

SUBJECT AREA TO BE ADDRESSED: Firesafety in educational facilities.

SPECIFIC AUTHORITY: 633.01(7), 633.022, 1013.12 FS.

LAW IMPLEMENTED: 633.01(7), 633.022, 1013.12 FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW.

TIME AND DATE: 9:00 a.m., January 11, 2005

PLACE: Leto Adult Center, 4409 West Sligh Avenue, Tampa, Florida

TIME AND DATE: 9:00 a.m., January 12, 2005

PLACE: Florida Atlantic University, Room 3, 1515 West Commercial Blvd., Fort Lauderdale, Florida 33309

TIME AND DATE: 9:00 a.m., January 14, 2005

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

Pursuant to the provisions of the Americans with Disabilities Act and Section 286.26, F.S., any person requiring special accommodations to participate in this program please advise the department at least 5 calendar days before the program by contacting: Millicent King, (850)413-3619, Fax (850)922-2553.

All persons intending to make suggestions and recommendations at the workshops are requested to bring the suggestions in writing and to file them with the Division of State Fire Marshal staff at the workshops. If possible, it would be beneficial to the Division of State Fire Marshal staff to have the suggestions and recommendations at least five working days prior to the workshop date. All such suggestions and recommendations should be mailed, faxed, or e-mailed to Jim Goodloe, Chief, Bureau of Fire Prevention at the above U.S. Mail, fax, or e-mail address.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY TEXT, IF AVAILABLE, IS: Jim Goodloe, Chief, Bureau of Fire Prevention, 200 East Gaines Street, Tallahassee, FL 32399-0342, (850)413-3171, Fax (850)922-2553, e-mail: goodloej@dfs.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

## Section II Proposed Rules

### DEPARTMENT OF EDUCATION

#### State Board of Education

RULE TITLE: Definition of Qualified Instructional Personnel  
PURPOSE AND EFFECT: The purpose of the rule amendment is to include the option of using a High, Objective Uniform State System of Evaluation (HOUSSE) plan developed pursuant to the No Child Left Behind Act for meeting the

RULE NO.:

6A-1.0503

qualified teacher definition. Section 1012.05(6), Florida Statutes, requires that the flexibility of a HOUSSE plan be implemented.

SUMMARY: The proposed amendment will align the instructional personnel definition in Florida rule to the definition of highly qualified personnel in the NO Child Left Behind Act and will implement the requirements of Section 1012.05(6), F.S., for use of a High, Objective Uniform State System of Evaluation (HOUSSE) plan.

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

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

SPECIFIC AUTHORITY: 1002.33(12), 1012.05, 1012.32, 1012.55(1), 1012.56(6) FS.

LAW IMPLEMENTED: 1002.33, 1012.05, 1012.32, 1012.39, 1012.55, 1012.56 FS.

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

TIME AND DATE: 1:00 p.m., January 18, 2005

PLACE: Dale Mabry Campus, Hillsborough Community College, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Beverly Gregory, Chief, Bureau of Educator Certification, Department of Education, 325 West Gaines Street, Room 201, Tallahassee, Florida 32399-0400, (850)245-0431

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.0503 Definition of Qualified Instructional Personnel.

A qualified instructional person is defined as an instructional staff member who meets one (1) of the following conditions:

(1) Holds a valid Florida educator's certificate with the appropriate coverage as provided for in the Course Code Directory as adopted by reference in Rule 6A-1.09441, F.A.C., or

(2) Is a selected noncertificated person employed under the provisions of Rule 6A-1.0502, F.A.C., or

(3) Holds a valid Florida educator's certificate with coverage other than that deemed appropriate by subsection (1) and has documented a highly qualified designation pursuant to 20 U.S.C. S. 7801(23), by a High, Objective, Uniform State System of Evaluation (HOUSSE) plan for the academic course assigned, or

~~(4)~~ Holds a valid Florida educator's certificate with coverage other than that deemed appropriate by subsection (1) and does not meet the requirements of subsection (3) and has been approved by the school board or charter school governing board to teach out-of-field after determination that a teacher



all manufacturers. The effect is to improve the safety, efficiency, and reliability of new school buses, through incorporation of the proposed changes, including, in part revision of warranty requirements, fuel filtration requirements, transmission model numbers, lighting options, floor covering requirement, mirror requirements, firewall insulation requirements, circuit breakers requirements, heater/defroster requirements and the addition of driver's post-trip passenger check system requirement.

