run North

81°20'55" West (North 81°23'36" West per deed), along the Southerly line of said Outfall Ditch Easement, a distance of 800 feet, more or less, to a point in the Easterly bank of the Tomoka River; thence run Southerly and Easterly, along the Easterly bank of the Tomoka River, a distance of 8100 feet, more or less, to a point lying 5 feet Northerly of, as measured at right angles to, the Northerly right-of-way line of the 240-foot wide right-of-way of State Road #600 (U.S. Highway #92), as shown on the State of Florida, Department of Transportation Right-of-Way Map, Section 7906, revision dated July 12, 1940; thence run South 51°01'34" West (South 50°51'45" West per F.D.O.T. map) a distance of 5455 feet, more or less, to a point, said point being 5 feet Northeasterly of the Easterly right-of-way line of the aforementioned Eleventh Street; thence, running parallel to and 5 feet Northerly or Easterly from the right-of-way line of said Eleventh Street run the following courses and distances: South 74°43'02" West (South 74°38'29" West per F.D.O.T. map), a distance of 388.29 feet; thence run North 75°52'42" West (North 75°57'15" West per F.D.O.T. map) a distance of 745.26 feet; thence run North 61°40'39" West (North 61°45'12" West per F.D.O.T. map) a distance of 588.04 feet; thence run South 39°33'17" West to the Easterly right-of-way line of said Eleventh Street (at this point the right-of-way of Eleventh Street becomes 200 feet wide); thence run North 39°03'42" West (North 39°08'15" West, 4016.04 feet, per F.D.O.T. map) a distance of 4015.80 feet to a point therein, said point lying in a curve, concave Northerly, and having a radius of 1841.75 feet; thence run Northerly and Westerly, along said curve, a distance of 864.15 feet, or through a central angle of 26°53'00", having a chord distance of 886.25 feet and a chord bearing of North 25°37'12" West to the Point of Cusp of a curve, concave Southerly, and having a radius of 100.00 feet; thence run Southerly and Easterly, along said curve, a distance of 170.88 feet, or through a central angle of 97°54'24", having a chord distance of 150.83 feet and a chord bearing of South 61°12'48" East to the Point of Reverse Curvature of a curve to the left, said curve having a radius of 2177.89 feet and a central angle of 10°25'48"; thence run Northerly and Easterly, along said curve, a distance of 396.46 feet, having a chord distance of 395.91 feet and a chord bearing of North 64°37'06" East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 699.34 feet and a central angle of 16°47'06"; thence run Northerly and Easterly, along said curve, a distance of 204.87 feet, having a chord distance of 204.14 feet and a chord bearing of North 51°00'40" East to the Point of Curvature of a curve to the left, said curve having a radius of 2039.93 feet and a central angle of 19°56'00"; thence run Northerly and Easterly, along said curve, a distance of 709.70 feet, having a chord distance of 706.13 feet and a chord bearing of North 32°39'07" East to the Point of Reverse Curvature of a curve to the right, said curve having a radius of 1357.26 feet and a central angle of 22°20'20"; thence run Northerly and Easterly, along said curve, a distance of 529.18 feet, having a

chord distance of 525.83 feet and a chord bearing of North 33°51'17" East to the Point of Tangency thereof; thence run North 45°01'27" East a distance of 357.30 feet to the Point of Curvature of a curve to the left, said curve having a radius of 970.00 feet and a central angle of 02°36'05"; thence run Northerly and Easterly, along said curve, a distance of 44.04 feet, having a chord distance of 44.04 feet and a chord bearing of North 43°43'24" East to a point; thence run South 30°39'13" East a distance of 91.14 feet; thence run North 39°50'12" East a distance of 2033.09 feet to a point in the Southerly line of the City of Daytona Beach Sewage Treatment Plant, as described in Official Records Book 1875, Page 1551, of the Public Records of Volusia County, Florida; thence run North 89°33'20" East (North 89°33'15" East per deed), a distance of 294.14 feet to the Southeast corner of said parcel; thence run North 00°37'30" West (North 00°37'36" West, 1947.42 feet per deed) a distance of 1947.54 feet to the Northeast corner of said parcel, said point also lying in the Southerly line of a 50-foot wide City of Daytona Beach Easement as described in Official Records Book 1478, Page 598, of the Public Records of Volusia County, Florida; thence run South 70°42'56" West (South 70°43'27" West, 862.55 feet, per Sewage Treatment Plant deed and South 70°37'55" West per Easement deed) along the Northerly line of said Sewage Treatment Plant parcel and the Southerly line of said Easement, a distance of 862.59 feet; thence run South 89°33'29" West (South 89°33'15" West, 1183.16 feet per Sewage Treatment Plant deed and South 89°33'15" West, 1183.93 feet per Easement deed) a distance of 1183.22 feet to the Northwest corner of said Sewage Treatment Plant parcel and the end of said Easement, said point also lying in the East line of the City of Daytona Beach Well Field Site, as described in Official Records Book 92, Page 687, of the Public Records of Volusia County, Florida; thence run North 00°34'23" West, along the East line of said City of Daytona Beach Well Field Site, a distance of 50.00 feet to the Northeast corner thereof; thence run South 89°33'09" West, along the North line of said City of Daytona Beach Well Field Site, being also the North line of Section 29, Township 15 South, Range 32 East, a distance of 1281.00 feet to an intersection with the Easterly right-of-way line of the aforementioned Eleventh Street; thence run North 00°06'57" West (North 00°11'30" West per F.D.O.T. map), along said Easterly right-of-way line, a distance of 11083.14 feet to the Point of Curvature of a curve to the right, said curve having a radius of 1809.86 feet and a central angle of 64°28'16"; thence run Northerly and Easterly, along said curve, a distance of 2036.39 feet, having a chord distance of 1930.65 feet and a chord bearing of North 32°07'11" East, to the Point of Tangency thereof; thence run North 64°21'19" East (North 64°16'30" East per F.D.O.T. map), along the Southerly line of said Eleventh Street, a distance of 1553.03 feet; thence run North 89°13'54" East a distance of 67.62 feet to the POINT OF BEGINNING of this description, EXCEPTING THEREFROM the State of Florida Sovereignty Lands of the

Tomoka River, the L.P.G.A. Golf Course, as described in Official Records Book 3799, Page 1647, the L.P.G.A. Entrance Road, Phase I (now known as Champions Drive), as described in Official Records Book 3713, Page 1288, and a portion of Section 33, Township 15 South, Range 32 East, deeded from Patricia Lagoni, as Trustee, to Florida Power & Light Company, as described in Official Records Book 3783, Page 2241, all of the Public Records of Volusia County, Florida, and the City of Daytona Beach Maintenance Building Access Road, said parcel also being subject to Florida Power & Light Company Easements as described in Official Records Book 170, Pages 347-349, Official Records Book 511, Pages 86-88, and Official Records Book 1335, Page 500, all of the Public Records of Volusia County, Florida, and also being subject to any other easements of record, said parcel having a net acreage of 2,480 acres, more or less.

Total Parcel Area 2480 acres, more or less.

ALSO:

A portion of Section 9, Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: As a Point of Reference, commence at a concrete monument marking the Southwest corner of said Section 9; thence run North 00°39'55" West, along the West line of said Section 9, a distance of 1137.09 feet to an intersection with the Northeasterly line of a 234-foot wide Florida Power & Light Co. Transmission Line Easement, as described in Official Records Book 511, Pages 86-88, Official Records Book 950, Page 613, and Official Records Book 1335, Page 500, all of the Public Records of Volusia County, Florida; thence run North 44°01'44" West, along said easement line, a distance of 937.94 feet; thence, departing said easement line, run North 34°45'18" West a distance of 14.25 feet; thence run North 37°39'33" East a distance of 111.68 feet; thence run North 140 09'21" East a distance of 44.54 feet; thence run North 39°07'07" East a distance of 53.63 feet; thence run North 42°55'18" East a distance of 110.70 feet; thence run North 45°36'16" East a distance of 144.01 feet; thence run North 54°05'16" East a distance of 79.06 feet; thence run North 55°21'12" East a distance of 49.01 feet; thence run South 65°27'32" East a distance of 22.01 feet; thence run South 15°17'51" West a distance of 15.70 feet; thence run South 46°24'08" East a distance of 16.57 feet; thence run North 75°20'16" East a distance of 10.37 feet; thence run North 60°42'21" East a distance of 27.40 feet; thence run North 55°27'25" East a distance of 33.61 feet; thence run North 25°19'03" East a distance of 50.11 feet; thence run North 42°23'32" East a distance of 62.59 feet; thence run North 46°53'22" East a distance of 72.64 feet; thence run North 49°02'28" East a distance of 59.44 feet; thence run North 69°06'07" East a distance of 36.77 feet; thence run North 64°14'10" East a distance of 38.91 feet; thence run North 87°30'29" East a distance of 40.97 feet; thence run North 72°01'29" East a distance of 36.93 feet; thence run South 83°29'44" East a

distance of 41.82 feet to the POINT OF BEGINNING of this description; thence run South 83°29'44" East a distance of 111.70 feet; thence run South 72°23'14" East a distance of 110.00 feet; thence run South 50°23'14" East a distance of 40.00 feet; thence run South 39°36'46" West a distance of 20.00 feet; thence run South 64°31'03" West a distance of 103.45 feet; thence run North 89°17'23" West a distance of 33.79 feet; thence run North 45°25'24" West a distance of 152.95 feet; thence run North 05°25'14" East a distance of 23.70 feet to the POINT OF BEGINNING of this description, said parcel containing 0.4233 acres, more or less, said parcel also being subject to any other easements or rights-of-way of record.

ALSO:

A portion of Section 21, Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: As a Point of Reference, commence at a concrete monument marking the Northwest corner of said Section 21; thence run South 00°45'52" East, along the West line of said Section 21, a distance of 180.16 feet to a point therein, said point being the Northwesterly corner of Parcel 6 of the L.P.G.A. International Golf Course and also lying on the Southerly line of Parcel 1 of the L.P.G.A. International Golf Course, all as described in Official Records Book 3799, Pages 1647-1659, of the Public Records of Volusia County, Florida; thence, departing said Section line and along said boundary line of the L.P.G.A. International Golf Course the following courses and distances: run South 83°15'47" East, a distance of 137.41 feet; thence, run South 59°00'00" East a distance of 192.00 feet; thence, run South 71°30'00" East a distance of 103.31 feet to the POINT OF BEGINNING of this description; thence, departing the boundary line of said L.P.G.A. International Golf Course, thence run North 29°00'00" East a distance of 32.91 feet; thence run South 72°00'00" East a distance of 130.00 feet; thence run North 85°00'00" East a distance of 93.00 feet; thence run North 71°00'00" East a distance of 116.00 feet; thence run North 08°00'00" East a distance of 246.67 feet; thence run South 65°00'00" East a distance of 239.96 feet to a point lying on the Southerly line of Parcel 1 of the L.P.G.A. International Golf Course; thence continue along said Southerly line the following courses and distances: run South 27°30'00" West a distance of 91.00 feet; thence run South 55°00'00" West a distance of 60.00 feet; thence run South 75°30'00" West a distance of 120.00 feet; thence run South 51°00'00" West a distance of 128.00 feet; thence run South 74°00'00" West a distance of 51.00 feet to the Northeast corner of Parcel 6 of the L.P.G.A. International Golf Course; thence run South 28°01'12" West, along the Easterly line of said Parcel 6, a distance of 391.82 feet to an intersection with the Northerly right-of-way line of the variable width right-of-way of Champions Drive, as described in Official Records Book 4040, Pages 4724 to 4742, of the Public Records of Volusia County, Florida; thence run North 62°57'26" West, along said Northerly right-of-way line, a distance of 12.41 feet

to the Point of Curvature of a curve to the left; thence run Northerly and Westerly, along said curved right-of-way line, having a radius of 518.00 feet, an arc distance of 43.42 feet, or through a central angle of  $04^{\circ}48'10''$ , having a chord distance of 43.41 feet, and a chord bearing of North  $65^{\circ}21'30''$  West, to the Point of Tangency thereof; thence run North  $67^{\circ}45'36''$  West, along said right-of-way line, a distance of 126.37 feet to the Point of Curvature of a curve to the left; thence run Northerly and Westerly, along said curved right-of-way line, having a radius of 518.00 feet, an arc distance of 18.07 feet, or through a central angle of  $01^{\circ}59'57''$ , having a chord distance of 18.07 feet, and a chord bearing of North  $68^{\circ}45'33''$  West, to the Point of Tangency thereof; thence run North  $69^{\circ}45'33''$  West, along said Northerly right-of-way line, a distance of 14.25 feet to the Point of Curvature of a curve to the right; thence run Northerly and Westerly, along said curved right-of-way line, having a radius of 482.00 feet, an arc distance of 32.10 feet, or through a central angle of  $03^{\circ}48'57''$ , having a chord distance of 32.09 feet, and a chord bearing of North  $67^{\circ}51'03''$  West, to a point therein; thence, departing said right-of-way line, run North  $29^{\circ}00'00''$  East a distance of 358.09 feet to the POINT OF BEGINNING of this description, said parcel containing 3.2947 acres, more or less, said parcel also being subject to any other easements or rights-of-way of record.

**LESS THE FOLLOWING DESCRIBED PARCEL:**

A portion of Sections 9 and 16, Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: As a Point of Reference, commence at a concrete monument marking the West one-quarter corner of said Section 9; thence run North  $00^{\circ}46'29''$  West, along the West line of said Section 9, a distance of 55.73 feet to a point in the Southerly right-of-way line of the 125-foot wide right-of-way of Eleventh Street, as shown on the State of Florida, Department of Transportation (F.D.O.T.) Right-of-Way Map, Section 79507-2602, sheet 11, revision dated October 29, 1974, said point also lying in a curve, concave Southeasterly, and having a radius of 75.00 feet; thence run Northerly and Easterly, along said curve, a distance of 85.25 feet (85.22 feet per F.D.O.T. map), or through a central angle of  $65^{\circ}07'49''$  ( $65^{\circ}06'15''$  per F.D.O.T. map), having a chord distance of 80.73 feet and a chord bearing of North  $31^{\circ}47'25''$  East, to the Point of Tangency thereof; thence run North  $64^{\circ}21'19''$  East (North  $64^{\circ}17'40''$  East per F.D.O.T. map), along said Southerly right-of-way line, a distance of 1250.13 feet to a point therein and the POINT OF BEGINNING of this description; thence, departing said Southerly right-of-way line of Eleventh Street, run Southerly and Easterly, along a curve, concave Easterly, and having a radius of 397.81 feet; thence run Southerly and Easterly, along said curve, a distance of 268.87 feet, or through a central angle of  $38^{\circ}43'28''$ , having a chord distance of 263.78 feet and a chord bearing of South  $44^{\circ}06'11''$  East to the Point of Tangency thereof; thence run South  $24^{\circ}44'27''$  East a distance

of 230.27 feet; thence run South  $39^{\circ}17'04''$  East a distance of 192.82 feet to the Point of Tangency of a curve to the left, said curve having a radius of 4703.96 feet and a central angle of  $04^{\circ}07'28''$ ; thence run Southerly and Easterly, along said curve, a distance of 338.61 feet, having a chord distance of 338.53 feet and a chord bearing of South  $19^{\circ}03'59''$  East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 1638.51 feet and a central angle of  $12^{\circ}20'12''$ ; thence run Southerly and Easterly, along said curve, a distance of 352.80 feet, having a chord distance of 352.12 feet and a chord bearing of South  $27^{\circ}17'49''$  East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 471.84 feet and a central angle of  $27^{\circ}19'26''$ ; thence run Southerly and Easterly, along said curve, a distance of 225.02 feet, having a chord distance of 222.89 feet and a chord bearing of South  $47^{\circ}07'39''$  East to the Point of Reverse Curvature of a curve to the right, said curve having a radius of 27654.59 feet and a central angle of  $01^{\circ}08'14''$ ; thence run Southerly and Easterly, along said curve, a distance of 548.95 feet, having a chord distance of 548.94 feet and a chord bearing of South  $60^{\circ}13'14''$  East to the Point of Compound Curvature of a curve to the right, said curve having a radius of 817.82 feet and a central angle of  $19^{\circ}47'54''$ ; thence run Southerly and Easterly, along said curve, a distance of 282.59 feet, having a chord distance of 281.19 feet and a chord bearing of South  $49^{\circ}45'10''$  East to the Point of Compound Curvature of a curve to the right, said curve having a radius of 689.52 feet and a central angle of  $30^{\circ}16'48''$ ; thence run Southerly and Easterly, along said curve, a distance of 364.40 feet, having a chord distance of 360.18 feet and a chord bearing of South  $24^{\circ}42'50''$  East, to the Point of Reverse Curvature of a curve to the left, said curve having a radius of 44977.15 feet and a central angle of  $00^{\circ}22'21''$ ; thence run Southerly and Easterly, along said curve, a distance of 292.46 feet, having a chord distance of 292.46 feet and a chord bearing of South  $09^{\circ}45'37''$  East to an intersection with the Northerly right-of-way line of a 234-foot wide Florida Power & Light Company Easement as described in Official Records Book 511, Pages 86-88, Official Records Book 950, Page 613, and Official Records Book 1335, Page 500, all of the Public Records of Volusia County, Florida; thence continue Southerly and Easterly, along said curved line, having a radius of 44977.15 feet, an arc distance of 418.84 feet, or through a central angle of  $00^{\circ}32'01''$ , having a chord distance of 418.84 feet, and a chord bearing of South  $10^{\circ}12'48''$  East, to the Point of Reverse Curvature of a curve to the right, said curve having a radius of 85351.12 feet and a central angle of  $00^{\circ}15'35''$ ; thence run Southerly and Easterly, along said curve, a distance of 386.86 feet, having a chord distance of 386.86 feet and a chord bearing of South  $10^{\circ}21'01''$  East to the Point of Reverse Curvature of a curve to the left, said curve having a radius of 2145.74 feet and a central angle of  $03^{\circ}14'26''$ ; thence run Southerly and Easterly, along said curve, a distance of 121.36 feet, having a chord distance of 121.34 feet and a chord bearing of South  $11^{\circ}50'26''$  East, to a point

therein, said point lying on the boundary of a St. Johns River Water Management District (S.J.R.W.M.D.) easement, as described in Official Records Book 4109, Page 4037, of the Public Records of Volusia County, Florida; thence, departing said curved line, run Northerly and Westerly, along the Easterly line of said S.J.R.W.M.D. easement, the following courses and distances: thence run North 82°58'33" West a distance of 91.79 feet; thence run North 56°47'33" West a distance of 29.98 feet; thence run South 75°03'58" West a distance of 85.56 feet; thence run South 82°29'25" West a distance of 26.35 feet; thence run North 25°04'21" West a distance of 298.75 feet (367.95 feet per said easement deed); thence run North 03°50'01" West a distance of 76.04 feet; thence run North 26°29'28" East a distance of 54.72 feet; thence run North 63°37'42" East a distance of 43.03 feet; thence run North 07°43'21" West a distance of 135.93 feet; thence run North 07°09'34" West a distance of 57.56 feet; thence run North 37°20'52" West a distance of 48.82 feet; thence run North 49°47'32" West a distance of 71.80 feet; thence run North 13°15'15" West a distance of 141.32 feet; thence run North 86°56'05" East a distance of 30.06 feet; thence run North 37°15'02" East a distance of 50.36 feet; thence run North 15°39'47" East a distance of 38.22 feet; thence run North 15°39'47" East a distance of 34.83 feet; thence run North 08°05'45" East a distance of 82.36 feet; thence run North 23°08'36" West a distance of 137.68 feet; thence run North 13°24'54" East a distance of 69.93 feet; thence run North 44°24'53" West a distance of 66.75 feet; thence run North 00°08'14" East a distance of 7.70 feet to the Point of Cusp of a curve, concave Southerly; thence run Northerly and Westerly, along said curve, having a radius of 50.00 feet, an arc distance of 106.38 feet, or through a central angle of 121°54'11", having a chord distance of 87.42 feet, and a chord bearing of North 60°48'52" West, to the Point of Cusp on said curve; thence run South 58°14'03" West a distance of 78.75 feet; thence run South 14°08'29" West a distance of 36.28 feet; thence run South 62°22'32" West a distance of 25.47 feet; thence run North 26°27'06" West a distance of 80.72 feet; thence run North 75°03'51" West a distance of 49.93 feet; thence run North 15°20'52" West a distance of 55.15 feet; thence run North 17°00'32" East a distance of 36.21 feet to the Point of Cusp of a curve, concave Westerly; thence run Northerly and Westerly, along said curve, having a radius of 50.00 feet, an arc distance of 85.21 feet, or through a central angle of 97°38'35", having a chord distance of 75.27 feet, and a chord bearing of North 31°48'46" West, to the Point of Cusp on said curve; thence run North 36°15'35" West a distance of 68.85 feet; thence run South 85°08'58" West a distance of 50.07 feet; thence run North 38°10'24" West a distance of 59.18 feet; thence run North 83°46'11" West a distance of 83.01 feet; thence run South 75°55'23" West a distance of 32.38 feet; thence run North 72°16'49" West a distance of 74.49 feet; thence run North 61°41'41" West a distance of 41.11 feet; thence run North 29°45'48" West a distance of

