

Section IV Emergency Rules

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

FLORIDA HOUSING FINANCE CORPORATION

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SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Recent hurricane seasons created the need for both short term and long term affordable housing needs in Florida. Among the overall housing needs are specialized needs that are not easily met by previously approved hurricane relief programs. To address these needs and to implement recommendations of the Governor's Hurricane Housing Work Group, the following programs are established: The Farmworker Housing Recovery Program (FHRP) for the purpose of providing affordable housing options for extremely low income migrant farmworkers in Florida; and the Special Housing Assistance and Development Program (SHADP) to provide financing for acquisition, rehabilitation and new construction of developments targeted to hard-to-serve households which include, frail elders, persons with a disability and homeless people.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Florida Housing Finance Corporation has been granted Emergency Rulemaking authority for these programs under Chapter 2006-69, L.O.F. The rule for FHRP and SHADP shall be effective immediately upon filing with the Florida Department of State.

SUMMARY: The purpose of this rule chapter is to establish the procedures by which the Corporation shall administer the Application process, determine loan amounts, make and service mortgage loans for the construction or Rehabilitation of affordable rental units utilizing funds authorized by Chapter 2006-69, L.O.F.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULES IS: Robert Dearduff, Special Programs Administrator, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 or call (850)488-4197

THE FULL TEXT OF THE EMERGENCY RULES IS:

67ER07-01 General.

This rule chapter is established to administer the implementation of the Farmworker Housing Recovery Program (FHRP) and the Special Housing Assistance and Development Program (SHADP) as established in Chapter 2006-69, L.O.F.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History--New 4-9-07.

Editorial Note: Formerly 67ER06-49.

67ER07-02 Definitions.

(1) "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.

(2) "Applicant" means any person or legally formed entity that is seeking a loan or funding from the Corporation by submitting an Application for one or more of the Corporation's programs.

(3) "Application" means the forms and exhibits created by the Corporation for the purpose of providing the means to apply for the program. A completed Application shall include additional supporting documentation provided by an Applicant.

(4) "Application Deadline" means 5:00 p.m., Eastern Time, on the final day of the Application Period for the program.

(5) “Application Period” means a period during which Applications shall be accepted as posted on the Corporation’s Website and with a deadline no less than thirty days from the beginning of the Application Period.

(6) “Board of Directors” or “Board” means the Board of Directors of the Corporation.

(7) “Calendar Days” means the seven (7) days of the week.

(8) “Compliance Period” means a period of time that the Development shall conform to all set-aside requirements as described further in this rule chapter and agreed to by the Applicant in the Application.

(9) “Corporation” means the Florida Housing Finance Corporation as defined in Section 420.503, F.S.

(10) “Credit Underwriter” means the independent contractor under contract with the Corporation having the responsibility for providing stated credit underwriting services.

(11) “Developer” means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable housing as required in the Application.

(12) “Development” means Project as defined in Section 420.503, F.S.

(13) “Development Cash Flow” means cash flow as calculated in the statement of cash flows prepared in accordance with generally accepted accounting principles (“GAAP”) and as adjusted for items including any distribution or payment to the Principal(s) or any Affiliate of the Principal(s) or to the Developer or any Affiliate of the Developer, whether paid directly or indirectly, which was not expressly disclosed in determining debt service coverage in the Board approved final credit underwriting report.

(14) “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.

(15) “Draw” means the disbursement of funds to a Development.

(16) “Elderly” means Elderly as defined in Section 420.503, F.S.

(17) “ELI Household” means a household of one or more persons with an adjusted income equal to or below the percentage of area median income determined to constitute ELI for the county where the household is located per the ELI chart in the Application Instructions.

(18) “Farmworker” means Farmworker as defined in Section 420.503, F.S.

(19) “Frail Elders” means with respect to an older individual who is determined to be functionally impaired because the individual:

(a) is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(b) due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.

(20) “General Contractor” means a person or entity duly licensed in the state of Florida with the requisite skills, experience and credit worthiness to successfully provide the units required in the Application.