SUMMARY: This rule is amended to incorporate the revised specifications which new school buses must meet to be used by the public school districts.

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 the notice.

SPECIFIC AUTHORITY: 1006.25 FS.

LAW IMPLEMENTED: 1006.22, 1006.25 FS.

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

TIME AND DATE: 1:00 p.m., January 18, 2005

PLACE: Dale Mabry Campus, Hillsborough Community College, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Charlie Hood, Director, School Transportation Management Section, Department of Education, 325 West Gaines Street, Room 1114, Tallahassee, Florida, (850)245-9795

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-3.0291 Specifications for New School Buses.

(1) School buses purchased each year shall conform to current National School Transportation Specifications and Procedures of the National Conference on School Transportation, current Federal Motor Vehicle Safety Standards and to specifications prescribed by the State Board for body, chassis and special equipment as provided in Section 1006.25, Florida Statutes. Each school bus as defined by Section 1006.25(1), Florida Statutes, shall meet the requirements of the Florida School Bus Specifications applicable for the year the bus was manufactured or the previous year if specifications were not revised and approved for a given year. Specifications shall incorporate the specific standards as approved by the State Board prior to and including the following years: 1965, 1966, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1992, 1993, 1995, 2000, and 2002, and 2004 revised. Copies of the above specifications are on file and available from the School Transportation Management Section, Florida Department of

Education, 325 West Gaines Street, Tallahassee, Florida 32399. Specifications may vary for different sizes and types of buses to meet specific needs and conditions. Bid forms prepared under the direction of the Commissioner shall incorporate basic specifications and equipment.

(2) through (3) No change.

Specific Authority 1006.25 FS. Law Implemented 1006.22, 1006.25 FS. History—Amended 9-17-72, 7-20-74, Repromulgated 12-5-74, Amended 11-10-83, 3-28-84, 10-8-84, 10-8-85, Formerly 6A-3.29, Amended 8-19-86, 9-30-87, 10-4-88, 12-11-89, 12-18-90, 11-10-92, 9-5-93, 11-15-94, 10-18-95, Formerly 6A-3.029, Amended 6-11-00, Formerly 6-3.029, Amended 4-21-03,

c.f. Florida School Bus Specifications Revised, January 1965  
 Florida School Bus Specifications Revised, Chassis – 1966; Body - 1966  
 Florida School Bus Specifications Revised, January 1966  
 Florida School Bus Specifications Revised, 1968  
 Florida School Bus Specifications Revised, 1969  
 Florida School Bus Specifications Revised, 1970  
 Florida School Bus Specifications Revised, 1971  
 Florida School Bus Specifications Revised, 1972  
 Florida School Bus Specifications Revised, 1973  
 Florida School Bus Specifications Revised, November 1974  
 Florida School Bus Specifications Revised, January 1975  
 Florida School Bus Specifications Revised, Chassis – October 1976;  
 Body – October, 1976, No Type A; No Exceptional Child  
 Florida School Bus Specifications Revised, Body, Chassis, Type A, and  
 Exceptional Child, March 1977  
 Florida School Bus Specifications Revised, 1978  
 Florida School Bus Specifications Revised, Amended, 1979  
 Florida School Bus Specifications Revised, November 1980  
 Florida School Bus Specifications Revised, 1982  
 Florida School Bus Specifications Revised, 1983  
 Florida School Bus Specifications Revised, January 1984  
 Florida School Bus Specifications Revised, September 1984  
 Florida School Bus Specifications Revised, September 1985  
 Florida School Bus Specifications July 1986  
 Florida School Bus Specifications Revised, October 1987  
 Florida School Bus Specifications Revised, 1988  
 Florida School Bus Specifications Revised, 1989  
 Florida School Bus Specifications Revised, 1990  
 Florida School Bus Specifications Revised, 1992  
 Florida School Bus Specifications Revised, 1993  
 Florida School Bus Specifications Revised, 1995  
 Florida School Bus Specifications Revised, 2000  
 Florida School Bus Specifications Revised, 2002  
Florida School Bus Specifications Revised, 2004

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Linda Champion, Director of School Business Services,  
 Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED  
 THE PROPOSED RULE: Jeanine Blomberg, Deputy  
 Commissioner for Finance and Operations, Department of  
 Education

DATE PROPOSED RULE APPROVED BY AGENCY  
 HEAD: December 1, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
 PUBLISHED IN FAW: November 12, 2004

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE TITLE: Specialization Requirements for the American Sign Language Endorsement – Academic Class

RULE NO.: 6A-4.02431

**PURPOSE AND EFFECT:** The purpose of the proposed new rule is to provide standards for the certification of American Sign Language Teachers in K-12 Public Schools. The effect will be standards and requirements for all teachers of American Sign Language.