97.11 feet; thence run North 42°17'34" West a distance of 98.18 feet; thence run North 35°52'06" West a distance of 109.26 feet; thence run North 74°35'30" West a distance of 68.38 feet; thence run North 41°12'40" West a distance of 41.65 feet; thence run North 34°20'57" West a distance of 133.32 feet; thence run North 86°38'56" West a distance of 59.39 feet; thence run North 45°59'49" West a distance of 35.93 feet; thence run North 14°03'44" West a distance of 39.69 feet; thence run North 04°04'42" West a distance of 184.52 feet; thence run North 15°25'58" West a distance of 63.48 feet; thence run North 17°51'28" West a distance of 52.44 feet; thence run North 26°32'10" West a distance of 94.49 feet; thence run North 02°06'34" West a distance of 53.71 feet; thence run North 18°29'24" West a distance of 54.78 feet; thence run North 10°13'44" East a distance of 59.39 feet; thence run North 07°49'22" East a distance of 60.21 feet; thence run North 06°08'39" West a distance of 104.78 feet; thence run North 21°23'21" West a distance of 51.01 feet; thence run North 36°14'49" West a distance of 85.55 feet; thence run North 55°07'33" West a distance of 61.53 feet; thence run North 11°29'20" East a distance of 51.11 feet; thence run North 09°10'58" West a distance of 25.46 feet; thence run North 34°56'42" East a distance of 44.73 feet to the Point of Cusp of a curve, concave Westerly; thence run Northerly and Easterly, along said curve, having a radius of 50.00 feet, an arc distance of 48.01 feet, or through a central angle of 55°00'54", having a chord distance of 46.19 feet, and a chord bearing of North 07°26'14" East to a Point of Cusp on said curve; thence run North 20°04'13" West a distance of 51.56 feet; thence run North 41°33'02" West a distance of 151.59 feet; thence run North 56°49'59" West a distance of 59.84 feet; thence run North 78°52'00" West a distance of 53.17 feet to a point in the Southerly right-of-way line of the aforementioned 125-foot wide right-of-way of L.P.G.A. Boulevard (formerly Eleventh Street); thence run North 64°21'19" East, along said Southerly right-of-way line, a distance of 29.48 feet to the POINT OF BEGINNING of this description, said parcel containing 18.9759 acres, more or less, and also being subject to any other easements or rights-of-way of record.

**ALSO INCLUDING WITHIN THE DISTRICT:**

A portion of the Southwest one-quarter of Section 33, Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: Commence on the West line of Section 33, Township 15 South, Range 32 East, at a point 2,124.79 feet North of the Southwest corner of said Section 33; thence run South 39°08'15" East, 299.45 feet to the centerline construction Station 24+45 as shown on Right of Way Map, 11th Street Extension (now L.P.G.A. Boulevard), as recorded in Road Plat Book 1, Page 47, of the Public Records of Volusia County, Florida; thence run North 50°51'45" East, 68.00 feet to the POINT OF BEGINNING on the Easterly right of way line of said L.P.G.A. Boulevard; thence run North 50°51'45" East a distance of 5.42 feet; thence

run South 61°45'12" East a distance of 586.95 feet; thence run South 75°57'15" East a distance of 745.26 feet; thence run North 74°38'29" East a distance of 387.14 feet; thence run South 39°08'15" East a distance of 5.46 feet to a point in the Northerly right of way line of State Road 600, as shown on the aforementioned right of way map; thence run South 50°51'45" West, along said Northerly right of way line, a distance of 388.00 feet to the Point of Curvature of a curve to the right; thence run Northerly and Westerly, along said curved right-of-way line, having a radius of 644.00 feet, an arc distance of 1011.59 feet, or through a central angle of 90°00'00", having a chord distance of 910.75 feet, and a chord bearing of North 84°08'15" West, to the Point of Tangency thereof; thence run North 39°08'15" West, along said right of way line, a distance of 656.00 feet to the POINT OF BEGINNING of this description, said parcel containing 8.8448 acres, said parcel also being subject to any other easements or rights of way of record.

**ALSO INCLUDING WITHIN THE DISTRICT:**

A portion of Sections 28 and 29, Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: As a Point of Reference, commence at a 4" x 4" concrete monument marking the Northwest corner of said Section 28, being also the Northeast corner of said Section 29; thence run South 00°39'06" East, along the East line of said Section 29, being also the West line of said Section 28, a distance of 1719.05 feet to a point therein and the POINT OF BEGINNING of this description; thence, departing said Section line, run North 89°33'10" East a distance of 375.61 feet; thence run South 39°50'12" West a distance of 2032.50 feet; thence run North 31°00'25" West a distance of 89.92 feet; thence run South 45°01'27" West a distance of 401.08 feet to the Point of Curvature of a curve to the left; thence run Southerly and Westerly, along said curved line, having a radius of 1357.26 feet, an arc distance of 529.18 feet, or through a central angle of 22°20'20", having a chord distance of 525.83 feet, and a chord bearing of South 33°51'17" West, to the Point of Reverse Curvature of a curve to the right; thence run Southerly and Westerly, along said curved line, having a radius of 2039.93 feet, an arc distance of 709.70 feet, or through a central angle of 19°56'00", having a chord distance of 706.13 feet, and a chord bearing of South 32°39'07" West, to the Point of Compound Curvature of a curve to the right; thence run Southerly and Westerly, along said curved line, having a radius of 699.34 feet, an arc distance of 204.87 feet, or through a central angle of 16°47'06", having a chord distance of 204.14 feet, and a chord bearing of South 51°00'40" West, to the Point of Compound Curvature of a curve to the right; thence run Southerly and Westerly, along said curved line, having a radius of 2177.89 feet, an arc distance of 400.56 feet, or through a central angle of 10°32'16", having a chord distance of 399.99 feet, and a chord bearing of South 64°40'21" West, to the Point of Compound Curvature of a curve to the right; thence run Northerly and Westerly, along said curved line, having a radius

of 100.00 feet, an arc distance of 171.23 feet, or through a central angle of 98°06'18", having a chord distance of 151.06 feet, and a chord bearing of North 61°00'22" West, to the Point of Tangency thereof, said point being an intersection with the Easterly right-of-way line of L.P.G.A. Boulevard, a 200-foot wide right-of-way; thence run North 01°22'59" West, along said Easterly right-of-way line, a distance of 1723.40 feet to an intersection with the Southerly line of the Daytona Beach Municipal Stadium Complex, as described in Official Records Book 2918, Page 0767, of the Public Records of Volusia County, Florida; thence, departing said Easterly right-of-way line and along the Southerly line of said Stadium Complex, run North 89°53'07" East a distance of 1307.16 feet to the Southeasterly corner thereof; thence run North 00°38'21" West, along the Easterly line of said Stadium Complex, a distance of 1285.90 feet to an intersection with the Southerly line of the City of Daytona Beach Sewerage Treatment Plant, as described in Official Records Book 1875, Page 1551, of the Public Records of Volusia County, Florida; thence run North 89°33'10" East, along said Southerly line, a distance of 1331.56 feet to the POINT OF BEGINNING of this description, said parcel containing 78.8 acres, more or less, said parcel also being subject to any other easements or rights-of-way of record.

**LESS THE FOLLOWING DESCRIBED PARCEL:**

A portion of Sections 9 and 16, all being in Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: As a Point of Reference, commence at a concrete monument marking the Northeast corner of said Section 16, being also the Southeast corner of said Section 9; thence run South 89°28'51" West, along the North line of said Section 16, being also the South line of said Section 9, a distance of 2278.43 feet to a point therein; thence, departing said section line, run South 00°31'08" East a distance of 12.44 feet to the POINT OF BEGINNING of this description, said point also being the Northeasterly corner of that parcel of land described in Official Records Book 4034, Page 3593, of the Public Records of Volusia County, Florida, (Florida Game & Fresh Water Fish Commission Easement (F.G.F.W.F.C.)) said point lying in a curve, concave Easterly, said curve having a radius of 2145.74 feet and a central angle of 06°01'29"; thence run Southerly and Easterly, along said curve, and the Easterly boundary of said F.G.F.W.F.C. parcel, a distance of 225.63 feet, having a chord distance of 225.52 feet and a chord bearing of South 16°28'24" East, to the Point of Compound Curvature of a curve to the left, said curve having a radius of 881.18 feet and a central angle of 21°38'42"; thence run Southerly and Easterly, along said curve, a distance of 332.89 feet, having a chord distance of 330.91 feet and a chord bearing of South 30°18'29" East, to the Point of Reverse Curvature of a curve to the right, said curve having a radius of 634.07 feet and a central angle of 24°08'12"; thence run Southerly and Easterly, along said curve, a distance of 267.11 feet, having a chord distance of 265.14 feet and a chord bearing

of South 29°03'44" East to the Point Reverse Curvature of a curve to the left, said curve having a radius of 7337.11 feet and a central angle of 02°02'20"; thence run Southerly and Easterly, along said curve, a distance of 261.10 feet, having a chord distance of 261.08 feet and a chord bearing of South 18°00'48" East to the Point of Tangency thereof; thence run South 75°29'28" East a distance of 61.32 feet; thence run South 45°02'04" East a distance of 70.58 feet; thence run South 55°22'59" East a distance of 74.58 feet; thence run South 53°54'44" East a distance of 123.51 feet; thence run South 53°27'15" East a distance of 110.00 feet; thence run South 39°01'47" East a distance of 218.90 feet; thence run South 71°30'00" West a distance of 290.00 feet; thence run South 18°30'00" East a distance of 538.00 feet; thence run North 71°30'00" East a distance of 290.00 feet; thence run South 03°19'49" East a distance of 441.25 feet; thence run South 28°04'00" West a distance of 57.51 feet; thence run South 27°37'10" West a distance of 91.14 feet; thence run South 29°24'23" West a distance of 101.59 feet; thence run South 28°22'25" West a distance of 56.54 feet; thence run South 23°10'06" West a distance of 116.83 feet to a point, said point lying in a curve, concave Easterly, said curve having a radius of 2566.72 feet and a central angle of 04°16'12"; thence run Southerly and Easterly, along said curve, a distance of 191.29 feet, having a chord distance of 191.24 feet and a chord bearing of South 02°24'11" East, to the Point of Compound Curvature of a curve to the left, said curve having a radius of 3397.22 feet and a central angle of 14°20'40"; thence run Southerly and Easterly, along said curve, a distance of 850.52 feet, having a chord distance of 848.30 feet and a chord bearing of South 11°42'37" East to the Point of Compound Curvature of a curve to the left, said curve having a radius of 1230.00 feet and a central angle of 03°56'49"; thence run Southerly and Easterly, along said curve, a distance of 84.73 feet, having a chord distance of 84.71 feet and a chord bearing of South 20°51'21" East to a point therein; thence run South 88°43'10" West a distance of 52.47 feet; thence run South 51°53'01" West a distance of 46.32 feet; thence run South 09°41'37" East a distance of 49.45 feet; thence run South 00°45'45" East a distance of 54.59 feet; thence run North 21°33'59" West a distance of 40.29 feet; thence run South 85°06'06" West a distance of 23.91 feet; thence run South 16°58'32" West a distance of 34.78 feet; thence run North 82°35'28" West a distance of 46.47 feet; thence run North 78°19'11" West a distance of 27.23 feet; thence run North 56°10'10" West a distance of 19.29 feet; thence run North 12°42'14" West a distance of 46.82 feet; thence run North 53°15'42" West a distance of 35.85 feet; thence run North 12°56'38" West a distance of 119.50 feet; thence, departing the boundary line of said F.G.F.W.F.C. parcel, run North 14°58'02" West a distance of 797.92 feet; thence run North 19°43'31" West a distance of 961.22 feet; thence run North 20°44'18" West a distance of 104.64 feet; thence run North 12°34'23" West a distance of

773.47 feet; thence run North 18°23'44" West a distance of 890.98 feet; thence run North 18°48'31" West a distance of 237.62 feet to an intersection with the boundary line of the aforementioned F.G.F.W.F.C. parcel; thence run along said boundary line the following courses and distances: thence run North 01°30'12" West a distance of 20.67 feet; thence run North 17°23'00" West a distance of 71.17 feet; thence run North 08°52'49" East a distance of 65.73 feet; thence run North 82°29'25" East a distance of 38.18 feet; thence run North 75°03'58" East a distance of 85.56 feet; thence run South 56°47'33" East a distance of 29.98 feet; thence run South 82°58'33" East a distance of 91.79 feet to the POINT OF BEGINNING of this description, said parcel containing 38.6981 acres, said parcel also being subject to a 100-foot wide Drainage Ditch easement as described in Official Records Book 82, Page 619, of the Public Records of Volusia County, Florida, and any other easements or rights-of-way of record.

Specific Authority 190.005 FS. Law Implemented 190.004, 190.005 FS. History—New 1-3-95, Amended 5-26-98, 9-19-99,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Teresa Tinker, Florida Land and Water Adjudicatory Commission, Room 1703, The Capitol, Tallahassee, Florida 32399-0001

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Teresa Tinker, Florida Land and Water Adjudicatory Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 30, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 7, 2001

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Funeral Directors and Embalmers**

RULE TITLE: RULE NO.:

Operating Procedures (Centralized 61G8-24.0425  
Embalming Facilities)

PURPOSE AND EFFECT: Require system to track and identify remains.

SUMMARY: The proposed rule is created to identify operating procedures for centralized embalming facilities.

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: 470.005, 470.0301(2)(h) FS.

LAW IMPLEMENTED: 470.0301(2)(h) FS.



IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE ISSUE OF THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Funeral Directors and Embalmers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G8-24.0425 Operating Procedures (Centralized Embalming Facilities).

Centralized embalming facilities shall establish a system of identification of human remains received. This system shall be designed to track the identity of the remains from time of receipt until delivery of the remains to the authorized persons, or until otherwise disposed of in accordance with instructions from the funeral establishment in charge of said human remains.

Specific Authority 470.005, 470.0301(2)(h) FS. Law Implemented 470.0301(2)(h) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Funeral Directors and Embalmers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral Directors and Embalmers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 6, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 26, 2001

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Funeral Directors and Embalmers**

RULE TITLE: Funeral Establishments RULE NO.: 61G8-33.001

PURPOSE AND EFFECT: The purpose for the rule is to establish a system of identification to be used in handling and storing human remains in Funeral Establishments.

SUMMARY: The proposed rule establishes procedures relating to handling and storing human remains in Funeral Establishments.

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: 470.005(3), 470.024(10), 470.0315(4) FS.

LAW IMPLEMENTED: 470.005(3), 470.024(10), 470.0315(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE ISSUE OF THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Funeral Directors and Embalmers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G8-33.001 Funeral Establishments.

Funeral establishments shall establish a system of identification of human remains received. This system shall be designed to track the identity of the remains from the time of receipt until delivery of the remains to the authorized persons. This is in addition to the requirements for identification of human remains set forth in Section 470.0355, Florida Statutes.

Specific Authority 470.005(3), 470.024(10), 470.0315(4) FS. Law Implemented 470.005(3), 470.024(10), 470.0315(4) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Funeral Directors and Embalmers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral Directors and Embalmers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 6, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 26, 2001

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Funeral Directors and Embalmers**

RULE TITLE: Direct Disposal Establishments RULE NO.: 61G8-33.002

PURPOSE AND EFFECT: The purpose for the rule is to provide procedures relating to the identification of human remains at Direct Disposal Establishments.

SUMMARY: The proposed rule defines "Direct Disposal Establishments" and establishes procedures relating to the identification of human remains.

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: 470.005(3), 470.0315(4) FS.

LAW IMPLEMENTED: 470.005(3), 470.0315(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Funeral Directors and Embalmers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G8-33.002 Direct Disposal Establishments.

Direct disposal establishments shall establish a system of identification of human remains received. This system shall be designed to track the identity of the remains from the time of receipt until delivery of the remains to the authorized persons. This is in addition to the requirements for identification of human remains set forth in Section 470.0355, Florida Statutes.

Specific Authority 470.005(3), 470.0315(4) FS. Law Implemented 470.005(3) FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Funeral Directors and Embalmers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral Directors and Embalmers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 6, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 26, 2001

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Division of Resource Management**

DOCKET NO.: 97-19R and 01-56R

RULE CHAPTER TITLE: Mandatory Phosphate Mine Reclamation

RULE CHAPTER NO.: 62C-16

RULE TITLE: Reclamation and Restoration Standards

RULE NO.: 62C-16.0051

PURPOSE AND EFFECT: The Department intends to repeal the provision in paragraph 62C-16.0051(10)(b), F.A.C., that authorizes it to “waive” slope, revegetation, and erosion control requirements for reclamation of sites mined for phosphate. The Department also intends to repeal the provision in paragraph 62C-16.0051(12)(b), F.A.C., that allows the Department to grant a variance for methods that increase the overall quality of the reclamation program through the creation of particular land forms or habitats.