(21) “Homeless” means, as defined in Section 420.621, F.S., an individual or family who lacks a fixed, regular, and adequate nighttime residence or an individual or family 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. For purposes of this rule, the term homeless does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(22) “Housing Assistance Payment” means the monthly assistance payment by a public housing authority, which includes:

(a) A payment to the owner for rent to the owner under the family’s lease; and

(b) An additional payment to the family if the total assistance payment exceeds the rent to owner pursuant to 24CFR982.4.

(23) “Local Government” means Local government as defined in Section 420.503, F.S.

(24) “LURA” or “Land Use Restriction Agreement” means an agreement between the Corporation and the Applicant which sets forth the set-aside requirements and other Development requirements under a Corporation program.

(25) “Migrant Farmworker” means a person who travels across state or county boundaries to do agricultural work of a seasonal or other temporary nature, and who is required to be absent overnight from his or her permanent place of residence. Exceptions to this definition are immediate family members of an agricultural employer or a farm labor contractor.

(26) “Migrant Farmworker Housing” means the improvements 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 safe, sanitary and affordable residential housing for Migrant Farmworkers.

(27) "Mortgage" means Mortgage as defined in Section 420.503, F.S.

(28) "Non-Profit" means a qualified non-profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., 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 or managing member entity and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing, as further described in Rule 67-48.0075, F.A.C.

(29) "Note" means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money on a specified date, which provides the interest rate and is secured by a Mortgage.

(30) "Persons with a Disability" means, pursuant to the Americans with Disabilities Act of 1990, Public Law 101-336, with respect to an individual:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(b) A record of such an impairment; or

(c) Being regarded as having such impairment.

(31) "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.

(32) "Project" or "Property" means Project as defined in Section 420.503, F.S.

(33) "Rehabilitation" means repairs or improvements which are needed for safe or sanitary habitation, correction of substantial code violations, or the creation of additional living space.

(34) "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.

(35) "Rent-Restricted Unit" means a unit for which the gross rent does not exceed thirty percent (30%) of the applicable income limitation imputed for unit type. For purposes of the foregoing, in the case of a unit that does not have a separate bedroom the applicable income limitation for one (1) individual is used and in the case of a unit that has one or more separate bedrooms the applicable income limitation for one and one-half (1.5) individuals for each separate bedroom is used.

(36) "Single Family Rental" means a single family home which may be occupied by 2 or more single persons consisting of common space and for facilities for group use by the

occupants of the unit. This also includes manufactured housing or modular housing built in accordance with the Code of Federal Regulations, 24 C.F.R. Part 92.251.

(37) "SRO" or "Single Room Occupancy" means housing, consisting of single room dwelling units, that is the primary residence of its occupant or occupants. An SRO does not include facilities for students. New Construction SRO units are required to contain either food preparation, sanitary facilities or both. For Rehabilitation of an existing residential structure, 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 tenants.

(38) "Total Development Cost" means the total of all costs incurred in the completion of a Development, all of which shall be subject to the review and approval by the Credit Underwriter and the Corporation pursuant to this rule chapter, and as further described in this rule chapter.

(39) "Unaccompanied Farmworker" means a person otherwise qualified as a Farmworker who seeks housing as a single individual and is not accompanied by spouse, children or other dependents.

(40) "Victim of Domestic Violence" means an individual who has been a victim of Domestic Violence.

(41) "Voucher" means a document issued by a Public Housing Authority to a family selected for admission to the voucher program. This document describes the program and the procedures for Public Housing Authority approval of a unit selected by the family. The voucher also states obligations of the family under the program pursuant to 24CFR982.4.

(42) "Website" means the Florida Housing Finance Corporation's website, the Universal Resource Locator (URL) for which is www.floridahousing.org.

(43) "Youth Aging Out of Foster Care" means a youth eighteen years of age or older that is no longer eligible for foster care placement.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History-New 4-9-07.