**SUMMARY:** This rule establishes certification requirements for American Sign Language (ASL) teachers in Florida’s K-12 public schools, as required by Section 1007.2615, Florida Statutes.

**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 the notice.

**SPECIFIC AUTHORITY:** 1001.02, 1007.2615 FS.

**LAW IMPLEMENTED:** 1007.2615 FS.

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

**TIME AND DATE:** 1:00 p.m., January 18, 2005

**PLACE:** Dale Mabry Campus, Hillsborough Community College, Tampa, Florida

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Beverly Gregory, Chief, Bureau of Educator Certification, 325 West Gaines Street, Room 201, Tallahassee, Florida 32399-0400, (850)245-9796

**THE FULL TEXT OF THE PROPOSED RULE IS:**

6A-4.02431 Specialization Requirements for the American Sign Language Endorsement – Academic Class.

(1) A bachelor’s or higher degree with certification in an academic class coverage, and

(2) Eighteen (18) semester hours in American Sign Language to include three (3) semester hours in each area specified below:

- (a) First and second language acquisition,
- (b) Linguistics of American Sign Language,
- (c) Aspects of the deaf culture and community,
- (d) Methods of teaching American Sign Language,
- (e) American Sign Language IV, and
- (f) American Sign Language literature, or

(3) A bachelor’s or higher degree with certification in an academic class coverage, and a valid Professional Level Certificate issued by the American Sign Language Teachers Association (ASLTA).

Specific Authority 1001.02, 1007.2615, 1012.55, 1012.56 FS. Law Implemented 1001.02, 1007.2615, 1012.54, 1012.55, 1012.56 FS. History—New

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Pam Stewart, Deputy Chancellor for K-12 Educator Quality, Department of Education

**NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:** Jim Warford, Chancellor K-12 Schools, Department of Education

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** November 23, 2004

**DATE NOTICE OF PROPOSED DEVELOPMENT PUBLISHED IN FAW:** October 1, 2004

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE TITLE: Rehabilitation Provider Qualifications

RULE NO.: 6A-22.002

**PURPOSE AND EFFECT:** The proposed amendments are to clarify the requirement for qualified rehabilitation providers to attend a workshop conducted by the Department and eliminate the exemption of employees of other public agencies and private agencies receiving federal or state funds from applying for listing in the directory. These changes are in response to concerns of the Joint Administrative Procedures Committee to ensure consistency with rule and law.

**SUMMARY:** This rule clarifies the requirement for qualified rehabilitation providers to attend a workshop conducted by the Department and eliminates the exemption of employees of other public agencies and private agencies receiving federal or state funds from applying for listing in the directory.

**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 the notice.

**SPECIFIC AUTHORITY:** 440.491(7) FS.

**LAW IMPLEMENTED:** 440.491(7) FS.

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

**TIME AND DATE:** 1:00 p.m., January 18, 2005

**PLACE:** Dale Mabry Campus, Hillsborough Community College, Tampa, Florida

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, 2728 Centerview Drive, Suite 101A, Tallahassee, FL 32399-0400, (850)245-3470

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-22.002 Rehabilitation Provider Qualifications.

(1) No change.

(2) Applicants applying for renewal shall submit a non-refundable twenty-five (25) dollar biennial renewal fee, and a signed, typed and completed qualified rehabilitation provider application on form DWC-96 and a copy of current certification and applicable licensure.

(a) Attendance at a ~~Department sponsored or approved~~ qualified rehabilitation provider workshop conducted by the Department within the prior two (2) years is required before the initial application and also before each renewal.

(b) through (4) No change.

(5) Employees of the Department, ~~other public agencies and private agencies receiving federal or state funds to provide reemployment services~~ are exempt from the requirements of subsections 6A-22.002(2) and (3), F.A.C.