SUMMARY: A Notice of Proposed Rule Development, published in the April 25, 1997, issue of the Florida Administrative Weekly, identified that the Department intended to amend portions of fifteen sections of Chapter 62C-16, F.A.C. During the rule development process, the Department has determined that it lacks sufficient rule authority for the variance provision in paragraph 62C-16.0051(10)(b), F.A.C., and the “waiver” provision in paragraph 62C-16.0051(12)(b), F.A.C. Please note that the Department originally intended to consolidate the rule amendments contained in this notice with the more extensive rule amendments contained in the Notice of Rule Development published in 1997 for purposes of publishing a consolidated Notice of Proposed Rulemaking. The Department has subsequently chosen to adopt the rule amendments through two separate rule adoptions.

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

Any person who wishes to provide information regarding a 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: 211.32, 378.207 FS.

LAW IMPLEMENTED: 211.32, 378.207 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Orlando Rivera, Florida Department of Environmental Protection, Division of Water Resource Management, Bureau of Mine Reclamation, Mail Station 715, 2051 East Dirac Drive, Tallahassee, Florida 32310-3760, telephone (850)488-4522

THE FULL TEXT OF THE PROPOSED RULE IS:

62C-16.0051 Reclamation and Restoration Standards.

(1) through (9) No change.

(10) Wildlife.

(a) No change.

(b) The operator may designate specific locations within the mine as “Wildlife Areas” and include a plan for reclamation and management for sites so designated. Slopes, revegetation, and erosion control requirements may be waived or modified by the department in such areas on a case-by-case basis where such changes will benefit the overall plan for the propagation of wildlife

(11) No change.

(12) Exceptions and Innovations. In order to encourage the development of new technology which will hasten reclamation or improve the quality of restored lands, the secretary board may grant a variance to any of the requirements of section 62C-16.0051 to accommodate for the following circumstances:

~~(a) Experimental or innovative techniques when where the technology is not yet proven.~~

~~(b) Methods which will increase the overall quality of the reclamation program through the creation of particular landforms or habitats.~~

Specific Authority 211.32, ~~370.024~~, 378.207 FS. Law Implemented 211.32, 378.207 FS. History-New 10-6-80, Amended 7-19-81, 2-22-87, Formerly 16C-16.051, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mimi Drew, Director, Division of Water Resource Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan Bedwell, Deputy Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 10, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 29, 2000

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE TITLE: Citations RULE NO.: 64B8-55.002

PURPOSE AND EFFECT: The Electrolysis Council proposes to update the existing rule.

SUMMARY: The Council has determined that the rule text should be amended to add failure to pay fees and fines to the list of citation violations.

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: 456.077(1),(2) FS.

LAW IMPLEMENTED: 456.072(3)(b), 456.077(1),(2), 478.51, 478.52 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Electrolysis Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-55.002 Citations.

(1) through (3) No change.

(4) The Board designates the following as citation violations:

(a) through (q) No change.

(r) Failure to timely pay required fees and fines (r) For first time violation a \$250 fine

(5) through (6) No change.

Specific Authority 456.077(1)(2) FS. Law Implemented 456.072(3),(b), 456.077(1),(2) 478.51, 478.52 FS. History-New 11-16-93, Formerly 61F6-80.002, Amended 1-2-95, Formerly 59R-55.002, Amended 11-13-97, 10-12-98, 2-11-01,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Electrolysis Council

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 1, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 9, 2001

**DEPARTMENT OF HEALTH**

**Board of Opticianry**

RULE TITLE: Examination Review Procedure RULE NO.: 64B12-9.003

PURPOSE AND EFFECT: The Board proposes to repeal the existing rule text.

SUMMARY: The Board has decided to repeal this rule as the Department of Health's rules govern examinations and the procedures for the same.

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

Any person who wishes to provide information regarding 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: 456.017(2) FS.

LAW IMPLEMENTED: 456.017(2) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

All written material received by the Department within 21 days of the date of publication of this notice shall be made a part of the official record.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sue Foster, Executive Director, Board of Opticianry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B12-9.003 Examination Review Procedure.

Specific Authority 456.017(2) FS. Law Implemented 456.017(2) FS. History—New 12-6-79, Formerly 21P-9.03, Amended 4-22-90, Formerly 21P-9.003, 61G13-9.003, 59U-9.003, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sue Foster, Executive Director, Board of Opticianry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sue Foster, Executive Director, Board of Opticianry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 2, 2001

**DEPARTMENT OF HEALTH**

**Division of Environmental Health**

RULE TITLE: Licenses and Fees RULE NO.: 64E-17.006

PURPOSE AND EFFECT: The proposed amendment will eliminate the process of tanning facilities having to submit an annual renewal permit application, which will eliminate duplicative paperwork.

SUMMARY: This amendment will eliminate the requirement for submission of an annual application to the county health departments for renewal of a tanning facility permit. The Department of Health’s computer system has the ability to annually invoice and permit existing business establishments. An application would only be required for new tanning facilities, facilities whose licenses have been revoked, facilities where an increase or a decrease in devices would alter the amount of the annual fee, and when a change of ownership occurs. Establishments with licenses with an expiration date of September 30 will not be required to complete another application except under the above provisions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: 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 a lower cost regulatory alternative, must do so within 21 days of this notice.

SPECIFIC AUTHORITY: 381.89(13) FS.

LAW IMPLEMENTED: 381.89(3)(b) 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: 10:00 a.m., Thursday, January 10, 2002

PLACE: Division of Environmental Health, 4042 Bald Cypress Way, Conference Room 240 P, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ken Widergren, Environmental Specialist III, Bureau of Facility Programs, 4052 Bald Cypress Way, Bin #A08, Tallahassee, FL 32399-1710. By telephone at (850)245-4444 ext 2453 or SC 205-4444, Ext. 2453

THE FULL TEXT OF THE PROPOSED RULES IS:

64E-17.006 Licenses and Fees.

(1) through (2) No change.

(3) License, Renewal, and Transfer.

(a) No change.

(b) An application for renewal of an existing ~~the~~ tanning facility license is not required ~~shall be made through the local county public health unit~~. The county health department shall invoice the facility and the annual fee payment is required within 30 days of the date of the invoice. The application for renewal shall be completed and received by the department not less than 30 days prior to the expiration of the current license.

(4) No change.

(5) Fees.

(a) ~~A~~ Persons applying for first-time ~~an~~ annual license shall pay the full fee. All other applicants, such as change of ownership, reinstatement after revocation of license, or the issuance of a new license for reason such as a change of information from the information provided on the original application after the first quarter shall pay a prorated fee on a quarterly basis after the first quarter of the licensing year. Annual fees must be received by the department within 30 days of notification or a late renewal fee will be assessed. All tanning facilities shall pay an annual or prorated fee to the county ~~public health department unit~~ department according to the following:

- |                                    |          |
|------------------------------------|----------|
| 1. Annual License Fee (one device) | \$150.00 |
| Each additional device             | \$ 55.00 |
| Total fee not to exceed            | \$315.00 |
| 2. Late renewal of license         | \$ 25.00 |

(b) No change.

Specific Authority 381.89(13) FS. Law Implemented 381.89(3)(a),(b),(c),(13) FS. History—New 1-12-93, Amended 8-7-96, Formerly 10D-112.008, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ken Widergren, Environmental Specialist, Bureau of Facility Programs

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Leslie Harris, Environmental Manager, Bureau of Facility Programs

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 5, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 18, 2001

**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	67-21.004
Public Policy Criteria Requirements and Qualified Resident Programs	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) Entities	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 acquisition, 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 the 2002 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, 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:** 10:00 a.m., January 4, 2002  
**PLACE:** Leon County Civic Center, 505 West Pensacola Street, Tallahassee, Florida 32301

Any person requiring special accommodations at the hearing because of a disability or physical impairment should contact Laurie Camp 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).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Wayne Conner, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 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, Chapter 420, Part V, Florida Statutes, as amended.

(3) "Address" means the address assigned by the United States Postal Service and must include address number, street name, city, state and zip code. If the address has not yet been assigned, include, at a minimum, street name or closest designated intersection, city, state and zip 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) "Annual Recertification" means the compilation of the gross income of all persons or families in a given development qualified as lower-income residents tenants to continue to meet the requirements established in section 142(d) of the Code.

(6)(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, as of the date of occupancy shown on the Income Certification promulgated from time to time by Florida Housing.

~~(7)(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 by submitting an Application 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 Florida Housing and any such change is subject to the approval of the Board.~~

~~(8)(7)~~ “Application” means, with respect to the completed Form MFMRB2001 MMRB Program, the completed forms from the Universal Application Package, its instructions, and its appendices together with all 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 Program.

~~(9)~~ “Application Deadline” means 5:00 p.m., Eastern Time, on the final day of the Application Period.

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

~~(10)~~ “Application Period” means a period during which Applications shall be accepted, as determined from time to time by the Corporation.

~~(11)~~ “Assisted Living Facility” or “ALF” means a Florida licensed living facility that complies with Sections 400.401 through 400.454, Florida Statutes, and Rule Chapter 58A-5, Florida Administrative Code.

~~(12)(9)~~ “Board” or “Board of Directors” means the Board of Directors of Florida Housing.

~~(13)(10)~~ “Bond Counsel” means the attorney or law firm retained by Florida Housing to provide serve the specialized services function generally described in the industry as the role of bond counsel.

~~(14)(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.

~~(15)(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.

~~(16)~~ “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.

~~(17)(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.

~~(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.

~~(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.

~~(14)~~ “Completeness and Threshold Check” or “CTC” means the examination of the Application by a Credit Underwriter assigned by Florida Housing. This examination shall consist of a determination that all required information has been provided in the Application, and a verification and analysis of 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.

~~(20)(15)~~ “Contact Person” means the a person, Developer, or owner of the Development with whom Florida Housing will correspond concerning the Application and the Development. This person cannot be a third party consultant.

~~(21)(16)~~ “Corporation” or “Florida Housing” or “FHFC” means the Florida Housing Finance Corporation created pursuant to the Act.

~~(22)(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.

~~(23)(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, 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.

~~(24)(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.

~~(25)(20)~~ "Credit Underwriter" means the entity legal representative under contract with Florida Housing having the responsibility for providing ~~stated~~ credit underwriting services. 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.

~~(26)~~ 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.

~~(27)(21)~~ "Credit Underwriting Report" means a report for a particular Development 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 additional 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.

~~(28)(22)~~ "Cross-collateralization" means the pledging of the security of one Development to the obligations of another development.

~~(29)(23)~~ "Developer" means the any individual, association, corporation, joint venturer or partnership identified as such in the Application 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.

~~(30)(24)~~ "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, but are not limited to ~~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 Florida Housing with respect to a Development shall 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.

~~(31)(25)~~ "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.

~~(32)~~ "Development Cost" means the total of all costs incurred in the completion of a Development excluding Developer Fee, acquisition cost of existing developments, and total land cost shown in the Development Cost line item on the development cost pro forma within the Application.

~~(33)(26)~~ "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); of the Code IRC.

~~(34)(27)~~ "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.

~~(35)(28)~~ “Elderly” means persons 62 years of age or older or qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), Florida Statutes.

~~(36)(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 meets the requirements for an Elderly Development as set forth in the Universal Application Package.

~~(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.~~

~~(37) “Family” or “Family Household” describes a household composed of one or more persons.~~

~~(38)(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.

~~(39)(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.

~~(40)(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) “Final Board Approval” means formal action by the Board of Directors to adopt a resolution to authorize financing of a Development.~~

~~(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.~~

~~(41)(36)~~ “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.

~~(42)(37)~~ “Financial Beneficiary” means any Developer and its principals or the principals of the Applicant entity ~~one~~ who ~~is to~~ receives or will 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

(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(39), F.A.C.~~

~~(43)(38)~~ “Florida Housing” or “FHFC” means the Florida Housing Finance Corporation as created by the Act.

~~(44) “Florida Keys Area” means all lands in Monroe County, except:~~

~~(a) That portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;~~

~~(b) All lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; and~~

~~(c) Federal properties.~~

~~(45) “Funding Cycle” means the period of time established by the Corporation pursuant to this Rule Chapter and concluding with the issuance of allocations or loans to Applicants who applied during a given Application Period.~~

~~(46)(39)~~ “General Contractor” means an entity duly licensed in the State of Florida which to be eligible for the maximum 14% fee, must meet ~~meeting~~ the following conditions ~~criteria~~:

(a) The Development superintendent must be ~~is an~~ employed by ~~employee of~~ the General Contractor and the costs of that employment must be ~~are~~ charged to the general requirements line item of the General Contractor’s budget;



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

(c) Building permits must be ~~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) must be ~~is~~ issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.;

(e) None of the General Contractor duties to manage and control the construction of the Development may be subcontracted; and

(f) Not more than 20 percent of the construction cost is sub-contracted to any one entity unless otherwise approved by the Board for a specific Development.

~~(47)(40)~~ "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.

~~(48)~~ "Geographic Set-Aside" means, with respect to a MMRB Development, the amount of allocation which has been designated by Florida Housing for Developments located in specific geographical regions within the State of Florida pursuant to the Universal Application Package.

~~(49)(41)~~ "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 at the times required by this Rule Chapter. 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.

~~(50)(42)~~ "HC" or "Housing Credit Program" means the Low-Income or Very Low-Income rental housing program federal tax credit program administered by Florida Housing in accordance with Section 42 of the Code and Section 420.5099, Florida Statutes, under which Florida Housing is designated the Housing Credit Agency for the State of Florida within the meaning of Section 42(h)(7)(A) of the Code, and Rule Chapter 67-48, F.A.C.

~~(51)~~ "Homeless" or "Homeless Household" means an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing;

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

~~(52)~~ "HUD" means the U.S. Department of Housing and Urban Development.

~~(53)(43)~~ "HUD Risk Sharing Program" means the program authorized by Section 542(c) of the Housing and Community Development Act of 1992.

~~(54)(44)~~ "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.

~~(55)(45)~~ "Income Certification," "Tenant Income Certification" or "Form TIC-1" means the that Form TIC-1, as amended from time to time, 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.

~~(56)(46)~~ "Issuer" means the Florida Housing Finance Corporation.

~~(57)(47)~~ "Land Use Restriction Agreement," "LURA" or "Regulatory 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 Rule~~, the rules and 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 expressly agrees to subordinate the LURA to facilitate the financing.

~~(58)(48)~~ “Loan” means the loan made by Florida Housing to the Applicant from the proceeds of the Bonds issued by Florida Housing.

~~(59)(49)~~ “Loan Agreement” means the ~~Loan or~~ Program Documents or Loan Documents wherein Florida Housing and the Applicant agree to 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.

~~(60)(50)~~ “Loan Commitment” means the ~~Loan or~~ Program Documents or Loan Documents executed by Florida Housing and the Applicant after the issuance of a favorable Credit Underwriting Report that 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 and is 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.~~

~~(61)(51)~~ “Local Government” means a unit of local general-purpose government as defined in Section 218.31(2), Florida Statutes.

~~(62)(52)~~ “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.

~~(63)(53)~~ “Lower Income Residents 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 Residents Tenants if all the occupants of a unit are students as defined in Section 151(c)(4) of the Code or if the residents tenants do not comply with the provisions of the Code defining Lower Income Residents 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.~~

~~(64)(55)~~ “Mortgage” means the instrument securing the Loan which creates a first, co-equal or acceptable subordinate lien on the Development, subject to permitted encumbrances.

~~(65)(56)~~ “Mortgage Loan” means the Loan secured by the Mortgage and evidenced by a Note or Mortgage Note.

~~(66)~~ “Note” means an unilateral agreement containing an express and absolute promise to pay to Florida Housing a principal sum of money for the Loan together with interest on a specified date. The Note will provide the interest rate and will be secured by a mortgage.

~~(57)~~ “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.~~

~~(67)(58)~~ “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, management agent, architect/engineer, attorney that participates on an arms-length fee arrangement are not considered Principals of the Applicant entity.

~~(68)(59)~~ “Private Placement” or “Limited Offerings” means the sale of Florida Housing Bonds directly or through an underwriter or placement agent 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.

~~(69)(60)~~ “Program” means Florida Housing’s Multifamily Mortgage Revenue Bond (MMRB) Program.

~~(70)(61)~~ “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.

(71) “Program Report” or “Form PR-1” means the report format which is required to be completed and submitted to Florida Housing 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.

(72)(62) “Public Policy Criteria and Qualified Resident Programs” means the requirements and guidelines established by Florida Housing and set forth in 67-21.0041, F.A.C. and the Universal Application Package. The programs and these requirements shall be incorporated in the Loan Commitment and Program Documents. Such Public Policy Criteria and Qualified Resident Programs have been adopted for the purpose of accomplishing the programmatic goals of the Code, Florida Housing and the Act.

(73)(63) “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 Title 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.

(74)(64) “Qualified Census Tract” means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50% or more of the households at an income which is less than 60% of the area median gross income, or a poverty rate of at least 25 percent, in accordance with Section 42(d)(5)(C), of the Code.

(75)(65) “Qualified Lending Institution” means any Lending Institution designated by Florida Housing, 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.

(76)(66) “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.

(77) “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., Eastern Time, on the deadline date.

~~(78)(67)~~ “Rehabilitation Development” means a Development, the Rehabilitation Expenditures with respect to which equal or exceed ~~15%~~ 50% 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.~~

~~(79)~~ “Rehabilitation Expenditures” has the meaning set forth in Section 147(d)(3) of the Code.

~~(80)(68)~~ “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 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 Ffamily~~ 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 Ffamily~~ 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 Ffamily~~ 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.

~~(81)(69)~~ “Special Counsel” means any ~~the~~ attorney, ~~attorneys, law firm~~ or law firms retained by Florida Housing, pursuant to a RFP, to serve as counsel to Florida Housing, including or as Disclosure Counsel pursuant to a contract between the Special Counsel and Florida Housing.

~~(82)(70)~~ “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.

~~(83)(71)~~ “State Bond Allocation” means the allocation of the State private activity bond volume limitation pursuant to Chapter 159, Part VI, Florida Statutes, administered by the Division of Bond Finance and allocated to Florida Housing for the issuance of its Tax-exempt Bonds.

~~(84)(72)~~ “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.

~~(85)(73)~~ “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.

~~(86)(74)~~ “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.

~~(87)(75)~~ “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.

~~(88)(76)~~ “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.

(89) “Universal Application Package” or “UA1016” means the computer disks(s), forms and instructions, obtained from Florida Housing at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to Florida Housing in accordance with this rule chapter in order to apply for the MMRB Program. The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter.

(90)(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, state or federal government as evidenced by its inclusion in a HUD Empowerment/Enterprise Zone, HUD-designated qualified census tracts, Florida Enterprise Zone, area designated under a Community Development Block Grant (CDBG) or area designated as a HOPE VI or Front Porch Florida Community or a Community Redevelopment Area as described and defined in the Florida Community Redevelopment Act of 1969, or the proposed Development is located in a Qualified Census Tract and the development of which contributes to a concerted community revitalization plan, 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, 2-12-01, \_\_\_\_\_.

(Substantial rewording of Rule 67-21.003 follows. See Florida Administrative Code for present text.)