Editorial Note: Formerly 67ER06-50.

67ER07-03 Application Procedures.

(1) To receive funds from the FHRP or SHADP, an Applicant shall submit a completed "Farmworker Housing Recovery and Special Housing and Development" Application (Form 67ER07App. effective April 2007) as adopted and incorporated by reference in this rule. Copies may be obtained at www.floridahousing.org.

(2) When submitting an Application, Applicants must utilize the Application Package in effect at the Application Deadline, unless provided otherwise.

(a) The Application Package consists of the forms and instructions, obtained from the Florida Housing Finance Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 or available on the Corporation's Website at www.floridahousing.org, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

(b) All Applications must be complete, legible and timely when submitted. Corporation staff shall 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.

(3) Failure to submit an Application completed in accordance with the Application instructions and these rules shall result in the failure to meet threshold, rejection of the Application, a score less than the maximum available, or a combination of these results in accordance with the instructions in the Application and this rule chapter.

(4) Each submitted Application 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.

(5) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within eight (8) Calendar Days of the date the preliminary scores are sent by overnight delivery by the Corporation, 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 can be submitted. The Corporation's staff will review each written NOPSE Received timely.

(6) 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.

(7) Within 11 Calendar Days of the date the notice set forth in subsection (6) above is sent by overnight delivery by the Corporation, each Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues raised pursuant to subsections (4) and (6) above that could result in rejection of the Application or a score less than the maximum available. Pages of the Application that are not revised or otherwise changed shall not be resubmitted, except that documents executed by third parties must be submitted in their entirety, including all

attachments and exhibits referenced therein, 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).

(8) Within seven (7) Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (7) above, all Applicants shall submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. Each NOAD is limited only to issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (7) 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 which may be submitted. NOADs which seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation will only review written NOADs that are timely Received.

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

(10) Following the receipt and review by the Corporation of the documentation described in subsections (6), (7) and (8) above; the Corporation 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 subsections (4), (5) and (6) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (7) and (8) 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 subsection (15) below can be identified at any time prior to sending the final scores to Applicants and will result in rejection of the Application. The Corporation shall then transmit final scores to all Applicants.

(11) The availability of any remaining funds shall be noticed or offered to a Development as described in the Ranking and Selection Criteria section of the Application instructions.

(12) Applications shall be limited to one submission per subject property. Two or more Applications with the same Financial Beneficiary for Developments that are contiguous

with the property of another Application, or that are 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, 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. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number.

(13) If the Board determines that any Applicant or any Affiliate of an Applicant:

(a) Has engaged in fraudulent actions;

(b) Has materially misrepresented information to the Corporation regarding any past or present Application or Development;

(c) Has been convicted of fraud, theft or misappropriation of funds;

(d) Has been excluded from federal or Florida procurement programs; or

(e) Has been convicted of a felony; and that such action substantially increases the likelihood that the Applicant will not be able to produce quality affordable housing, 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 proceeding conducted pursuant to Sections 120.569 and 120.57, F.S., or as a result of a finding by a court of competent jurisdiction.

(14) 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 subsection (7) above:

(a) The Development is inconsistent with the purposes of the Programs applied for 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;

(c) The Applicant fails to file all applicable Application pages and exhibits which are provided by the Corporation and adopted under this rule chapter or as provided for in the Application instructions;

(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 or any agent or assignee of the Corporation. This paragraph does not include permissible deferral of interest.

(15) 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 Applicant;

(b) Identity of each Developer, including all co-Developers;

(c) Site for the Development;

(d) Development Category;

(e) County;

(f) Total number of units;

(g) Loan Request Amount

(h) Submission of one original hard copy with the required number of photocopies of the Application by the Application Deadline;

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History—New 4-9-07.

Editorial Note: Formerly 67ER06-51.

67ER07-04 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by this rule chapter, each Applicant will be provided with the final ranking scores and a notice of rights, which shall constitute the point of entry to contest any issue related to Applications for the FHRP or SHAD Programs.