Specific Authority 440.491(7) FS. Law Implemented 440.491(7) FS. History—New 7-1-96, Amended 6-26-01, Formerly 38F-55.002, Amended 5-5-04,

NAME OF PERSON ORIGINATING PROPOSED RULE: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Parnell, Interim Director, Division of Vocational Rehabilitation, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2004

DATE NOTICE OF PROPOSED DEVELOPMENT PUBLISHED IN FAW: September 3, 2004

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE TITLE: Notice Requirements

RULE NO.: 6A-22.004

PURPOSE AND EFFECT: The purpose of this rule amendment is to implement the statutory requirement for carriers to notify injured employees of the availability of a screening for training and education benefits as prescribed in Section 440.491(6), Florida Statutes, and to specify the content of such notification. Language is being added which references the limitations for entitlement to temporary total disability benefits payable in a workers' compensation case upon reaching maximum medical improvement.

SUMMARY: The rule specifies when and how carriers are to notify injured employees of the availability of a screening for training and education benefits as prescribed in Section 440.491(6), Florida Statutes.

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 the notice.

SPECIFIC AUTHORITY: 440.491(6)(b) FS.

LAW IMPLEMENTED: 440.491(6)(b) FS.

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

TIME AND DATE: 1:00 p.m., January 18, 2005

PLACE: Dale Mabry Campus, Hillsborough Community College, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, 2728 Centerview Drive, Suite 101A, Tallahassee, FL 32399-0400, (850)245-3470

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-22.004 Notice Requirements.

(1) If an injured employee remains unemployed 180 days after the date of accident and is receiving compensation, the carrier shall notify the injured employee in writing within 190 days of the date of accident of the availability of a Department screening.

(2) A carrier shall use the following written notice: "Your continuing disability indicates you may be unable to perform the duties of the job held at the time of your work-related injury. If this is correct and you are unable to return to work in any capacity with your current employer or find other employment which would allow you to earn your pre-injury wages, you may be eligible for a screening for reemployment services from the State of Florida, Department of Education. Upon receipt of your request, the Department will assess your case to determine what services are necessary to return you to suitable gainful employment. Reemployment services that you may be eligible for include job seeking skills training, counseling, referrals to other agencies, job market information, transferable skills analysis, job development, job placement, job analysis, job modification, vocational testing, vocational evaluation, on-the-job training, or formal training and education. Additionally, if you have reached maximum medical improvement, and subject to the overall limitation of one hundred four (104) weeks of temporary total disability benefits payable in a workers' compensation case with a date of accident which falls on or after October 1, 2003, the carrier shall pay temporary total disability benefits for a period up to 26 weeks upon beginning a Department approved retraining program or the carrier may elect to pay temporary partial disability/wage loss benefits if you earn wages as the result of on-the-job training or work while enrolled in a program. An

additional 26 weeks may be approved if deemed necessary by the Judge of Compensation Claims. To request a screening, contact your local state Division of Vocational Rehabilitation District Office or the Central Office in Tallahassee at (850)245-3470 ~~488-3434~~ and ask to speak with a staff person in the Reemployment Services Section of the Bureau of Rehabilitation and Reemployment Services.” The carrier shall send a copy of this notification to the Bureau of Rehabilitation and Reemployment Services, Department of Education, 101A Forrest Building, 2728 Centerview Drive, Tallahassee, Florida 32399-0400 ~~0664~~ within ten days of mailing the notification to the injured employee.

Specific Authority 440.491(5),(6),(8) FS. Law Implemented 440.491 FS. History—New 7-1-96, Amended 6-26-01, Formerly 38F-55.006, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Parnell, Interim Director, Division of Vocational Rehabilitation, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2004

DATE NOTICE OF PROPOSED DEVELOPMENT PUBLISHED IN FAW: October 1, 2004

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE TITLE: Reemployment Services and Programs

RULE NO.: 6A-22.008

PURPOSE AND EFFECT The purpose of this rule amendment is to ensure consistency with Section 1000.21(3), Florida Statutes, which provides for approving training and education programs for dates of accidents October 1, 2003 and forward to only community colleges as designated in Section 1000.21(3), Florida Statutes, and vocational-technical schools established under Section 1001.44, Florida Statutes. Injured employees with dates of accidents before October 1, 2003 will not be affected. The effect is to ensure consistency with statutory authority.