#### 67-21.003 Application and Selection Process for Loans.

(1) All Applications must be complete, legible and timely when submitted, except as described below. 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.

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Universal Application Package and these rules. Preliminary scores shall be transmitted to all Applicants along with the scoring sheets and threshold report.

(4) 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 Notice of Possible Scoring Error (NOPSE). Each NOPSE must

specify the assigned Application number and the scores in question, as well as describe the alleged deficiencies in detail. Each NOPSE is limited to the review of only one Application’s score. Any NOPSE that seeks 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 NOPSEs that may be submitted. The Corporation’s staff will review each written NOPSE timely received.

(5) The Corporation shall transmit to each Applicant the NOPSEs submitted by other Applicants with regard to its Application. The notice shall also include the Corporation’s decision regarding the NOPSE, along with any other items identified by the Corporation to be addressed by the Applicant.

(6) Within 15 Calendar Days of receipt of the notice set forth in paragraph (5) above, each Applicant shall be allowed to submit additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues raised pursuant to paragraphs (3) and (5) above that could result in rejection of the Application or a score less than the maximum available. 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, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to 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. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s). Each Applicant must submit a computer disk containing all revised completed pages. Nothing on the computer disk that is not otherwise contained within the original of the revised pages will be considered.

(7) Within 10 Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in paragraph (6) above, all Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. Each NOAD is limited only to issues created by documents revised and/or added by the Applicant submitting the Application pursuant to paragraph (6) above. Each NOAD must specify the assigned Application number, the pages and the documents in question, as well as describe the alleged deficiencies in detail. Each NOAD is limited to the review of

only one Applicant's submission. However, there is no limit to the number of NOADs that may be submitted. NOADs that seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation will only review each written NOAD timely Received.

(8) The Corporation shall transmit a copy of all NOADs to the affected Applicant.

(9) Following the receipt and review by the Corporation's staff of the documentation described in paragraphs (5), (6) and (7) above, the Corporation's staff shall then prepare final scores. In determining such final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the notices described in paragraphs (3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to paragraph (6) above will still be justification for rejection or reduction of points as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in paragraph (14)(a)-(l) below can be identified at any time prior to sending the final scores to Applicants and will result in rejection of the Application, and any deficiencies in the mandatory element set forth in (14)(l) below can be identified at any time prior to sending the final scores to Applicants and will result in zero tie-breaker points for the applicable Proximity to Proposed Development chart in that section. The Corporation shall then transmit final scores to all Applicants.

(10) 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 Credit Underwriting and those that are below the funding line on the MMRB ranked list. Any remaining 2002 allocation designated by the Board for multifamily housing, which as of December 1, 2002 is insufficient to fully fund the next ranked Application shall be offered to the next ranked Applicant, continuing down the ranked 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, at the option of the Board, be carried over and applied to the 2003 calendar year allocation or applied to single family housing. The Board may, upon a determination that such is necessary to assure timely processing of Applicants with respect to future State Bond Allocation which may become available, invite up to the next five Developments on the ranked list into 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 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 ranked list. Applicants electing to proceed to Credit Underwriting do so at their own risk. Any Applicant which declines invitation to Credit Underwriting shall be removed from the ranked list.

(11) Applications shall be limited to one submission per subject property with exception of Tax-Exempt Bond-Financed Developments applying noncompetitively for Housing Credits. Two or more Applications with the same Financial Beneficiary for Developments that are contiguous with the property of another Application, or that is divided by a street or easement, or if it is readily apparent from the two Applications, proximity, chain of title or other information available to the Corporation that the properties are part of a common or related scheme of development, the Applications will be considered to be submissions for the same Development site and the Corporation will reject all such Applications except the Application with the highest (worst) lottery number.

(12) If the Board determines that any Applicant or any Affiliate of an Applicant has engaged in fraudulent actions or has materially misrepresented information within the current Application or in any previous Applications for financing or an allocation of Housing Credits administered by the Corporation, the Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two years, which will begin from the date the Board makes such determination. 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.

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in paragraph (6) above:

(a) The Development does not conform to the Application requirements specified in this rule chapter;

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules and the Universal Application Package;

(c) The Applicant fails to provide all required copies and file all applicable Application pages and exhibits and the disk that are provided by the Corporation and adopted under this rule chapter;

(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 and/or any agent or assignee of the Corporation.

(14) 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;

(b) Name of the Developer;

(c) Program(s) applied for;

(d) Number of units;

(e) Site for the Development;

(f) Type of Development category;

(g) Whether the Development design constitutes a High Rise;

(h) County;

(i) Targeted resident population or targeted demographic area;

(j) Requested Amount, except as provided in 67-21.003(10);

(k) The total percentage of units committed to be set-aside;

(l) Selections made on the Proximity of Proposed Development charts in the proximity section of the Application.

(15) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the 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.

(16) If an Applicant or any Principal, Affiliate 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, this rule chapter, or applicable loan documents, and any applicable 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 Credit Underwriting Report, the requested allocation will, upon a determination by the Board that such non-compliance substantially increases the likelihood that such Applicant will not be able to produce quality affordable housing, 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 such time as all of their existing Developments participating in any Corporation programs are in compliance.

(17) With respect to the MMRB Program Applications, when two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the Universal Application Package.

(18) 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 after issuance of the final scores as set forth in paragraph 9 above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Development. If an Applicant or its representative does contact a Board member in violation of this section, the Board shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) 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 Calendar Days of notification by the local, state or federal authorities.

(20) Prior to instituting any change resulting in any modification or deviation from the Application or 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 the Universal Application Package 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.

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

(22) 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.

(23) Proposed Developments that are ranked, but not selected by the Board to enter Credit Underwriting, shall remain on the ranked list in the event State Bond Allocation

becomes available to fund additional Developments. If the current year's State Bond Allocation designated by the Board for multifamily housing is insufficient to fully finance a Development, subject to the provisions of 67-21.003(10), permitting reduction of the requested amount, a new Application must be filed to be eligible for a future year's State Bond Allocation.

(24) Florida Housing shall notify the Applicant, in writing, of the Board's determination related to approval of the Credit Underwriting Report and require the Applicant to submit one-half of the Good Faith Deposit within 7 Calendar Days from the receipt of such notice. 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 notification. In the event the loan does not close within the designated time frame and the closing date is not extended in writing by Florida Housing, then the State Bond Allocation shall be forfeited.

(25) Upon favorable recommendation of the Credit Underwriting Report and preliminary recommendation of the method of bond sale from Florida Housing's Financial Advisor, 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 Florida Housing bond and special counsel as needed.

(26) Following receipt of one-half of the Good Faith Deposit, Florida Housing's assigned counsel shall begin preparation of the Loan Commitment.

(27) Upon execution of a Loan Commitment, Applicant shall pay the balance of the Good Faith Deposit and Florida Housing shall authorize bond counsel and special counsel to prepare the Program Documents.

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, 2-12-01,\_\_\_\_\_.

(Substantial rewording of Rule 67-21.0035 follows. See Florida Administrative Code for present text.)

67-21.0035 Applicant Administrative Appeal Procedures.

(1) Each Applicant will be provided with a statement that 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 Calendar Days of the date of receipt of the notice. Only petitions Received by the deadline set forth herein will be considered. The petition must specify in detail each issue and score sought to be reviewed. Unless the appeal involves disputed issues of material fact, the appeal will

be conducted on an informal basis. If the appeal raises disputed issues of material fact, a formal administrative hearing will be conducted pursuant to s. 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.

(2) All parties have the right to submit written arguments in response to a recommended order entered as a result of an informal administrative proceeding pursuant to s. 120.57(2), Florida Statutes, regarding its own Application for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m. on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders.

(3) For those Applicants with s. 120.57(2), Florida Statutes, appeals that have not yet had final orders entered as of the date of the 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 ranking, provide the requested funding and/or allocation from the next available funding and/or allocation, whether in the current year or a subsequent year. Nothing contained herein shall affect any applicable Credit Underwriting requirements.

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 2-12-01,\_\_\_\_\_.

67-21.004 Federal Set-Aside 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 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 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).



(3) For Developments financed solely through the issuance of Taxable Bonds or refundings of Tax-exempt Bonds originally issued under the Internal Revenue Code of 1954, as amended, 20 percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 80 percent of the area median income limits adjusted for Family size (the 20/80 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 91-21.004, Amended 1-26-99, 11-14-99, 2-12-01, \_\_\_\_\_.

67-21.0041 Public Policy Criteria Requirements and Qualified Resident Programs.

(1) An Applicant may commit to provide Qualified Resident Programs as provided for in the Universal Application Package. 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 refundings of Tax-exempt Bonds originally issued under the Internal Revenue Code of 1954, as amended, 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 67-21.0041(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-i below. The maximum number of Public Policy Criteria is five.

(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 or 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, 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).

(i) For refundings only, the commitment to set aside an additional 10 percent of units for Lower Income Tenants beyond requirements of Rule 67-21.0041(1), F.A.C.

(2) An Applicant may irrevocably commit to Set-Aside units in the Development for a longer period of time than that required by Rule 67-21.004, F.A.C.

(3) All Public Policy Criteria and Qualified Resident Programs 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 and Qualified Resident Programs selected by the Applicant and identified in its Development Application may be only changed to other Public Policy Criteria and Qualified Resident Programs set forth in Rule 67-21.0041 and the Universal Application Package 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 Universal Application Package 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 except Developments utilizing (i) Florida Housing's Guarantee Fund, (ii) HUD Risk-Sharing, (iii) the Predevelopment Loan Fund, or (iv) SAIL to the extent specified in the Ranking Criteria;

- ~~(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 2-12-01, Amended \_\_\_\_\_.

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(30)(24).

(6) For those transactions that Florida Housing’s Financial Advisor recommends for a negotiated sale, Florida Housing shall appoint an investment banker 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 91-21.0045, Amended 1-26-99, Repromulgated 11-14-99, Amended 2-12-01, \_\_\_\_\_.

67-21.005 Selection of Qualified Lending Institutions as Credit Underwriters, Originators or Servicers.

(1) Qualified Lending Institutions shall be selected by Florida Housing to credit underwrite, participate in the origination of and service eligible Mortgage Loans.

(2) The criteria which shall be considered by Florida Housing 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 that is authorized to transact business in the State of Florida pursuant to statutory authority 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 91-21.005, Amended 1-26-99, Repromulgated 11-14-99, 2-12-01, Amended \_\_\_\_\_.

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) ~~The 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, Commercial Fishing Workers, Homeless Persons or Farmworkers.

(6) The Applicant shall have no present plan to convert the Development to any use other than the use as affordable 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 Residents ~~Tenants~~, prior to the satisfaction of which no additional units shall be rented or leased, except to ~~an individual or a~~ family that is also a Lower Income Resident ~~Tenant~~;

(b) All of the Public Policy Criteria and Qualified Resident Programs selected in the Application must be met; and

(c) After initial rental occupancy of such residential units by Lower Income Residents ~~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 Residents ~~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 Resident ~~Tenant~~.

(9) The Applicant shall obtain and maintain on file income certifications from each Lower Income Resident ~~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.~~

~~(12)~~(13) The Applicant may limit the leasing of units in a Development to Elderly Persons, Commercial Fishing Workers, Homeless Persons or Farmworkers as permitted hereby.

~~(13)~~(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 that the Development no longer qualifies as Elderly Housing.

~~(14)~~(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 is completed.

~~(15)~~(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. A key management company. ~~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.

~~(16)~~(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.

~~(17)~~(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 prepared by an independent certified public accounting firm, consolidated or consolidating, on the Development and any other information required by Florida Housing to comply with continuing disclosure requirements imposed by law.

~~(18)~~(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, 2-12-01, \_\_\_\_\_.

#### 67-21.007 Fees.

In addition to the fees specified in the Universal Application Package, 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.~~

~~(a) \$1000 per Application if Applicant or Applicant's general partner qualifies as a Non-Profit entity; and~~

~~(b) \$2000 per Application for all others.~~

~~This fee includes the minimum estimated costs for the 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.~~

~~(1)~~(3) TEFRA Fee: At the time of submission of the Application, Applicants shall submit a non-refundable TEFRA fee to Florida Housing in the amount of \$500. 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 a second TEFRA notice and hearing are is required, Applicant is responsible for all costs associated with the additional TEFRA process.

~~(2)~~(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.

~~(3)~~(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 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. 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 Florida Housing will be deducted from the Good Faith Deposit prior to refunding any unused funds to the Applicant. In the event that additional invoices are received by Florida Housing subsequent to a determination that the Loan will not close and refunding any 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.

~~(4)~~(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 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.

~~(5)(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 pay will 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 pay will 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.~~

~~(c)(4)~~ Fees of the Florida Housing Finance Corporation Affordable Housing Guarantee Program pursuant to Rule Chapter 67-39, F.A.C.

~~(6)(8)~~ Compliance Monitoring Fees: The annual monitoring fee ~~to be paid by~~ the Applicant shall pay will be determined by contract between Florida Housing and the monitoring agent.

~~(7)(9)~~ Permanent Loan Servicing Fees: The annual servicing fee ~~to be paid by~~ the Applicant shall pay will be determined by contract between Florida Housing and the servicer.

~~(8)(10)~~ Financial Monitoring Fees: The annual financial monitoring fee ~~to be paid by~~ the Applicant shall pay will be determined by contract between Florida Housing and the monitoring agent.

~~(9)(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 Fee 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 Chapter 67-39, F.A.C., shall apply and be paid by the Applicant to Florida Housing.

~~(10)(12)~~ Development Cost Pro Forma: All of the fees set forth above with respect to the Program and other Florida Housing programs are part of the Total Development Cost. These costs must be included in the Development cost pro forma.

~~(11)(13)~~ Failure to pay any fee on or before ten Calendar Days after the due date shall cause no further activity by Florida Housing or its agents with respect to processing of the Loan.

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 91-21.007, Amended 1-26-99, 11-14-99, 2-12-01, \_\_\_\_\_.

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 Mortgage Loan in full beginning on the earlier of 36 24 months after closing, or stabilized occupancy, or conversion to permanent financing by any lender on secondary financing and ending not later than the expiration of the useful life of the property, and in any event, not later than 45 years from the date of the Mortgage Loan;

(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, 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 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 affordable to Lower Income Residents.

(d) The Applicant providing to Florida Housing, Bond Counsel 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, 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.

(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, or as requested during Credit Underwriting, 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 and that are acceptable to Florida Housing. 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, or a copy of the lease creating a long-term leasehold in favor of the Applicant acceptable to the Corporation and the Credit Underwriter.

(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 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.~~

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, 2-12-01,\_\_\_\_\_.

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 2-12-01,\_\_\_\_\_.

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 satisfy the ~~Final~~ Credit Underwriting Report, as the same may be amended, 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, 2-12-01,\_\_\_\_\_.

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, Commercial Fishing Worker or Homeless Development, or to preclude a Developer from discrimination based on income in renting units Set-Aside for Lower Income Residents Tenants in compliance with the requirements of the Code or with the requirements of section 420.509(19), Florida Statutes, 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, 2-12-01,\_\_\_\_\_.

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 2-12-01,\_\_\_\_\_.

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 utilized for financings where the Applicant has demonstrated that the utilization of a Private Placement produces a substantial benefit to the Development not otherwise available from credit enhancement structures. 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, Repromulgated 2-12-01, \_\_\_\_\_.

#### 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 after applicable cure periods shall be required for a Development to be invited to Final Credit Underwriting.~~

~~(1)(b) An invitation into Final Credit Underwriting shall require that the Applicant submit the Final 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 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 ~~C~~redit ~~E~~nhancer 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 with the Bond Trustee 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 type 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. Percentage Exposure of Florida Housing funds utilized 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 existing 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 ten business days of receipt of the request therefor. Failure for any reason to submit required information on or before the specified deadline shall result in the Application being moved to the bottom of the ranked list.

~~(h) At a minimum, the Credit Underwriter shall require the following information during Credit Underwriting: 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 unaudited financial statements and federal tax returns for the past three years to the Credit Underwriter.~~



1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or Credit Underwriting is complete.

2. For Principals and Guarantors, audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with SSARS are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter in accordance with the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 23, 1999, and the two most recent years tax returns.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and General Partner, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that Credit Underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(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 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 not later than when an Application enters Final Credit Underwriting. 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 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 following presentation of the Credit Underwriter's favorable recommendation from final Credit Underwriting Report 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 9F-21.014, Amended 1-26-99, 11-14-99, 1-26-00, 2-12-01.

67-21.015 Use of Bonds with Other Affordable Housing Finance Programs.

~~(1) Subject to any ranking criteria which may be imposed pursuant to the Universal Application Package Rule 67-21.0041(4)(a), 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.~~

~~(1)(2) Applicants may submit one Application for the MMRB Program, SAIL, competitive housing credits and non-competitive housing credits, subject to the restrictions set forth in the Universal Application Package, 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.~~

~~(2)~~(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, 2-12-01,\_\_\_\_\_.

#### 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 and shall 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 Lower-Income ~~Residents~~ Tenants.

(b) Being held vacant for occupancy by Lower-Income ~~Residents~~ Tenants.

(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 ~~Residents~~ Tenants is discovered during the course of compliance monitoring or by any other means.

(9) ~~Borrowers~~ Sponsors shall annually certify that the household gross income, ~~adjusted for family size,~~ of each household occupying a unit set aside for Lower Income ~~Residents~~ 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.

(10) The compliance monitoring for MMRB will begin following loan closing or, if the Development is occupied, prior to loan closing.

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, 2-12-01,\_\_\_\_\_.

#### 67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of this ~~Rule Section~~ 67-21.017, provided that transfers of the limited partnership interest in the Developer to a tax credit syndicator, or the transfer of ownership to a creditor by means of foreclosure or deed in lieu of foreclosure, 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

(3) Upon demonstration of compliance with the provisions of this ~~Rule 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) The 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) All outstanding fees owing to Florida Housing shall be paid,

(c) The Development shall be in compliance with all existing regulatory requirements imposed by Florida Housing or its predecessor, and

(d) If 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, 2-12-01, \_\_\_\_\_.

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) Determination of the likelihood ~~quality~~ of the impending default;

(b) Submission of a sworn certificate of impending default by the Developer or Credit Enhancer;

(c) Submission of sworn certificate from the Developer or Credit Enhancer that conditions causing default are likely to continue;

(d) Submission 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) Independent evidence of market conditions in the Development location;

(f) Evidence of effort by the Developer or Credit Enhancer to procure other sources of capital infusion;

(g) Statement by the Developer or Credit Enhancer of the continued public purpose to be achieved by refunding;

(h) Agreement by the Developer or Credit Enhancer to update the Land Use Restriction Agreement, including retention of state and federal income limits;

(i) New 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) The 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) All costs of refunding are paid by the Developer or the Credit Enhancer outside of Bond proceeds, including all applicable fees;

(l) Retention of annual fees by Florida Housing;

(m) Provision of other evidence of the immediacy of default;

(n) Retention of the Credit Enhancement; and

(o) Management of the Development is reviewed and approved by Florida Housing.