(2) Each Applicant that wishes to contest the final scores must file a petition with the Corporation within 21 Calendar Days after the date Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3), F.A.C., and specify in detail each issue and score sought to be challenged. If the petition does not raise a disputed issue of material fact, the challenge will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered by the designated hearing officer which will then be considered by the Board.

(3) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding concerning its own Application shall be allowed the opportunity to submit written arguments to the Board. Any written argument should be typed and 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., Eastern Time, on the date contained in the recommended order. 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. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(4) No funding will be awarded until the conclusion of all litigation and appeal proceedings conducted pursuant to Sections 120.569, 120.57, and 120.68, F.S.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History–New 4-9-07.

67ER07-05 Farmworker Housing Recovery Program (FHRP).

(1) The program shall prioritize housing solutions for Migrant Farmworkers who shall be capable of paying minimal rents for part of the year.

(2) The funds shall be utilized for the construction, Rehabilitation or acquisition/ Rehabilitation of affordable, safe and sanitary rental housing units.

(3) Occupancy shall be limited to four beds per bedroom.

(4) Each unit must have a minimum of 50 square feet per bed for sleeping units only or 100 square feet per bed for units providing sleeping, cooking and living space.

(5) Developments shall commit to set aside 100% of the units for Farmworkers.

(6) Farmworker developments which set aside at least 60% of the units or beds for Migrant Farmworkers, for a minimum of 20 years, shall receive priority over developments that commit to set aside a lesser number of units for Migrant Farmworkers.

(7) Farmworker developments under the FHRP program shall commit to set aside a minimum of 25% of the units or beds for ELI Households for a minimum of 20 years.

(8) Developments shall commit to set-aside 100% of units or beds to households earning 60% or less of the area median income. Income for Unaccompanied Farmworkers shall be verified within ten days of initial occupancy of a set-aside unit. All other Farmworker income shall be verified upon initial occupancy.

(9) Developments shall be limited to a maximum of 60 units or 150 beds. There shall be 1 shower/bathtub for every 8 residents for new construction/renovation, 1 toilet for every 6 males/4 females.

(10) Developments shall provide the minimum unit features as described in the Application and instructions for FHRP.

(11) Eligible occupancy shall be limited to Unaccompanied Farmworkers or Farmworkers and their families, providing the eligible tenant earns not less than 51

percent of their annual income from agricultural employment or must have bona fide local agricultural employment at time of leasing.

(12) For Unaccompanied Farmworkers, rents shall be charged per bed and occupants shall not be required to sign a long term lease. For any area of the State, monthly rent (or weekly or daily prorated rent) per bed shall not exceed the lowest rent limit established by Florida Housing for 28 percent of the AMI for a 0 bedroom unit. For the current year, the limit per bed shall be \$216 per bed per month.

(13) For Non-Profit organizations committing to own and operate Developments with at least 25% of the units targeted to ELI, and in which all or part of land and infrastructure costs are paid for or donated by entities such as farmers and Local Governments, loans for the full cost of the units, not to exceed the \$3,000,000 limit, shall be allowed. In these cases, the loan shall be set at 0 percent interest and the principal shall be forgivable at a rate of 10 percent per year if the units stay targeted to ELI households for at least 20 years.

(14) Funding for Farmworker Developments shall be targeted to counties in tiers I and II as determined by the Corporation before counties in tier III; and Developments shall be located in agricultural areas where Farmworkers are known to live and that are proximate to essential services.

(15) If funds remain unencumbered in this program after two years, or if funds are returned to the Corporation after that time, they shall be utilized to fund developments in this program or in the Special Housing Assistance and Development Program or as the Board deems appropriate.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History–New 4-9-07.

Editorial Note: Formerly 67ER06-52.

67ER07-06 Special Housing Assistance and Development Program (SHADP).

(1) The program shall prioritize permanent housing solutions for Frail Elders, Persons with a Disability, Homeless people, Youth Aging Out of Foster Care, and/or Victims of Domestic Violence.

(2) The funds shall be utilized for the construction, rehabilitation or acquisition/rehabilitation of affordable, safe and sanitary permanent rental housing units.

(3) Occupancy shall be limited to two beds per bedroom. Each unit must have a minimum of 50 square feet per bed for sleeping units only or 100 square feet per bed for units providing sleeping, cooking and living space. For SRO developments, the minimum square footage is 110 per unit.

(4) Applicants shall commit to set aside units according to the selected demographic group. The set-aside requirements are:

(a) A minimum of 80% of the units in developments housing Elderly persons of which 50% shall be for Frail Elders; or

(b) A minimum of 50% of the units in developments for Homeless people; or

(c) A minimum of 50% of the units in developments for Persons With a Disability; or

(d) A minimum of 100% for Youth Aging Out of Foster Care; or

(e) A minimum of 100% for Victims of Domestic Violence.

(5) Applicants under the SHADP shall commit to set-aside a minimum of 25% of the units or beds for ELI households for a minimum of 20 years.

(6) Applicants shall commit to set-aside 100% of units or beds to households earning 60% or less of the area median income.

(7) Applicants shall be limited to a maximum of 60 units or 120 beds.

(8) Applicants shall commit to set-aside at least 5% of units as accessible in accordance with section 504 of the American Disabilities Act.

(9) Up to 10 percent of the funding for each development may be used for the construction of ancillary facilities to be used for community services that are also to be used by the population being targeted in the development.

(10) Funding for Developments shall be targeted to counties in tiers I and II as determined by the Corporation before counties in tier III.

(11) For Non-Profit organizations committing to own and operate Developments with at least 25% of the units targeted to ELI households, and in which all or part of land and infrastructure costs are paid for or donated by entities such as public housing authorities and Local Governments, loans for the full cost of the units shall be allowed. In these cases, the loan shall be set at 0 percent interest and the principal shall be forgivable at a rate of 10 percent per year if the units stay targeted to ELI Households for at least 20 years.

(12) If funds remain unencumbered in this program after two years, or if funds are returned to the Corporation after that time, they shall be utilized to fund developments in this program or in the Farmworker Housing Recovery Program or as the Board deems appropriate.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History--New 4-9-07.

Editorial Note: Formerly 67ER06-53.

67ER07-07 Loan Terms.

(1) The loans shall be in a first, second, or other subordinated lien position as approved by the Board.

(2) The loan shall be limited to the lesser of \$3,000,000 or 75% of the Total Development Cost, except as provided herein.

(3) The base loan shall be non-amortizing and shall have interest rates as follows:

(a) For properties financed through FHRP or SHADP, a 0% simple interest for Non-Profit Developers and public housing authorities. The loan shall be forgivable over a period of 10 years provided the Developer commits to maintain set-aside units at the level committed to in the Application for a period of 20 years.

(4) For properties financed through the FHRP or SHADP by Developers and owners other than Non-Profits, the interest rate shall be one percent, paid annually, with loan repayment due on sale or after 20 years, whichever is earlier.

(a) The Corporation's servicer shall issue a billing for interest due, when applicable, on the loan for the immediately preceding calendar year by January 31 of each calendar year of the loan.

(b) The Applicant shall remit the interest due to the Corporation's servicer no later than March 31 of each year of the loan term. The first payment of interest will be due no later than March 31 following the calendar year within which the first unit is occupied. The first payment of interest shall include all 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.

(5) After maturity or acceleration, the Note shall bear interest at the default interest rate, pursuant to the loan documents, from the due date until paid.

(6) 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 shall be subject to the Corporation's prior written approval.

(7) The loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.

(8) The Corporation shall monitor compliance of all terms and conditions of the loans for the Compliance Period and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement (LURA) and recorded in the public records of the county wherein the Development is located. Violation of any term or condition of the documents evidencing or securing the loans shall constitute a default during the term of the loan. The Corporation shall take legal action to effect compliance if a violation of any term or condition relative to the set-asides committed to by the Applicant is discovered during the course of compliance monitoring or by any other means.