(p) The Set-Aside of an additional 10 percent of units for Lower Income Residents beyond the requirements of Rule 67-21.0041(1), F.A.C.

(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) 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) The loan shall immediately on the earlier of 24 months after closing or stabilized occupancy in the case of major rehabilitation begin full amortization 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) 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) 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, 2-12-01,\_\_\_\_\_.

67-21.019 Issuance of Bonds for 501(c)(3) Entities.

(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 entity organized under Section 501(c)(3) of the Code.

(2) In connection with all ~~B~~bonds issued pursuant to 67-21.019, F.A.C., Applicants shall be required to comply with the provisions of Rule(s) 67-21.003, 67-21.0041 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 at least one Qualified Resident Program shall be committed to in addition to the minimum federal Set-Aside.

~~(a) With respect to Rule 67-21.0041, F.A.C., paragraph (4) does not apply;~~

~~(b) With respect to Rule 67-21.003(4), F.A.C., and Rule 67-21.014, F.A.C., no CTC or CTC fee shall be required; and~~

~~(c) Only one Public Policy Criteria shall be satisfied in addition to the minimum federal Set-Aside.~~

(3) In addition, Applicant shall submit the following:

~~(a) An abbreviated Application using specified forms from MFMRB2001;~~

~~(b)~~(b) An 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)~~(c) An opinion from Applicant's counsel at Applicant's sole expense evidencing the Applicant's qualifications as a 501(c)(3) entity and Applicant's authority to incur bond debt for multifamily housing; and

~~(d)~~(d) If a Development to be acquired is intended to be exempt from ad valorem taxes, evidence that it has notified all local ad valorem taxing authorities of the acquisition of the proposed Development by a 501(c)(3) entity.

Specific Authority 420.507(12) FS. Law Implemented 420.502, 420.507(14),(24), 420.508 FS. History--New 11-14-99, Amended 2-12-01,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne Conner, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (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 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 6, 2001, Corporation Board Meeting

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 27, No. 29, July 20, 2001

**FLORIDA HOUSING FINANCE CORPORATION**

RULE TITLES:	RULE NOS.:
Definitions	67-32.002
Notice of Fund Availability	67-32.003
General Program Restrictions	67-32.004
Application Procedures	67-32.005
Terms and Conditions of Loan	67-32.006
Scoring, Ranking, and Funding Guidelines	67-32.007
Selection for Participation in Program	67-32.008
Right to Inspect and Monitor Funded Developments	67-32.010
Fees	67-32.011

PURPOSE, EFFECT: Pursuant to Florida Statutes Section 420.5087(3)(c)2., the Florida Housing Finance Corporation administers the Elderly Housing Community Loan (EHCL) Program. This program provides loans to sponsors of affordable rental housing for very low income elderly households. Chapter 67-32 provides the procedures for the

administration of this loan program and criteria for receiving, evaluating, and competitively ranking all applications for loans under the EHCL Program.

The intent of this Rule is to provide loans to sponsors of housing for the elderly to make building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or life-safety or security-related repairs or improvements to such housing.

SUMMARY: The proposed Rule with its amendments sets out the procedures by which projects will be selected to participate in the Elderly Housing Community Loan Program and receive funds under the State Apartment Incentive Loan Program's allocation. This proposed Rule provides the procedures for program administration and will enable the corporation to make or participate in the making of mortgage loans for life-safety, building preservation, health, sanitation, and security-related repairs or improvements to eligible developers of rental housing projects for the elderly community.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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: 420.5087 FS.

LAW IMPLEMENTED: 420.5087 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: 9:30 a.m., January 4, 2002

PLACE: Leon County Civic Center, 505 West Pensacola Street, Tallahassee, Florida 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Kerey Carpenter, Deputy Development Officer, 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:

67-32.002 Definitions.

For the purposes of this rule the following definitions shall apply:

(1) "Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, of the Florida Statutes.

(2) "Applicant" means any non-profit that provides housing for the elderly who is requesting funding from the Elderly Housing Community Loan Program (EHCL) a loan from the Corporation for the purpose of making building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, life-safety or security-related repairs or improvements to such housing.

(3) "Application" means the completed forms together with all exhibits submitted to Florida Housing in accordance with this rule chapter for the purpose of requesting funds from the EHCL Program.

(4) "Application Package" means the forms, threshold requirements, instructions and other information necessary for submission of an Application to Florida Housing for the EHCL Program.

(5)(3) "Corporation" or "FHFC" or "Florida Housing" means the Florida Housing Finance Corporation.

(6)(4) "Development," "Project," or "Property" means the rental housing unit or units to be repaired or improved by the funds received a loan from the Program.

(7)(5) "EHCL" or "EHCL Program" or "Program" means the Elderly Housing Community Loan Program created pursuant to Section 420.5087(3)(d) ~~420.5087(3)(e)2.~~

(8)(6) "Elderly" describes a person 62 years of age or older. Persons meeting the Fair Housing Act requirements for Elderly, pursuant to Section 760.29(4), Florida Statutes, shall be considered Elderly for purposes of this Program.

(9)(7) "Housing for the Elderly" means any ~~non-profit~~ housing community as defined in Section 420.503, Florida Statutes which is financed by a mortgage loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3), or s. 236 of the National Housing Act, as amended, and which is subject to the income limitations as established by the United States Department of Housing and Urban Development, or any program funded by the Farmers Home Administration or its successor, U.S. Department of Agriculture Rural Development, and subject to the income limitations as established by the United States Department of Agriculture.

(8) "~~Program~~" means the Elderly Housing Community Loan Program.

(10) "Received" means delivery by hand, U.S. Postal Service, or other courier service, unless otherwise indicated, to the offices of the Florida Housing no later than 5:00 p.m., Eastern time, on the day of the Application deadline.

(11)(9) "Review Committee" means a committee of Florida Housing staff and one Department of Community Affairs person five who will make recommendations to Florida Housing's Board of Directors regarding Program participation organize the scoring of the applications. Four will be staff of the Florida Housing Finance Corporation and appointed by the Board of Directors of the Corporation and one will be a staff person of the Florida Department of Elder Affairs. Meetings of the Review Committee shall be at the call of the Chairman who shall also be designated by the Executive Director.

(10) "~~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 amended, as of February 1995.

~~(1) “Sponsor” means an Applicant selected for participation in the Program.~~

~~Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History–New 10-2-89, Amended 2-25-96, Formerly 9I-32.002, Amended 11-9-98, 1-2-00, 12-31-00,\_\_\_\_\_.~~

~~67-32.003 Notice of Fund Availability.~~

~~(1) Applications shall be submitted to the Corporation within the deadline which will be noticed in the Florida Administrative Weekly. The notice shall also be mailed to each person or organization on the Corporation’s mailing list for the Program. The application cycle shall be open for 90 days.~~

~~(2) Such notice shall provide notice of the temporary reservation of funds established in s. 420.5087 (3)(c)2., Florida Statutes.~~

~~(3) After scoring and ranking of applications, the appeal period and final loan commitments, any remaining funds shall be made available to Applicants under the State Apartment Incentive Loan Program.~~

~~Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History–New 10-2-89, Formerly 9I-32.003, Repromulgated 11-9-98, 1-2-00, 12-31-00, Repealed\_\_\_\_\_.~~

~~67-32.004 General Program Restrictions.~~

~~(1) The proceeds of all loans shall be used for life-safety, building preservation, health, sanitation, or security-related repairs or improvements which result in making the Development safe and secure, and meeting requirements of state, federal, or local regulation. Loans shall be subject to the following restrictions:~~

~~(2)(a) Funding provided under the EHCL Program A loan for life-safety, building preservation, health, sanitation, or security-related repairs or improvements may not exceed \$200,000 per Housing Community for the Elderly per funding cycle.~~

~~(b) Loans under this Program shall be made:~~

~~1. For life-safety related installations, modifications, or improvements, building preservation, health, sanitation, or security-related installations, modifications, or improvements. Examples shall include emergency generator system, sprinkler system, emergency alert or call system, rewiring fire safety and sprinkler system, new or updated fire alarms, new or updated smoke detectors or smoke detection systems, security surveillance system, enhanced lighting, roof replacement or repair, plumbing replacement or repair, improvement of Development access to handicapped persons, repair or improvement to large boiler and chiller water systems, closed circuit security TV system, intercom system, install locks, exterior or interior, regulatory federal, state, or local required repairs or improvements, security card access system, fence, sidewalks, exterior waterproofing of building, automated or remote activated entrance and exit door latch system; and~~

~~2. For the purpose of meeting and maintaining the standards set forth in applicable federal requirements contained in HUD Handbooks 4571.3, Rev. 1, 4560.01, Rev. 1, 4510.1~~

~~and Multifamily Accelerated Processing (MAP) Guide, and HUD regulatory agreement forms HUD-92466-CA, HUD-93135 and FHA-1733 to assure a safe and secure environment for Development residents. Examples include emergency call systems, enhanced lighting in halls, stairwells, public areas, and exterior entrances and exits; intercom systems, fencing, security surveillance systems and automated entrance and exit door latch systems.~~

~~(2) The Sponsor of the Development housing community for the Elderly must match at least 15 percent (15%) of the loan amount to pay the cost of such repair or improvement.~~

~~(3) Loan proceeds shall not be used to pay for administrative costs, routine maintenance or new construction.~~

~~Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History–New 10-2-89, Amended 1-9-92, 2-25-96, Formerly 9I-32.004, Amended 11-9-98, 1-2-00, 12-31-00,\_\_\_\_\_.~~

~~67-32.005 Application Procedures.~~

~~(1) The Review Committee shall review all applications that are received by the noticed application deadline. Received means delivery by hand, U.S. Postal Service, or other courier service, to the offices of the Corporation no later than 5:00 p.m., time, on the day of the application period.~~

~~(1)(2) Florida Housing The Corporation hereby adopts and incorporates herein by reference the EHCL Program Application Package packet, effective on the date of the latest amendment of this Rule Chapter, which provides forms, instructions and other information necessary for submission of an application under this Program.~~

~~(2)(3) Application Packages packets may be obtained from Florida Housing the Corporation, which is located at in Suite 5000, City Centre Building, 227 North Bronough Street, Tallahassee, Florida 32301-1329.~~

~~(3)(4) All Applications must be complete, accurate, legible and timely when submitted. A failure to comply with the aforementioned will result in the application being rejected.~~

~~(4)(5) An original and two photocopies of the original Application must be submitted on or before the Application deadline noticed in a publication of general circulation throughout the state.~~

~~(5) Any Application which is not Received with the appropriate fee and number of copies by the Application deadline will be rejected and no action will be taken to score the Application.~~

~~Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History–New 10-2-89, Amended 1-9-92, 2-25-96, Formerly 9I-32.005, Amended 11-9-98, 1-2-00, 12-31-00,\_\_\_\_\_.~~

~~67-32.006 Terms and Conditions of Loan.~~

~~(1) The loan All loans shall be in compliance with this rule chapter and the Act, and loan documents shall, at a minimum, contain the following terms and conditions:~~

~~(a) The loan loans shall be non-amortizing and shall have an interest rate of three percent;~~

(b) Repayment of principal and interest shall be deferred until maturity of the note; however, the servicer will collect principal and interest payments along with servicing fees monthly and place them in an interest-bearing account which will provide funds to pay servicing fees and fully pay the loan at maturity.

(c) Repayment of principal shall occur at maturity of the note;

~~(c)(4)~~ The loan term shall not exceed fifteen years but may be for a shorter period of time as recommended by the credit underwriter, and shall be established on the basis of a credit analysis of the Applicant. Development cash flow and the financial condition of the Applicant, including available reserve accounts, shall be examined to determine the specific loan term.

(2) Unless otherwise approved by Florida Housing's Board of Directors, the loan must close within 120 days of the date of acceptance of the loan commitment.

~~(3)(2)~~ The loan shall not be assumable upon Development sale, transfer or refinancing of the Development.

~~(4)(3)~~ If the loan is repaid due to upon sale, transfer, or refinancing of the Development, all available proceeds shall be applied to pay the following items in order of priority:

- (a) First ~~m~~Mortgage debt service and fees;
- (b) Expenses of the sale;
- (c) EHCL principal and accrued interest.

~~(5)(4)~~ Florida Housing The Corporation or an authorized representative of Florida Housing the Corporation shall monitor compliance of all terms and conditions of the loan as provided in the loan documents and shall require that such terms and conditions be recorded in the public records of the county wherein the Development is located. Violation of any term or condition shall constitute a default on the loan.

~~(6)(5)~~ The Corporation shall require adequate insurance shall to be maintained on the Development property as determined by the first mortgage lender, but which shall, in any case, include fire, and hazard insurance, with Florida Housing listed as a loss payee, in an amount sufficient to cover the amount of the EHCL loan and all superior mortgage loans and other insurance sufficient to meet the standards established by the U.S. Department of Housing and Urban Development or United States Department of Agriculture (formerly the Farmers' Home Administration) in the Program providing the first mortgage loan for the Development facility.

~~(7)(6)~~ All loans must provide that Any violation of the terms and conditions required by Rule Chapter 67-32 or the loan documents constitutes a default under the loan documents allowing Florida Housing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

~~(7) The proceeds of all loans shall be used for life safety, building preservation, health, sanitation, or security-related repairs or improvements which result in making the Development safe and secure, and meeting requirements of state, federal, or local regulation.~~

~~(8) Loan proceeds shall not be used to pay for administrative costs, routine maintenance or new construction.~~

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Amended 1-9-92, 2-25-96, Formerly 9I-32.006, Amended 11-9-98, Repromulgated 1-2-00, Amended 12-31-00.

~~67-32.007 Selection Criteria, Rejection Criteria, and Scoring, and Ranking, and Funding Guidelines.~~

~~(1) The content of Each Application received by the Application deadline shall be scored evaluated and preliminarily ranked by Florida Housing staff the Review Committee using based on the following factors specified in the Application Package, with points being recommended to the Corporation Board by the Review Committee up to the maximum indicated. Final award of points shall be made by the Corporation Board. Details on criteria to be utilized to award full and partial points for each factor shall be provided in the application packet: Preliminary scores shall be transmitted to all Applicants.~~

~~(2) Failure to submit an Application following instructions provided in the Application Package and this rule chapter will result in rejection of the Application or a score less than the maximum available.~~

~~(3) With the exception of those items specified in the Application as mandatory elements which cannot be changed once the Application deadline has passed, Applicants will have 15 days from the date Florida Housing sends the preliminary scores to the Applicant to submit additional documentation, revised pages, and any such information the Applicant deems appropriate to address issues raised during scoring that could result in rejection of the Application or a score less than the maximum available. Where specific pages of the Application are revised or additional information is provided, each new page must be marked "revised" and an original and two copies of this additional documentation must be submitted by the deadline for Florida Housing to consider it in determining final scores. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except those documents signed by third parties shall be submitted in their entirety.~~

~~(4) Following the receipt and review of the documentation described in subsection (3) above, Florida Housing shall then prepare final scores. In determining the final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the preliminary scores transmitted to the Applicant.~~

(5) The Review Committee shall prepare a scoring and ranking recommendation based on final scores and submit it to Florida Housing's Board of Directors for approval.

(6) Following the Board's action regarding the scoring and ranking, Florida Housing will transmit the scoring and ranking to each Applicant along with a notice of appeal rights.

(7) Following the Board's action on recommended orders received for all appeals resolved pursuant to Section 120.57, Florida Statutes, Florida Housing staff shall implement the Board's action by adjusting the scoring and ranking to reflect the outcome of the final orders.

(8) Applications shall be funded in the order of their scoring and ranking until all allocated funding has been awarded. However, an Application shall not be considered for funding if it does not meet threshold requirements as provided in the Application Package.

(9) If two or more Applications have a tied score and fall within the funding range, Florida Housing shall fund all Applicants with tied scores. Should there be insufficient funds available to fully fund all Applications with tied scores, an award of funding will be offered to each Applicant with a tied score on a pro rata basis such that all Applicants with tied scores will be offered an equal percentage of their request amount so that remaining funds are divided among the tied Applications.

(10) If an Applicant rejects an offer of funding, Florida Housing will offer the funding to remaining eligible Applications in order of ranking.

(11)(10) After all eligible Applications have been funded, any funds which have not been awarded shall be made available to Applicants under the State Apartment Incentive Loan Program.

(a) Ability of the Applicant to provide matching funds in excess of minimum requirements — 75 points.

(b) Ability to proceed on the Development — 100 points. Points shall be awarded to Applicants able to move quickly to begin and complete the proposed Development.

(c) Economic viability as determined by Corporation staff — 125 points. The Applicant's ability to repay the principal and interest due upon maturity of the note will be evaluated.

(d) Relative priority of type of repair or improvement to be completed — 100 points.

(e) Local government planning and financial contributions to the Development — 100 points.

(2) The Review Committee shall recommend to the Corporation Board a numerical ranking of all Developments. The final ranking shall be made by the Corporation Board. In the event of a tie, the Corporation shall fund all Applicants which achieved tie scores, provided that the tie score places them within funding range, up to the amount of funds available. Should there be insufficient funds available to fund all applications with tie scores, such applications will equally divide available funds for their rank.

~~(3) An application shall not be considered for funding if it does not score a minimum of 200 points.~~

~~(4) An application shall not be considered for funding if it does not reflect that at least a fifteen (15) percent match is being made by the Applicant to complete the proposed repairs or improvements.~~

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Formerly 9I-32.007, Amended 11-9-98, 1-2-00, Repromulgated 12-31-00, Amended \_\_\_\_\_.

67-32.008 Selection for Participation in Program.

~~(1) The Review Committee shall analyze the proposed Development, including financial information and other application materials.~~

~~(a) The Corporation shall have the ability to request additional exhibits from the Applicant to clarify application materials or to complete underwriting of the application.~~

~~(2) A loan amount shall be determined by the Corporation's Board of Directors following review of the applications and the recommendation of the Review Committee.~~

~~(3) Based upon fund availability, the Corporation shall notify Applicants of selection for participation in the Program in order of the Applicant's ranking.~~

~~(4) Rejection of an offer of a loan amount will cause the Corporation to make the offer to the next highest ranked Applicant.~~

~~(5) If determination of final loan amounts for Applicants selected for participation in the Program results in remaining funds being available, additional Applicants shall be selected for participation by moving down the list of Applicants meeting threshold requirements in rank order.~~

~~(6) Final selection for Program participation is contingent upon fund availability after determination of loan amounts and the appeals process.~~

~~(7) The loan must close within 90 days of the date of receipt by the Sponsor of the commitment for the loan.~~

~~(8) A failure to comply with any part of this section without the written permission of the Corporation will result in the disqualification of the application and withdrawal of the loan commitment.~~

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Formerly 9I-32.008, Amended 11-9-98, Repromulgated 1-2-00, Amended 12-31-00, Repealed \_\_\_\_\_.

67-32.010 Right to Inspect and Monitor Funded Developments.

Florida Housing The Corporation or its agents shall have the right to inspect and monitor the records and facilities of all Developments. Inspections shall occur while the during the implementation phase of the repairs or improvements are being made and may occur after completion of the such repairs or improvements as a result of suspected default or noncompliance issues.



Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Formerly 91-32.010, Amended 11-9-98, 1-2-00, Repromulgated 12-31-00, Amended.

67-32.011 Fees.

(1) ~~The Corporation shall collect the following fees are required and charges in conjunction with the Elderly Housing Community Program loans:~~

(a) ~~Application Package fee of \$20 payable to Florida Housing which will include the Rule and the Application Package.~~

(b) ~~Application fee of \$50 payable to Florida Housing for each EHCL Application submitted.~~

(c) ~~Credit underwriting fee (\$2,200) pursuant to contract between Florida Housing the Corporation and the credit underwriter payable to be paid to the credit underwriter on or before the seventh within seven (7) calendar day days following after issuance of the preliminary commitment letter. The Credit Underwriter will not begin credit underwriting until this fee has been paid selection for participation in the Elderly Housing Community Loan Program and post-appeal scores and rankings and prior to credit review by the Corporation's credit underwriter. If a Development involves units at scattered sites of units within a single county market area, a single credit underwriting fee shall be charged.~~

(d) ~~A non-refundable cCommitment fee of \$250.00 payable from each sponsor to be paid to Florida Housing the Corporation which shall be due upon acceptance of the firm commitment and which is not refundable.~~

~~1. Not-for-profit Applicants Sponsors who provide a letter signed by the Applicant certification with an explanation of why indicating that funds will not be available prior to closing shall be permitted to pay the commitment fee at closing.~~

~~2. All Sponsors shall remit the commitment fee payable to the Florida Housing Finance Corporation.~~

(e) ~~Loan Servicing fees to be paid by the Applicant Sponsor to the servicer/monitoring agent pursuant to contract between Florida Housing the Corporation and the servicer/monitoring agent.~~

(2) ~~Fees are part of Development cost and may be included in as an eligible expense in determining total cost of the repairs or improvements a loan commitment if requested in the application and approved by the credit underwriter.~~

(3) ~~Failure to pay any fee shall cause the firm EHCL commitment to be terminated or shall constitute a default on the loan.~~

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.507(19), 420.5087(3)(c) FS. History—New 10-2-89, Amended 2-25-96, Formerly 91-32.011, Amended 11-9-98, 1-2-00, 12-31-00, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Kerey Carpenter, 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: December 6, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 27, No. 31, August 3, 2001

**FLORIDA HOUSING FINANCE CORPORATION**

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
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 Credits 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

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 2002 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: 10:00 a.m., January 4, 2002

PLACE: Leon County Civic Center, 505 West Pensacola Street, Tallahassee, Florida 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Kerey Carpenter, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (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 91-48.001, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended

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 the address 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) “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 24 CFR 5.611 ~~Section 61 of the Code.~~

(4) “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) “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) “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 Rule 67-48.006(6), F.A.C., and is adopted and incorporated herein by reference, effective on the date of the latest amendment to

this rule chapter. A copy of such form is available on FHFC's web site [www.floridahousing.org](http://www.floridahousing.org), included as an attachment to the Application Package.

(7) "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) "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 HOME Program(s) for Low-Income or Very Low-Income persons or households, and (ii) with respect to the HC Program for qualified tenants, as defined in Section 42 of the Code.

(9) "Application" means, with respect to the SAIL and HC Programs, the completed forms from the Universal Application Package together with all exhibits submitted to the Corporation in accordance with this rule chapter and the Universal Application Package instructions in order to apply for the SAIL, HOME and/or HC Program(s). "Application" means, with respect to the HOME Program, the completed forms from the HOME Rental Application Package together with all exhibits submitted to the Corporation in accordance with this rule chapter and the HOME Rental Application Package instructions in order to apply for the HOME Program.

(10) "Application Deadline" means 5:00 p.m., Eastern Time Tallahassee time, on the final day of the Application Period.

(11) "Application Package" or "Form CAP01" 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.

(12) "Application Period" means a the period during which Applications shall be accepted as determined from time to time by the Corporation as described in the Notice of Funding or Credit Availability published in the Florida Administrative Weekly.

(13) "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 Rule Chapter 58A-5, Florida Administrative Code.

(15) "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) "Board of Directors" or "Board" means the Board of Directors of the Corporation.

(17) "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) "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 Rule 67-48.028, F.A.C.

(20) "Catchment Area" means the geographical area covered under a Local Homeless Assistance Continuum of Care Plan, as designated and revised as necessary by the State Office on Homelessness, in accordance with Section 420.624, Florida Statutes.

(21) "Categorical Set-Aside" means, with respect to the SAIL Program, the reservation of funds for Commercial Fishing Workers or Farmworkers, Families, and Elderly persons, and persons who are Homeless, 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 as a set-aside.

(22) "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.

~~(21)~~~~(22)~~ “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.

~~(22)~~~~(23)~~ “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.

~~(23)~~~~(24)~~ “Community Housing Development Organizations” or “CHDOs” means ~~private non-profit~~ organizations that are organized pursuant to the “CHDO” definition in 24 CFR Part 92 the HUD Regulations.

~~(24)~~ “Competitive Housing Credits” or “Competitive HC” means those Housing Credits which come from Florida Housing’s annual Allocation Authority.

(25) “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) “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) “Contact Person” means the a person with whom the Corporation will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

(28) “Corporation” or “Florida Housing” or “FHFC” means the Florida Housing Finance Corporation created pursuant to the Act.

(29) “Credit Underwriter” means the independent contractor ~~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) “Default Interest Rate” means the rate of interest charged when the borrower is in default of the terms and conditions of the loan documents ~~18% per annum~~.

(31) “Department” or “DCA” means the Department of Community Affairs of the State of Florida.

(32) “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 via rental agreement executed in accordance with the Florida Residential Landlord and Tenant Act, Sections 83.40-83.682, Florida Statutes, 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) “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.~~

(34) “Development Cost” means the total of all costs incurred in the completion of a Development excluding developer fee, acquisition cost of existing developments, and total land cost as shown in the Development Cost line item on the development cost pro forma within the Application.

(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) "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 Rule 67-48.010(4), F.A.C., the term does not include extraordinary capital expenses, developer fees and other non-operating expenses.~~

(36)(37) "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.

~~(37)(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.

~~(38)(39)~~ "Draw" means the disbursement of funds to a Development under the SAIL and HOME Programs.

~~(39)(40)~~ "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.

~~(40)(41)~~ "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.

~~(41)(42)~~ "Executive Director" means the Executive Director of the Corporation.

~~(42)(43)~~ "Extended Use Agreement," "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.

~~(43)(44)~~ "Family" or "Family Household" describes a household composed of one or more persons.

~~(44)(45)~~ "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 in rural areas as defined by the U.S. Census Bureau 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.

~~(45)(46)~~ “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.

~~(46)(47)~~ “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)~~ “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

(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), F.A.C.~~

~~(47)(49)~~ “Final Cost Certification Application” or “Form FCCA” means, with respect to a Housing Credit Development, that Form FCCA which is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter revised August 2000, 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 Rule 67-48.023(6)(7)-(7)(8), F.A.C., along with the executed ~~recorded~~ Extended Use Agreement, IRS Forms 8821 for all Financial Beneficiaries, 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 such form is available on FHFC’s web site [www.floridahousing.org](http://www.floridahousing.org), included as an attachment to the Application Package.

~~(48)(50)~~ “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 Rule 67-48.023(6)(7)-(7)(8), F.A.C.

~~(49)(50)~~ “Financial Beneficiary” means any Developer and its principals and principals of the Applicant entity who are 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

(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 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(54), F.A.C.

~~(50)(51)~~ “Financial Institution” means a state or federal association, bank, trust company, international bank agency, representative office or international administrative office, or credit union.

~~(51)(52)~~ “Florida Keys Area” means all lands in Monroe County, except:

(a) That portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;

(b) All lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; and

(c) Federal properties.

~~(52)(51)~~ “Funding Cycle” means the period of time commencing with the Notice of Funding Availability 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.

~~(53)(52)~~ “General Contractor” means an entity a duly licensed in the State of Florida entity which, to be eligible for the maximum 14% fee, must meet the following conditions:

(a) A Development 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 acceptable to Florida Housing) must be issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.; ~~and~~

(e) None of the General Contractor duties to manage and control the construction of the Development may be subcontracted; and

(f)(e) Not more than 20 percent % of the construction Development cost is sub-contracted to any one entity unless otherwise approved by the Board for a specific Development.

~~(54)(53) "Geographic Set-Aside" means, with respect to a Housing Credit Development, the amount of Allocation Authority or funding 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.~~

~~(55)(54) "HC" or "Housing Credit 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.~~

~~(56)(55) "HOME" or "HOME Program" means the HOME Investment Partnerships Program administered by the Corporation pursuant to the HUD Regulations 24 CFR Part 92 and Section 420.5089, Florida Statutes.~~

~~(57)(56) "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.~~

~~(58)(57) "HOME Development" means any Development which receives financial assistance from the Corporation under the HOME Program.~~

~~(59)(58) "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.~~

~~(60) "HOME Rental Application Package" or "HOMER1015" means the computer disk, forms, 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 HOME Programs. The HOME Rental~~

Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.

~~(61)(59) "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 no earlier than within 6 months prior to from the Application Deadline and the Development certifies compliance with federal labor standards (if 12 or more HOME-Assisted Units are developed under a single contract) for any work already completed.~~

~~(62)(60) "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.~~

~~(63) "Homeless" or "Homeless Household" means an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:~~

~~(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing;~~

~~(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or~~

~~(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.~~

~~(64)(61) "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.~~

~~(65)(62) "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.~~

~~(66) "Housing Credit Development" means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.~~

~~(67)(63)~~ “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.

~~(68)(64)~~ “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) The taxable year in which such building is placed in service, or

(b) At the election of the Developer, the succeeding taxable year.

~~(65) “Housing Credit Development” means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.~~

~~(69)(66)~~ “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.

~~(70)(67)~~ “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.

~~(71)(68)~~ “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.

~~(72)(69)~~ “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 CHDOs, with demonstrated capacity to construct or rehabilitate affordable housing.

~~(73)(70)~~ “HUD” means the U.S. Department of Housing and Urban Development.

~~(74)(71)~~ “HUD Regulations” means, with respect to the HOME Program, the regulations of HUD in 24 CFR § 92 ~~(1996)~~ ~~(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.

~~(75)(72)~~ “Income Certification”, “Tenant Income Certification” or “Form TIC-1” means that Form TIC-1, as amended from time to time, and which shall be used to certify the income of all residents residing in a set-aside unit in a Development. A copy of such form is available on FHFC’s web site [www.floridahousing.org](http://www.floridahousing.org), included as an attachment to the Application Package.

~~(76)(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.

~~(77)~~ “Lead Agency” means a Local Government or Non-Profit serving as the point of contact and accountability to the State Office on Homelessness with respect to the Local Homeless Assistance of Continuum of Care Plan, in accordance with Section 420.624, Florida Statutes.

~~(78)(74)~~ “Local Government” means a unit of local general-purpose government as defined in Section 218.31(2), F.S. (2000).

~~(79)~~ “Local Homeless Assistance Continuum of Care Plan” means a plan for developing and implementing a framework for a comprehensive and seamless array of housing and services to address the needs of homeless persons and persons at risk for homelessness, in accordance with Section 420.624, Florida Statutes.

~~(80)(75)~~ “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.

~~(81)(76)~~ “Match” means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations.

~~(82)(77)~~ “Non-Profit” means a qualified non-profit entity as 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, 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. For purposes of the foregoing, in accordance with Section 42 of the Code, a for-profit entity wholly owned by one or more qualified non-profit organizations will constitute a Non-Profit entity. 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. 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.

~~(83)(78)~~ “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.

~~(84)(79)~~ “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.

~~(85)(80)~~ “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.

~~(86)(81)~~ “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.

~~(87)(82)~~ “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.

~~(88)(83)~~ “Program” or “Programs” means the SAIL, HOME and/or HC Program(s) as administered by the Corporation.

~~(89)(84)~~ “Program Report” or “Form PR-1” means the report format which is required to be completed and submitted to the Corporation pursuant to Rule 67-48.006, F.A.C., and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter. A copy of

such form is available on FHFC’s web site [www.floridahousing.org](http://www.floridahousing.org) ~~included as an attachment to the Application Package.~~

~~(90)(85)~~ “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 Rule 67-48.028(4), F.A.C., and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter. A copy of such form is available on FHFC’s web site [www.floridahousing.org](http://www.floridahousing.org) ~~included as an attachment to the Application Package.~~

~~(91)(86)~~ “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 via rental agreement executed in accordance with the Florida Residential Landlord and Tenant Act, Sections 83.40-83.682, Florida Statutes, 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.

~~(92)(87)~~ “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, and which was approved by the Governor of the State of Florida, 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 available on FHFC’s web site [www.floridahousing.org](http://www.floridahousing.org) ~~included as an attachment to the Application Package.~~

~~(93)(88)~~ “Qualified Census Tract” means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50% or more of the households at an income which is less than 60% of the area median gross income, or a poverty rate of at least 25 percent, in accordance with Section 42(d)(5)(C), IRC.

~~(94)(89)~~ “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. A copy of such form is available on FHFC’s web site [www.floridahousing.org](http://www.floridahousing.org) ~~included as an attachment to the Application Package.~~

~~(95)~~~~(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., Eastern Time Tallahassee time, on the deadline date.

~~(96)~~~~(94)~~ “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 Section See: 42(e) of the Code, with the exception of Section See: 42(e)(3)(A)(ii)(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.”

~~(97)~~~~(92)~~ “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.

~~(98)~~~~(93)~~ “Review Committee” means a committee of seven FHFC staff persons and one DCA staff person appointed by the Board who will make recommendations to the Board regarding Program participation ~~oversee the scoring of the Applications. Meetings of the Review Committee shall be at the call of the Chairperson of the Review Committee shall be at the call of the Chairperson of the Review Committee who shall be appointed by the Executive Director.~~

~~(99)~~~~(94)~~ “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.

~~(100)~~~~(95)~~ “SAIL” or “SAIL Program” means the State Apartment Incentive Loan Program created pursuant to Sections 420.507(22) and 420.5087, Florida Statutes.

~~(96)~~ “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.~~

~~(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%.~~

~~(101)~~~~(97)~~ “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; and

(b) Permanent financing of the costs associated with construction or rehabilitation of the SAIL Development, including tax-exempt bonds with conversion clauses, has not closed as of the ~~date the SAIL loan Application Deadline was received by the Corporation~~; and

(c) The Application and attached exhibits demonstrate that SAIL funds will enable the SAIL Development to 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) Notwithstanding the above~~, 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 from the Board to process an Application through SAIL for additional funding.

~~(102)~~ “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.

~~(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%.

~~(103)~~~~(98)~~ “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, Homeless, 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, Homeless, or Farmworker and Commercial Fishing Worker) with annual household incomes at or below 50% of the area, metropolitan statistical area ("MSA") or state or county median income, whichever is higher, adjusted for family size, ~~whichever is higher~~, or

(b) 40% of the SAIL Development's units set-aside for residents (i.e., Family, Elderly, Homeless, or Farmworker and Commercial Fishing Worker) with annual household incomes at or below 60% of the area, MSA or state or county 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.

~~(104)(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.

~~(105)(100)~~ "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.

~~(106)(101)~~ "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.

~~(107)(102)~~ "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.

~~(108)~~ "State Office on Homelessness" means the office created within the Department of Children and Family Services under Section 420.622, Florida Statutes.

~~(109)(103)~~ "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.

~~(110)(104)~~ "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.

~~(111)(105)~~ "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.

~~(112)(106)~~ "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.

~~(113)~~ "Universal Application Package" or "UA1016" means the computer disk, forms, and instructions, 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 and/or HC Program(s). The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.

~~(114)(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, state or federal government (as evidenced by its inclusion in a HUD Empowerment/ Enterprise Zone, a HUD-approved Neighborhood Revitalization Strategy, a HUD-designated qualified census tract, Florida Enterprise Zone, area designated under a Community Development Block Grant (CDBG), area designated as HOPE VI or Front Porch Florida Community, or a Community Redevelopment Area as described and defined in the Florida Community Redevelopment Act of 1969, or the proposed Development is located in a Qualified Census Tract and the development of which contributes to a concerted community revitalization plan, 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.

~~(115)(108)~~ "Very Low-Income" means.

(a) With respect to the SAIL Program,

1. If 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 91-48.002, Amended 11-9-98, 2-24-00, 2-22-01,\_\_\_\_\_.

#### 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 60 Calendar Days prior to any such deadline.~~

~~(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 Rule 67-48.018, F.A.C., 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. In the event of CHDO Applications in excess of 15% of the HOME allocation designated for multifamily, such Applications shall be funded up to a cumulative maximum of 25%, including~~

~~partial funding of any such Application. Any remaining unfunded portion of such CHDO Application(s) shall remain eligible to compete for non-CHDO designated funding. 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 cycle administered pursuant to Rule 67-48, F.A.C., the Corporation will distribute funds in the following order:~~

~~1. Funds will be allocated to qualified CHDOs in order of ranking, until 15% of the available funds have been allocated, subject to the provisions of Rule 67-48.003(3)(b), F.A.C.~~

~~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.~~

~~(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 is made pursuant to Rule 67-48.004, F.A.C., 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; 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 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.~~

~~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 to one or more federal or state declared disaster areas.~~

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 91-48.003, Amended 11-9-98, 2-24-00, 2-22-01, Repealed.

67-48.004 Application and Selection Procedures for Developments.

~~(1) The Corporation hereby adopts by reference the Application Package (Form CAP01) 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.~~

~~(1)(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 will be accepted by facsimile transmission or other electronic means. 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 and 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.~~

~~(4) An original Application and three photocopies 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 the Application. 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. In the event of an inconsistency between the written Application and the computer disk, the written Application shall govern. Information on the computer disk will not be used for scoring purposes.~~

~~(2)(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) The Review Committee shall review all Applications that are received by the Application Deadline as specified in the Notice of Funding or Credit Availability.~~

~~(7) The Review Committee shall use other Corporation staff to assist in reviewing certain portions of the Application.~~

~~(3)(8) Each submitted The Application Package shall be evaluated and preliminarily scored using the factors specified in the Application Package and these rules. Preliminary scores shall be transmitted to all Applicants along with the Review Committee's scoring sheets, penalty report and threshold report.~~

~~(4)(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 Notice of Possible Scoring Error (NOPSE) request for a review of the other Applicant's score. Each NOPSE 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 NOPSE request is limited to the review of only one Application's score. Any NOPSE Requests that which seeks 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 NOPSEs requests that which may be submitted. The Corporation's staff Review Committee will review each written NOPSE 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; however, Applicants shall retain the rights set forth in paragraph (12) below.~~

~~(5)(10) The Corporation shall transmit to each Applicant the NOPSEs notice of possible scoring errors submitted by other Applicants with regard to its said Application. The Said notice shall also include the Corporation's decision Review Committee's position regarding the NOPSE correctness of the notice of possible scoring errors by other Applicants, along with any other items identified by the Corporation Review Committee to be addressed by the Applicant.~~

~~(6)(11) Within 15 Calendar Days of receipt of the notice set forth in paragraph (5)(10) above, each Applicant shall be allowed to submit additional documentation, revised pages forms and such other information as the Applicant deems appropriate to address the issues raised pursuant to paragraphs (3)(8) and (5)(10) above 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, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to 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. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s). Each Applicant must submit a computer disk containing all revised completed pages forms. Nothing on the computer disk that is not otherwise contained within the original of the revised pages forms will be considered.