(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 Part V, Section 106 of the Fannie Mae DUS Guide, effective November 3, 2003, which is adopted and incorporated herein by reference and available on the Corporation's Website at www.floridahousing.org.

(10) Upon maturity of the 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 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.

(11) After accepting a preliminary commitment, the Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the Mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior Mortgage loan without the Board's permission, provided that no other terms of the loan are changed. The Corporation must be notified of any such change. The Board shall deny requests for mortgage loan refinancing which require extension of the loan term or otherwise adversely affects the security interest of the Corporation.

(12) All loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR Part 100, which is adopted and incorporated herein by reference and available at http://www.access.gpo.gov/nara/cfr/waisidx_05/24cfr100_05.html; and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35, which is adopted and incorporated herein by reference and available at http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfr35_04.html. The Corporation shall allow units dedicated to occupancy by the Frail Elders in a Development designed for occupancy by Frail Elders' households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR Part 100.

(13) All set-aside units or beds shall be Rent-Restricted Units.

(14) Units or beds set-aside for ELI households shall not be occupied by a household that holds a tenant based Voucher and receives Housing Assistance Payments from a public housing authority. This shall not include one-time assistance with security deposit, rent, or utilities.

(15) The documents creating, evidencing or securing each loan must provide that any violation of the terms and conditions described in this rule chapter constitutes a default under the loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(16) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the loan, unless otherwise approved by the Board.

(17) The proceeds of the loan shall be expended within two years of the date of the firm commitment letter unless such date is extended by the Board.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History--New 4-9-07.

Editorial Note: Formerly 67ER06-54.

67ER07-08 Credit Underwriting and Loan Procedures.

The credit underwriting review 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 loan amount, if any. As part of the credit underwriting review, the Credit Underwriter will consider the applicable provisions of this rule chapter.

(1) No funding will be awarded for the 2007 cycle of these Programs until the conclusion of all litigation and appeal proceedings conducted pursuant to Sections 120.569, 120.57, and 120.68, F.S. At the conclusion of such litigation and appeal proceedings, the Corporation shall offer all Applicants within the funding range an invitation to enter credit underwriting. The Corporation shall select the Credit Underwriter for each Development. The invitation to enter credit underwriting constitutes a preliminary commitment.

(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.

(a) The Applicant shall submit the credit underwriting fee to the Credit Underwriter within 7 Calendar Days of the date of the letter of invitation. The credit underwriting fee is an eligible expense in the loan amount.

(b) Failure to submit the required credit underwriting fee by the specified deadline shall result in withdrawal of the invitation and issuance of an invitation to the next eligible Applicant as outlined in the Application instructions.

(3) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, and General Contractor.

(4) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting.

(5) The Applicant will be responsible for all fees in connection with the documentation submitted to the Credit Underwriter.

(6) 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.

(7) A full or self-contained appraisal 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 which have been ordered and submitted by the first mortgagee and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a loan. The Credit Underwriter shall also 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.

(8) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price or stipulated sum construction contract, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, a pre-construction analysis for all new construction or a physical needs assessment for Rehabilitation and a review of the Development's costs.

(9) 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 replacement reserve 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.

(10) The Credit Underwriter may request additional information, but at a minimum the following will be required during the underwriting process:

(a) 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. The audited statements may be waived if the credit enhancer is rated at least "A-" by Moody's, Standard and Poor's or Fitch.

(b) For the Applicant, general partner(s), and guarantors, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant 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 by a licensed Certified Public Accountant are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter in accordance with Part III, Sections 604 through 607, of the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 6, 2003, which is incorporated by reference and available on the Corporation's Website at www.floridahousing.org, and the two most recent year's tax returns shall be provided. 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 shall be provided.

(c) For the General Contractor, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant 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.

(11) 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 or contractor.