~~(7)(12)~~ Within 10 Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in paragraph ~~(6)(11)~~ above, all Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. Each NOAD notice is limited only to issues created by documents revised and/or added by the Applicant submitting the Application pursuant to paragraph ~~(6)(11)~~ above. Each NOAD request must specify the assigned Application number, the pages forms and the documents in question, as well as describe the alleged deficiencies in detail. Each NOAD notice is limited to the review of only one Applicant's submission. However, there is no limit to the number of NOADs notices which may be submitted. NOADs Notices which seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation Review Committee will only review each written NOAD notice timely Received.

~~(8)(13)~~ The Corporation shall transmit a copy of all NOADs the notices of alleged deficiencies to the affected Applicant.

~~(9)(14)~~ Following the receipt and review by the Corporation's Staff Review Committee of the documentation described in paragraphs ~~(5)(10)~~, ~~(6)(11)~~ and ~~(7)(12)~~ above, the Corporation's Staff Review Committee shall then prepare final pre-appeal scores. In determining such final pre-appeal scores, no Application shall be rejected or receive a point reduction or have any penalty imposed as a result of any issues not previously identified in the notices described in paragraphs ~~(3)(8)~~, ~~(4)(9)~~ and ~~(5)(10)~~ above. However, inconsistencies created by the Applicant as a result of information provided pursuant to paragraph ~~(6)(11)~~ above will still be justification

for rejection or reduction of points or penalties imposed, as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in paragraph ~~(14)(a)-(n)(18)~~ below can be identified at any time prior to sending preparation of the final pre-appeal scores to Applicants and will result in rejection of the Application, and any deficiencies in the mandatory element set forth in (14)(o) below can be identified at any time prior to sending the final scores to Applicants and will result in zero tie-breaker points for the applicable Proximity to Proposed Development chart in that section. The Corporation Pre-appeal scores shall then transmit final scores be transmitted to all Applicants, along with notice of appeal rights.

(10) The availability of any remaining funds or Allocation Authority shall be noticed or offered to a Development as approved by the Board of Directors. With respect to the HC Program, in the event there remains Allocation Authority after the Corporation has exhausted its waiting list of Applications 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.

~~(11)(15)~~ Applications shall be limited to one submission per subject property with exception of Tax-Exempt Bond-Financed Developments applying noncompetitively for Housing Credits. Two or more Applications with the same Financial Beneficiary for Developments that are contiguous with the property of another Application, or that is divided by a street or easement, or if it is readily apparent from the two Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development, the Applications located within a five mile radius of one another will be considered to be submissions for the same Development site and the Corporation will reject all such Applications except the Application with the highest (worst) lottery number subject property for purposes of the foregoing. In the event any two or more Applications are considered to be submissions for the same subject property as described above, the highest ranked Application shall be considered and all others rejected.

~~(12)(16)~~ If the Board determines that any Applicant or any Affiliate of an Applicant has is determined by the Corporation to have engaged in fraudulent actions or has to have deliberately and materially misrepresented information within the current Application or in any previous Applications for financing or an allocation of Housing Credits administered by the Corporation, the Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation to participate in any program administered by the Corporation for a period of up to two years, which will begin from the date the Board makes such determination approves the 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.

~~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.~~

~~(13)(17)~~ The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages forms and other information as the Applicant deems appropriate as described in paragraph ~~(6)(11)~~ above:

(a) 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) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application instructions Package;

(c) The Applicant fails to provide all required copies and file all applicable Application pages forms and exhibits and the disk verification forms which are provided by the Corporation and adopted under this rule chapter;

(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 and/or any agent or assignee of 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.

~~(14)(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) Whether the Development design constitutes a High Rise ~~as set forth in Form 1, Section II;~~

(h) County ~~as set forth in Form 2, Section I;~~

(i) Targeted resident population or targeted demographic area ~~as set forth in Form 16, Sections II and III, and Form 21, Sections I and II;~~

(j) Total number of units, ~~residential units, set-aside units, Categorical set-aside and demographic commitment~~ ~~as set forth in Form 11, Sections I, III, IV, V and VII for the SAIL Program;~~

(k) The total percentage of units committed to be set-aside unless, with regard to the HOME Program, the change results from the revision allowed under (n) below;

(l) Categorical set-aside for the SAIL Program;

(m) CHDO election for the HOME Program;

~~(k) Total number of units and set-aside units as set forth in Form 13, Section III for the HOME Program unless the change results from the revision allowed under (m) below;~~

~~(l) 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;~~

~~(n)(m) Requested amount as set forth in Forms 2, 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);~~

~~(n) The Applicant fails to file its Application by the Application Deadline;~~

~~(o) Selections made on the Proximity of Proposed Development charts in the proximity section of the Application. The Application is not accompanied by the correct Application fee as specified in this rule chapter;~~

~~(p) The Application is scanned or submitted on altered or retyped forms.~~

~~(15)(19)~~ A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the 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.

~~(16)(20)~~ If an Applicant or any Principal, Affiliate 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, this rule chapter, or applicable loan documents, and any applicable 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, upon a determination by the Board that such non-compliance substantially increases the likelihood that such Applicant will not be able to produce quality affordable housing, 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 such time as all of their existing Developments participating in any Corporation programs are in compliance.

~~(17)(21)~~ With respect to the SAIL, ~~and HOME and HC~~ Program Applications, when two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the applicable Application instructions which has the higher total score on Forms 3, 4, and 7 shall be ranked higher. ~~With respect to the SAIL and Home Program Applications, if two or more Applications receive the same numerical score, the Application remain tied, the Corporation shall give priority to the Application with the lowest total Corporation funding per set aside unit based on the calculation set forth in Form 10, Part II. With respect to the HC Program Application, when two or more Applications receive the same numerical score, the Application to be prioritized will be determined as provided in the QAP.~~

~~(18)(22)~~ 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 final pre-appeal scores as set forth in paragraph ~~(9)(14)~~ above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Development. If an Applicant or its representative does contact a Board member in violation of this section, the Board shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

~~(19)(23)~~ 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 Calendar Days of notification by the local, state or federal authorities.

~~(20)(24)~~ Prior to instituting any change resulting in any modification or deviation from the Application or 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 UA1016 and/or HOMER1015 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, 2-22-01.

67-48.005 Applicant Administrative Appeal Procedures.

~~(1) Following the Review Committee's determination of pre-appeal scores as set forth in Rule 67-48.004(14), F.A.C.,~~ Each Applicant will be provided with a statement that 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 Calendar Days of the date of receipt of the notice. Only petitions Received by the deadline set forth herein will be considered. The petition must specify in detail each issue, ~~form~~ and score sought to be reviewed ~~appealed~~. Unless the appeal involves disputed issues of material fact, the appeal will be conducted on an informal basis. 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.

~~(2) All parties have the right to submit written arguments in response to a recommended order entered as a result of an informal administrative proceeding pursuant to Section 120.57(2), Florida Statutes, regarding its own Application for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m. on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders.~~

~~(3)(2) Following the entry of all final orders in all appeals resolved pursuant to Section 120.57(2), Florida Statutes, and in accordance with the prioritization of the QAP and Rule 67-48, F.A.C., 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/or allocation (~~as applicable~~) from the next available funding and/or 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 if in the funding range for both programs at the time of the final rankings.~~ 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 91-48.005, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, \_\_\_\_\_.

#### 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 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 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 Certification Certificate Form 8609, Rev. 1-2000 8/96, and Schedule A, Annual Statement, Form 8609, Rev. 1-2000 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.

(8) Compliance monitoring for each program will begin:

(a) For the SAIL Program, regardless of whether the Development also received an HC allocation, following the SAIL loan closing or, if the Development is occupied, prior to the SAIL loan closing.

(b) For the HOME Program, regardless of whether the Development also received an HC allocation, following the HOME loan closing or, if the Development is occupied, prior to the HOME loan closing.

(c) For Developments receiving an allocation of non-competitive HC without any FHFC-issued loans, following Final Housing Credit Allocation.

(d) For Developments receiving Competitive HC without any FHFC-issued loans, following execution of the Carryover Allocation Agreement.

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 91-48.006, Amended 11-9-98, 2-24-00, 2-22-01,\_\_\_\_\_.

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) Universal Application Package fFee: Each Applicant must obtain an Application Package from the Corporation. A fee of \$80 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.

(2) Home Rental Application Package fee Application Tab Kit Fee: Each person requesting additional form and exhibit tabs for the Application shall remit a fee of \$30 per Application Tab Kit, payable to the Corporation prior to the issuance of the Application Tab Kit.

(3) Application fFee:

~~(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 per Application per Program if Applicant or Applicant's general partner qualifies as a Non-Profit entity; and~~

~~2. \$1,000 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 if Applicant or Applicant's general partner qualifies as a Non-Profit entity; and~~

~~2. \$250 for all others.~~

~~(4) Credit Underwriting fFees: 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 Calendar Days 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 fFees: With respect to the HC Program, each Applicant to whom a Preliminary Allocation, 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 general partner qualifies as a Non-Profit entity pursuant to Rule 67-48.002(77), F.A.C., HUD Regulations, Section 42(h)(5)(e), subsection 501(e)(3) or 501(e)(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 Calendar Days of the date of the Preliminary Housing Credit Allocation, the Binding Commitment or the Preliminary Determination, whichever is applicable.~~

~~(6) Commitment fFees: 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% of the SAIL loan amount will be charged if a request to extend the SAIL loan commitment is approved by the Board [see Rule 67-48.012(6), F.A.C.]. 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 shall remit the commitment fee payable to the Florida Housing Finance Corporation.~~

~~(7) Compliance mMonitoring fFees: 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 sServicing fFees: 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 mMonitoring fFees: 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) Tax-exempt mMortgage fFinancing: 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) 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, 2-22-01.

PART II STATE APARTMENT INCENTIVE LOAN PROGRAM

67-48.009 SAIL General Program Procedures and Restrictions.

(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 except as described in (3) below, 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 Section 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 80% occupancy of residents qualifying as a minimum of 80% of qualified Commercial Fishing Workers or Farmworkers as defined in 420.503(18), F.S., over the life of the loan.

(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.

(6) 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, F.A.C., pertaining to Tax-Exempt Bond-Financed Developments.

~~(7) In no event can the amount of the Developer's fee increase over what Developer fee is shown in the Application.~~

~~(7)(8) The General Contractor's fee shall be limited to a maximum of 14% of the total construction cost.~~

~~(8)(9) SAIL loan proceeds shall not be used to fund any contingency reserves.~~

~~(9)(10)~~ Except for small county requests, Applicants may not request SAIL funding for Developments receiving priority in FHFC's multifamily bond program for having no other FHFC funding.

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 91-48.009, Amended 11-9-98, 2-24-00, 2-22-01, \_\_\_\_\_.

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 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 ~~four~~ three demographic categories of (a) Family, (b) Elderly, ~~(c) Homeless~~ and ~~(d)(e) Commercial Fishing Workers and Farmworkers~~ and in accordance with the ranking and selection process set forth in the Universal Application Package.

(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) 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.

(6) After the six-month period referenced in Rule 67-48.0095(1), F.A.C., has expired, the Corporation shall allocate SAIL funds to Applicants meeting threshold requirements, without regard to demographic category.

(7) 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 only if there is enough allocation to fund at least 60% of the requested amount. 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 or, with Board approval, the available funds will be retained for use in the next Funding Cycle.

(8) 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 91-48.0095, Amended 11-9-98, 2-24-00, 2-22-01, \_\_\_\_\_.

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 ~~may~~ must be in a first, ~~or second, or other subordinated~~ 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) ~~1% 3%~~ simple interest per annum on loans to Developments that maintain an 80% occupancy of residents qualifying as ~~Commercial Fishing Workers or Farmworkers~~ over the life of the loan. Developments that are unable to pay will be required to show cause and may seek relief for deferral from the Board;

(b) ~~3%~~ 9% simple interest per annum for Family and Elderly loans. Developments that are unable to pay will be required to show cause and may seek relief for deferral from the Board ~~all other loans;~~

(c) 3% simple interest per annum on loans to Homeless and SRO. Developments that are unable to pay will be required to show cause and may seek relief for deferral from the Board.

~~(d)(e) Payment on the loans shall be based upon the actual Development Cash Flow.~~ Interest may be deferred as set forth in ~~(a)-(c) above Rule 67-48.010(6), F.A.C.,~~ without constituting a default on the loan.

(4) ~~The first interest payment on the loan shall be paid to the Corporation 24 months from the date of the notice of commencement and annually thereafter. The loans described in Rule 67-48.010(3)(a), and (b), and (c) F.A.C., 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 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) and (c) above over the life of the SAIL loan;~~
- ~~(d) Base interest payment deferred from previous years;~~
- ~~(e) Mandatory payment on subordinate mortgages;~~
- ~~(f) 12% Return on Equity to Applicant;~~
- ~~(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 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 shall retain all remaining monies, unless the Applicant 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 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;~~
- ~~(f) Any unpaid Return on Equity deferred from previous years; and~~
- ~~(g) Remaining monies to be equally divided between the Applicant 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 shall retain all remaining monies, unless the Applicant 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.~~

~~(5)(a) By May 31 of each year of the SAIL loan term, [T]he Applicant shall provide the Corporation and its servicer with audited financial statements within 5 months of the Applicant's fiscal year end a certification detailing the information needed to determine the annual payment to be made. However, this certification requirement will be waived until May 31 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 audited financial statements are to be prepared in accordance with generally accepted accounting principles for the 12 months ended with the Applicant's fiscal year end 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 as to the accuracy of such financial statements. The Applicant shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant'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 audited financial statements within 5 months of the Applicant's fiscal year end certification by May 31 of each year of the SAIL loan term. Failure to submit the required audited financial statements certification by the due date May 31 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 of each calendar year of the SAIL loan.~~

~~(c) The Applicant shall remit the interest due to the Corporation servicer no later than August 31 of each year of the SAIL loan term. The first payment of SAIL base interest will be due no later than August 31 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.~~

~~(6) After maturity or acceleration, the Note Any payment not paid when due shall bear interest at the Default Interest Rate (48%) from the due date until paid. Unless the Corporation has accelerated the SAIL loan, the Applicant shall pay the Corporation a late charge of 5% of any required payment that 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 Rule 67-48.010, F.A.C., 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 Rule 67-48.010, F.A.C., shall be eligible for forgiveness.~~

~~(7)(8) Any sale, conveyance, assignment, or other transfer of interest 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.~~

~~(8)(9) The final billing for the purpose of payoff of 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.~~

~~(9)(10) The SAIL loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.~~

~~(10)(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.

~~(11)(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 September 28, 1999 May 27, 1997.~~

~~(12)(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, or if otherwise approved by the Board.~~

~~(13)(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 Applicant during the SAIL loan term;~~

~~(b) Availability of similar housing stock for the target population in the area;~~

~~(c) Documentation and certification by the Applicant 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.~~

~~(14)(15) After Board approval of the final credit underwriting report, tThe Applicant 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 cCash fFlow 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 Rule 67-48.010(14)(15)(a), F.A.C., 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 Rule 67-48.010(14)(15)(a), F.A.C., 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 agreeing to further extend the Compliance Period or provide additional amenities or resident tenant programs suitable for the resident tenant 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.

(15)(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.

(16)(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.

(17)(18) The documents creating, evidencing or securing each SAIL loan must provide that any violation of the terms and conditions described in Rule 67-48, F.A.C., 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.

(18)(19) Applicants 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.

(19)(20) The Corporation must approve the Applicant's selection of a management company prior to such company assuming responsibility for the Development. The Applicant, its designated representative, 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.

(20)(21) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the SAIL loan.

(21)(22) If, after a four-month rent-up period commencing after issuance of the last certificate of occupancy on the units, an Applicant is unable to meet the agreed-upon Categorical ~~Set-Aside for Family, Elderly, Homeless, Farmworker or Commercial Fishing Worker~~, the Applicant 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 to provide additional amenities or resident programs suitable for the proposed resident population.

(c) The Board will require Applicants with 1% ~~3%~~ loans, as described in Rule 67-48.010(3)(a), F.A.C., to modify loan documents to conform to the terms and conditions of 3% ~~9%~~ loans, as described in Rule 67-48.010(3)(b), F.A.C., or to accelerate payments of SAIL loan principal or interest.

(22)(23) The Applicant shall provide to the Corporation an ~~and its servicer a certified~~ annual budget of income and expenses for the Development, certified as accurate by an officer of the Development, no later than 30 days prior to the beginning of the Development'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 91-48.010, Amended 11-9-98, 2-24-00, 2-22-01, \_\_\_\_\_.

67-48.0105 Sale, Refinancing or Transfer of a SAIL Development.

(1) The SAIL loan shall be assumable upon sale, transfer or refinancing of the Development if the following conditions are met:

(a) The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan; and

(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 SAIL loan is not assumed since Development is sold and the buyer does not meet the criteria for assumption of the SAIL loan, the SAIL loan (principal and any outstanding 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;

(b) SAIL compliance and loan servicing fees;

~~(c)(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.

~~(d)(e)~~ Unpaid principal balance of the SAIL loan;

~~(e)(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 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 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;~~

~~(g)(f)~~ If there will be insufficient funds available from Development Cash Flow and from the proposed sale of the Development to satisfy (2)(a)-(f) above, 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 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 that there are no Development funds available to repay the SAIL loan, including any interest due, and the Applicant knows of no source from which funds could or would be forthcoming to pay the SAIL loan; and

4. A certification from the Applicant 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.

(3) Any sale, refinancing or transfer of a SAIL Development shall be subject to a favorable recommendation from the Credit Underwriter and approval by the Corporation's Board.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 12-23-96, Amended 1-6-98, Formerly 91-48.0105, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, \_\_\_\_\_.

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 ~~7 seven~~ Calendar Days of the date of the invitation. The Corporation will, within the specified ~~7 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 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) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value. Appraisals and separate market studies which have been ordered and submitted by third party credit enhancers, first mortgagors 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.

(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. Developments receiving first mortgage funding from U.S. Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the SAIL and all superior mortgages.

(h) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter 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 underwriters may request additional information but at a minimum the following will be required during the underwriting process:

1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete.

2. For Principals and Guarantors, audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) are not available, unaudited financial statements prepared within the last 90 days and reviewed by the credit underwriter in accordance with the Fannie Mae Multifamily

Delegated Underwriting and Servicing (DUS) Guide, effective November 23, 1999, and the two most recent year's tax returns.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and General Partner, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

~~(j)(+)~~ The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

1. Liquidity of the guarantor.
2. Developer and General Contractor's history in successfully completing Developments of similar nature.
3. Problems encountered previously with Developer or contractor.
4. Exposure of Corporation funds compared to total Development Costs.