(d) Exposure of Corporation funds compared to Total Development Cost. 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 paragraphs (a)-(d) in this subsection that additional surety is needed. However, a completion guarantee will not be required if funds are not drawn until evidence of lien free completion is provided.

(12) The Developer fee and General Contractor's fee shall be limited to:

(a) The Developer fee shall be limited to 16% of Development Cost. A Developer fee on the building acquisition cost shall be limited to 4% of the cost of the building exclusive of land.

(b) The General Contractor's fee shall be limited to a maximum of 14% of the actual construction cost.

(13) In order for the General Contractor to be eligible for the maximum fee stated above, it must meet the following conditions:

(a) A Development 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) must be 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 subcontracted to any one entity unless otherwise approved by the Board for a specific Development.

(14) The Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of 6 consecutive months for the combined loan and superior mortgages.

(15) 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.

(16) The Credit Underwriter will 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.

(17) All items required by the Credit Underwriter must be provided 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. Unless an extension is approved by the Corporation, 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 as outlined in the Application instructions.

(18) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation, shall result in rejection of the Application. If the Application is rejected, the Corporation will make the funds available as outlined in the Application instructions.

(19) The Credit Underwriter shall complete its analysis and submit a written draft report and recommendation to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the section of the written draft report consisting of supporting information and schedules. 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 to the Credit Underwriter comments on the draft report and on the Applicant's comments. The Credit Underwriter shall then review and incorporate, if deemed appropriate, the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. The Credit Underwriter will provide a final report to the Corporation.

(20) The Credit Underwriter's recommendations will be sent to the Board for approval.

(21) After approval of the Credit Underwriter's recommendation for funding by the Board, the Corporation shall issue a firm loan commitment.

(22) Other mortgage loans related to the Development and the loan must close within 60 Calendar Days of the date of the firm loan commitment or the Program loan shall be de-obligated 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 for consideration.

(23) At least 5 Calendar Days prior to the loan closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from superior or subordinate mortgages 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 Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History-New 4-9-07.

Editorial Note: Formerly 67ER06-55.

67ER07-09 Sale or Transfer of a Development.

(1) The loans shall be assumable upon sale or transfer 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;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the loans for the period originally specified or longer; and

(c) The proposed transferee and release of transferor receives a favorable recommendation from the Credit Underwriter and approval by the Board of Directors of the Corporation. In order for a Development to satisfy paragraphs (1)(a) and (b) above, the loan shall not be considered 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 loan was true and accurate;

3. A certification from the Applicant that there are no Development funds available to repay the loan, including any interest due, and the Applicant knows of no source from which funds could or would be forthcoming to pay the loan; and

4. A certification from the Applicant detailing the information needed to determine the final billing for loan interest. Such certification shall require submission of financial statements and other documents that shall be required by the Corporation and its servicer.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History-New 4-9-07.

Editorial Note: Formerly 67ER06-56.

67ER07-10 Construction Disbursements and Permanent Loan Servicing.

(1) Loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the 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. 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 Clearing House (ACH). The Applicant shall 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) All of the following fees are part of Development Cost and can be included in the Development Cost pro forma and paid with FHRP or SHADP loan proceeds: credit underwriting, compliance monitoring, financial monitoring, and construction inspection.

Specific Authority Chapter 2006-69, L.O.F. Law Implemented Chapter 2006-69, L.O.F. History-New 4-9-07.

Editorial Note: Formerly 67ER06-57.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: April 9, 2007

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF EDUCATION

NOTICE IS HEREBY GIVEN that on March 29, 2007, the Department of Education has issued an order.

In the case of Champion Schools, Inc. d/b/a Champion Preparatory Academy and Terry Greiner and Isabel Greiner, husband and wife, vs. Florida Department of Education, the Petition for a Temporary Variance or Waiver was denied as the Petitioners had failed to demonstrate that a literal application of the rules affect Petitioners in a manner significantly different from the way the rules affects other similarly situated persons.