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity. In addition, a letter of credit or payment and performance bond 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.

~~(k)(+)~~ 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. Developments receiving U.S. Department of Agriculture Rural Development funds are not required to meet the debt service coverage standards for release of operating deficit guarantee.

~~(l)(+)~~ Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Substantial Rehabilitation may be included within the total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from SAIL funds.

~~(m)(+)~~ 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.

~~(n)(+)~~ 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.

~~(o)(+)~~ 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) in order of scoring.

~~(p)(+)~~ If audited financial statements are unavailable from the Applicant, the Credit Underwriter shall request federal tax returns and unaudited or internally prepared financial statements 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 ~~required by~~ on the Credit Underwriter 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 Calendar Days of notification from the Credit Underwriter the date of the preliminary SAIL commitment. The Applicant will have an additional 25 Calendar Days to submit 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 ~~by the specified deadlines within 35 Calendar Days of the date of the preliminary SAIL commitment.~~ Unless an extension is obtained from the Corporation's Board, failure to submit the required credit underwriting information or fees by the specified deadlines shall result in withdrawal of the preliminary commitment and the funds will be made available to the next eligible Applicant. 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 Calendar Days from the date of the Applicant's execution 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 Calendar Days of the date of the firm SAIL loan commitment unless an extension is approved by the Board. 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 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.~~

~~(7)(8)~~ The Corporation's servicer shall conduct at the Applicant's expense a preconstruction analysis and review of all the Development's costs prior to the closing of the SAIL loan.

~~(8)(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.

~~(9)(10)~~ At least 5 ~~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 91-48.012, Amended 11-9-98, 2-24-00, 2-22-01, \_\_\_\_\_.

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 Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw.

~~(a) A copy of the request for a Draw 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 a Draw, 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 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.

(4) The Corporation will disburse construction Draws through Automated ~~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) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Applicant in connection with the request for a Draw, 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 shown on the request for a Draw.

(6) The servicer may request submission of revised construction budgets.

(7) If the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Draw, 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) Retainage in the amount of 10% per Draw 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, 2-22-01, \_\_\_\_\_.

### 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 Corporation shall utilize up to 10% of the HOME allocation for administrative costs pursuant to the HUD Regulations.

(2) 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. In the event of CHDO Applications in excess of 15% of the HOME allocation designated for multifamily, such Applications shall be funded up to a cumulative maximum of 25%, including partial funding of any such Application. Partial funding will be offered to an Applicant only in the event that partial funding constitutes at least 60% of the Applicant's requested HOME funding. Any remaining unfunded portion of such CHDO Application(s) shall remain eligible to compete for non-CHDO designated funding. In order to apply under the CHDO set-aside, the CHDO must have at least 51% ownership interest in the Development held by the General Partner entity and meet all other CHDO requirements as defined by HUD in 24 CFR 92.

(3) Within the rental cycle administered pursuant to Rule 67-48, F.A.C., the Corporation will distribute funds in the following order subject to the provisions of Rule 67-14(1) and (2), F.A.C.:

(a) Funds will be allocated to qualified CHDOs in order of ranking, until 15% of the available funds have been allocated.

(b) The remaining funds will then be allocated to Applications for proposed Developments in order of ranking.

(4)(+) 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.

~~(5)(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.

~~(6)(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 the 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 Rule 67-48.020(1), F.A.C.

(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 Cost. 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.

(7)(4) The Development must comply with all applicable provisions of 24 CFR Part 92.

(8)(5) Any single 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), 24 CFR § 92.354, 24 CFR Part 70 (volunteers), and 40 U.S.C. 276c, 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. § 327-3332 (1994), and the Copeland Act (Anti-Kickback Act), 40 U.S.C. § 276c (1994), and the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).

(9)(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, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Fair Housing Act (42 U.S.C. 3601-3620), Age Discrimination Act of 1975, as amended (42 U.S.C. 6101), Executive Order 11063 (amended by Executive Order 12259), 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, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (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)(6) Lead-based Paint as enumerated in 24 CFR § 92.355, 42 U.S.C. 4821 et seq., and 24 CFR Part 35 and 24 CFR § 982.401(j) (except paragraph 982.401(j)(1)(i)).

(g)(7) Conflict of Interest as enumerated in 24 CFR § 92.356, 24 CFR 85.36, and 24 CFR 84.42.

(h)(8) Debarment and Suspension as enumerated in 24 CFR Part 5.

(h)(8) Flood Insurance as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106).

(i)(9) Handicapped Accessibility as enumerated in Section 504 of the Rehabilitation Act of 1973 (implemented in 24 CFR Part 8) and 24 CFR § 100.205.

(j) Americans with Disabilities Act as enumerated in 42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225.

(k) Equal Opportunity Employment as enumerated in Executive Order 11246 (implemented in 41 CFR Part 60).

(l) Economic Opportunity as implemented enumerated in 24 CFR Part 135.

(m) Minority/Women Employment as enumerated in 24 CFR § 85.36(e) and Executive Orders 11625, 12432, and 12138.

(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 2-22-01,\_\_\_\_\_.

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, or other Developments selected and approved by the Corporation's Board of Directors. Such pilot programs or Developments 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 2-22-01,\_\_\_\_\_.

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, 2-22-01,\_\_\_\_\_.

## 67-48.018 Eligible HOME Applicants.

Applicants for HOME loans may include CHDOs, 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 Rule 67-48.004, F.A.C.~~ 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, 2-22-01, \_\_\_\_\_.

## 67-48.019 Eligible and Ineligible HOME Development Costs.

(1) HOME funds may be used to pay for the following eligible costs as enumerated 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 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. ~~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 Rule ~~67-48.021(2)(f)2, 67-48.019(1)(e)8~~, F.A.C.;

(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 2-22-01, Amended \_\_\_\_\_.

## 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 ~~may~~ must be in a first, ~~or second, or~~ subordinated 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 general partner 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 general partner 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 general partner 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 general partner 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 Cost, as determined and certified by the Credit Underwriter.

(6) Before disbursing any HOME funds, there must be a written agreement with the Applicant ensuring compliance with the requirements of the HOME Program pursuant to this rule chapter and the HUD Regulations.

(7) A representative of the Applicant 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 to be developed under a single contract, 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 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 ~~c~~ash ~~f~~low 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 Rule 67-48.020(13)(a), F.A.C., 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 Rule 67-48.020(13)(a), F.A.C., 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 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 91-48.020, Amended 11-9-98, 2-24-00, 2-22-01, \_\_\_\_\_.

#### 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 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 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 that there are no Development funds available to repay the loan and the Applicant 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 91-48.0205, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated \_\_\_\_\_.

#### 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 Applications 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) All items required by the Credit Underwriter must be provided ~~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 Days of notification from the Credit Underwriter. The Applicant will have an additional 25 Calendar Days to submit the appraisal, survey and final plans to the Credit Underwriter shall be submitted within 60 Calendar Days of the preliminary commitment. Unless an a written extension is obtained from the Corporation's Board, failure to submit the required credit underwriting information by the specified deadlines shall result in withdrawal of the preliminary commitment and the funds will be made available to the next eligible Applicant 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 underwriters may request additional information but at a minimum the following will be required during the underwriting process:

1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete.

2. For Principals and Guarantors, audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) are not available, unaudited financial statements prepared within the last 90 days and reviewed by the credit underwriter in accordance with the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 23, 1999, and the two most recent year's tax returns.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and General Partner, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18

months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(e)(~~e~~) 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.

(f)(~~f~~) 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. Developments receiving first mortgage funding from U.S. Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the HOME and all superior mortgages.

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 and unaudited or internally prepared financial statements 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 guarantor.
- 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 contractor.
- e. Exposure of Corporation funds compared to total Development Costs. At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity.

In addition, a letter of credit or payment and performance bond will be required in an amount as determined by the Credit Underwriter 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. Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Rehabilitation may be included within the total Development Cost for Application and underwriting purposes. 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.

~~(g)~~(f) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value. Appraisals and separate market studies which have been ordered and submitted by third party credit enhancers, first mortgagors 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.

~~(h)~~(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 ~~is has been~~ approved by the Corporation's Board, shall result in the Application being rejected and the Corporation funding selecting additional Applications in order of scoring.

~~(i)~~(h) A preconstruction analysis and review of the Development's costs shall be required prior to the closing of the HOME loan.

~~(j)~~(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.

~~(k)~~(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.

~~(l)~~(k) The HOME loan shall close within 60 Calendar Days from the date of the firm commitment letter.

~~(m)~~(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, 2-22-01,\_\_\_\_\_.

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 shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant 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 to be developed under a single contract, 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 Draw 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.

(d) The Applicant or any of its Financial Beneficiaries are in financial arrears to the Corporation for any other Development funded by Corporation programs.

(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 (1996, as amended) (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 91-48.022, Amended 11-9-98, 2-24-00, 2-22-01.

#### 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 shall result in disqualification from participation in the current HC Funding Cycle and for a period of not less than one year. 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.

(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.~~

~~(5)(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.

~~(6)(7)~~ Each Housing Credit Development shall complete the Final Cost Certification Application Form FCCA-2001, which is incorporated by reference, by the earlier of the following two dates. A copy of such form is available on FHFC's web site www.floridahousing.org ~~included as an attachment to the Application Package.~~

(a) The date that is 60 Calendar Days after all the buildings in the Development have been placed in service, or

(b) The date that is 30 Calendar Days before the end of the calendar year for which the Final Housing Credit Allocation is requested.

The Corporation may grant extensions for good cause upon written request.

~~(7)(8)~~ The completed Final Cost Certification Application Form FCCA-2001 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.

~~(8)(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 Rule 67-48.029, F.A.C., 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, 2-22-01,\_\_\_\_\_.

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 Housing Credits in this state. As the allocating agency for the state, distribution of Housing Credits 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, have been approved by the Governor, and are 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, 2-22-01, Repromulgated.

67-48.026 Housing Credit Underwriting Procedures.

(1) After the final rankings are approved by the Board, 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 Calendar Days 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 Rule 67-48.007(4), F.A.C., to the Credit Underwriter within 7 Calendar Days of the date of the letter of invitation, and

(b) All information required by the Credit Underwriter must be provided ~~The Applicant shall submit the information required from the Credit Underwriter's checklist Form (CU-1)~~ to the Credit Underwriter within 35 Calendar Days of the date of the invitation to enter credit underwriting. The Credit Underwriter shall complete its report within 56 Calendar Days 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 ~~an a-written~~ extension is obtained from the Corporation's Board, failure to submit the required credit underwriting information or fees by the specified deadline shall result in withdrawal of the invitation and issuance of an invitation to the next eligible Applicant ~~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 qualified basis calculation, shall use a housing credit percentage of:

1. Thirty (30) basis points over the percentage as of the date of invitation to credit underwriting 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 invitation to credit underwriting 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 invitation to final credit underwriting 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, F.A.C., 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.~~

~~(d)(e)~~ The General Contractor's fee shall be limited to a maximum of 14% of the actual construction cost.

~~(e)(f)~~ Costs such as syndication fees and brokerage fees cannot be included in eligible basis. 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) above.

~~(f)(g)~~ All contracts for hard or soft Development costs must be itemized for each cost component.

~~(g)(h)~~ A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed property's financial feasibility. Appraisals ~~and separate market studies~~ which have been ordered and submitted by third party credit enhancers, first mortgagors 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. The market study must be completed by a disinterested party which is approved by the Credit Underwriter.

~~(h)(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.~~

~~(i)(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.

~~(j)(l)~~ In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter 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.

(k) The underwriters may request additional information but at a minimum the following will be required during the underwriting process:

1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete.

2. For Principals and Guarantors, audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) are not available, unaudited financial statements prepared within the last 90 days and reviewed by the credit underwriter in accordance with the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 23, 1999, and the two most recent year's tax returns.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and General Partner, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year

ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

~~(l)(m)~~ The Corporation's assigned Credit Underwriter shall order, at the Applicant's sole expense, a pre-construction analysis for all new construction or a physical needs assessment for Rehabilitation and shall conduct a review of all of the Development's costs.

~~(m)(n)~~ Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Rehabilitation may be included within the total Development Cost for Application and underwriting purposes.

(n) The proposed Development must demonstrate, based on current rates, that it can meet 1.10 debt service coverage (DSC) requirements with all mortgages. Developments receiving first mortgage funding from U.S. Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the first and second mortgages.

(o) If the Credit Underwriter is to recommend an allocation out of the annual Allocation Authority, the recommendation will be the lesser of (1) the qualified basis calculation result, (2) the gap calculation result, or (3) the Applicant's request amount. In the event the Credit Underwriter is making a recommendation for 4% Housing Credits in reference to a Development funded with tax-exempt bonds, the recommendation will be the lesser of the qualified basis calculation result or the gap calculation result.

~~(p)(o)~~ 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.

(9) After the completion of its analysis, the Credit Underwriter shall submit its draft recommendation including a detailed report of the Development'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 credit 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 credits 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 competed for Housing Credits within the RD set-aside and has not received an Obligation of Funding (RD or FmHA Form 1944-51) by October 1st of the year the Applicant is invited into credit underwriting, 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 Days 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, 2-22-01.

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, which applied for 4% seeking to obtain Housing Credits when applying for tax-exempt 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, which form is incorporated by reference. The Form MFMRB-2001 can be obtained from Florida Housing's Multifamily Mortgage Revenue Bond Program;~~

~~(b)(c)~~ Be subject to the ~~Form MFMRB~~, monitoring and credit underwriting fees as stated in Chapter 67-21, F.A.C.;

~~(c)(d)~~ Be deemed to have met all HC Program scoring threshold requirements upon the closing of the bonds with Florida Housing;

~~(d)(e)~~ Receive a Preliminary Determination from the Corporation upon Florida Housing's issuance of a loan commitment in reference to the tax-exempt bonds;

~~(e)(f)~~ Be subject to the provisions of this rule chapter, specifically the applicable provisions of Parts I and Part IV of this rule chapter, except for Rules 67-48.026 and 67-48.028, F.A.C.; ~~and~~

~~(f)(g)~~ 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, F.A.C.;

~~(g)~~ Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation; and

~~(h)~~ Pay the assigned Credit Underwriter for a comprehensive market study of the housing needs of Low Income individuals in the area to be served by the Development. The market study must be completed by a disinterested third party and a copy of the completed market study must be on file with Florida Housing prior to the Final Housing Credit Allocation.

(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) Be subject to the Application fee specified in this rule chapter;

(c) Meet the HC Program threshold requirements pursuant to the Qualified Allocation Plan and shall have completed loan closings on all required financing;

(d) 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 ~~H~~C housing credit need;

(e) 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 a Developer fee limitation as specified in this rule chapter;

~~(i)~~ Be subject to the provisions of this rule chapter, specifically the applicable provisions of Part I and Part IV, except for Rule 67-48.028, F.A.C.;

~~(j)~~ Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation;

~~(k)(l)~~ Be subject to the provisions in this rule chapter, pertaining to the required Extended Use Agreement;

~~(l)(m)~~ Be subject to the monitoring fee specified in this rule chapter, unless such Development has received tax-exempt bond financing through the Corporation;

~~(m)(n)~~ After bonds are issued to the Development, make Application to the Corporation as required in Rules 67-48.004 and 67-48.026, F.A.C. Applicant shall submit its Application completed in accordance with the Universal Application Instructions for receipt by the Corporation. 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

~~(n)(o)~~ 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, F.A.C.

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, 2-22-01, \_\_\_\_\_.

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 by December 29th of the year in which the Preliminary Allocation is issued 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, A~~ 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 within six months of the date of the execution of the Carryover Allocation Agreement or the Housing Credits will be deemed to be returned to the Corporation by the date required by federal law. 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 supporting Carryover documentation and the signed certification evidencing the required basis, must be submitted to the Corporation within six months of the date of the execution of the Carryover Allocation Agreement or the Housing Credits will be deemed to be returned by the date required by federal law.

(4) The Applicant for each Development for which a Carryover Allocation Agreement has been executed ~~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, effective on the date of the latest amendment to this rule chapter, 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 ~~P~~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, 2-22-01, \_\_\_\_\_.

#### 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 Extended Use Period, 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 units for each taxable year in the extended use period shall not be less than the Applicable Fraction;

(b) Eligible Persons occupying set-aside units shall have the right to enforce in any State of Florida court the extended use requirement for set-aside units;

(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 2-22-01, \_\_\_\_\_.

#### 67-48.030 Sale or Transfer of a Housing Credit Development.

An owner of a Housing Credit Development, its successor or assigns which has 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 Days 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 2-22-01, Repromulgated \_\_\_\_\_.

#### 67-48.031 Termination of Extended Use Agreement and Disposition of Housing Credit Developments.

The Housing Credit Extended Use Period 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 set-aside 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 set-aside unit, or any increase in the gross rent with respect to any set-aside unit 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, 2-22-01,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerey Carpenter, 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: December 6, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 27, No. 29, July 20, 2001

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE NO.: 3D-40.242
RULE TITLE: Principal Representative

NOTICE OF CHANGE

Notice is hereby given that the Department has made the following changes to the above referenced rule, which was originally published in the October 5, 2001, Vol. 27, No. 40, issue of the Florida Administrative Weekly, based on comments by the Joint Administrative Procedures Committee. When adopted, subsection (3) of the rule will read:

(3) Anyone being designated as a principal representative or any change in the principal representative after October 1, 2001, must submit evidence that he or she was originally licensed as a mortgage broker pursuant to Section 494.0033, F.S., on or after July 1, 1992, or has completed 24 hours of classroom education in accordance with Rule 3D-40.027, F.A.C., and has passed a written test in accordance with Rule 3D-40.025, F.A.C.

DEPARTMENT OF REVENUE

RULE NO.: 12-24.002
RULE TITLE: Definitions

NOTICE OF CORRECTION

The underline for the above proposed rule was inadvertently omitted for paragraphs (16)(g) through (i) when published in Vol. 27, No. 47, November 21, 2001 issue of the Florida Administrative Weekly. It should have read:

“(g) Severance taxes (Chapter 211, F.S.) and the Miami-Dade Lake Belt Mitigation Fee (Chapter 373, F.S.) reported on Form DR-140 series;

(h) Documentary stamp tax (Chapter 201, F.S.) reported on Form DR-225 or DR-225B;

(i) Communication services tax (Chapter 202, F.S.) reported on Form DR-70016 and substitute communications system tax (Chapter 202, F.S.) reported on Form DR-70019.”

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-602.220
RULE TITLE: Administrative Confinement

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., F.S., published in Vol. 27, No. 39, September 28, 2001, issue of the Florida Administrative Weekly:

33-602.220 Administrative Confinement.

(1) through (2)(b) No change.

(c) The Institutional Classification Team shall review inmates in administrative confinement within 72 hours. The only exception to being reviewed within 72 hours is when the ICT cannot complete its review within the allotted timeframe due to a holiday. If the review cannot be completed within 72 hours, the action of the senior correctional officer shall be reviewed within 72 hours by the duty warden, documented on the DC6-229, Daily Record of Segregation, and evaluated within 5 days by the ICT. Inmates placed into administrative