SUMMARY: This rule specifies when the Department will approve training and education as allowed under Section 440.491(6), Florida Statutes, and the types of training and education programs that can be approved in accordance with Section 440.491(6), Florida Statutes.

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 the notice.

SPECIFIC AUTHORITY: 440.491(6) FS.

LAW IMPLEMENTED: 440.491(6) FS.

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

TIME AND DATE: 1:00 p.m., January 18, 2005

PLACE: Dale Mabry Campus, Hillsborough Community College, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, 2728 Centerview Drive, Suite 101A, Tallahassee, FL 32399-0400, (850)245-3470

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-22.008 Reemployment Services and Programs.

(1) The Department shall approve sponsorship of reemployment services provided through an on-the-job training program, vocational assessment, job placement or a training and education program when recommended and approved as part of a Department reemployment plan.

(2) The Department will approve and sponsor retraining services if:

(a) The vocational evaluation is completed by a Department approved vocational evaluator, and

(b) The vocational evaluation contains the information identified in paragraph 6A-22.010(2)(e), F.A.C.; and

(c) The vocational evaluation demonstrates that the injured employee:

1. Has no transferable skills which would allow for return to suitable gainful employment with the same employer, same job; same employer, different or modified job; new employer, same job; new employer, modified or different job; or

2. Requires additional Department sponsored reemployment services to enable the injured employee to return to suitable gainful employment.

(3) The Department shall sponsor retraining programs which exceed 52 weeks only when there is no program shorter than 52 weeks which would enable the injured employee to return to suitable gainful employment, the injured employee provides a plan for living expenses during the period in excess of 52 weeks, and one of the following conditions apply:

(a) The injured employee has no formal marketable vocational training and education; or

(b) The injured employee has documented physical restrictions as a result of the injury.

(4) If the Department determines a training program is necessary to return an injured employee to suitable gainful employment, the Department shall have the exclusive right to determine the educational programs and facilities at which to sponsor the injured employee.

(a) For all dates of accidents, training programs which only accept students from an applicant pool after the students complete a prerequisite curriculum may be approved only if the injured employee presents evidence of acceptance into such program.

(b)(a) For dates of accident October 1, 1989 through and including September 30, 2003, training Training at private education facilities shall not be approved unless such recommended training is not offered at a public educational facility or provides an overall cost/time savings to the Workers' Compensation System, which can be justified.

~~(b) Training programs which only accept students from an applicant pool after the students complete a prerequisite curriculum may be approved only if the injured employee presents evidence of acceptance into such program.~~

1.(e) Baccalaureate or Graduate level studies may be approved only if the program capitalizes on prior education and/or aptitudes, and

2.1. The program under consideration firmly establishes marketability toward suitable gainful employment for that injured employee, and

3.2. The injured employee presents evidence of acceptance into a degree program prior to the Department's Disposition letter of approval, and

4.3. The program does not exceed the level of a Master's degree.

(c) For dates of accident on or after October 1, 2003, only programs which are consistent with the requirements found in Section 440.491(6)(a), Florida Statutes, shall be approved.

(5) The Department shall not transfer its sponsorship of reemployment services outside the range of the labor market survey unless a labor market survey for the new area supports the specific recommendation of the vocational evaluation.

(6) The Department shall not sponsor reemployment services if the vocational evaluation does not recommend reemployment services.

Specific Authority 440.491(5),(6) FS. Law Implemented 440.491 FS. History--New 7-1-96, Amended 2-9-00, 6-26-01, Formerly 38F-55.011, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Parnell, Interim Director, Division of Vocational Rehabilitation, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2004

DATE NOTICE OF PROPOSED DEVELOPMENT PUBLISHED IN FAW: October 1, 2004

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE TITLE: Employee Responsibilities

RULE NO.: 6A-22.009

PURPOSE AND EFFECT The purpose of this rule is to specify injured employees' responsibilities when approved for training and education benefits under Section 440.491(6), Florida Statutes.

SUMMARY: This rule specifies injured employees' responsibilities when approved for training and education benefits in accordance with Section 440.491(6), Florida Statutes, and specifies the consequences of refusing such training and education benefits deemed necessary by the Department.

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 the notice.

SPECIFIC AUTHORITY: 440.491(6) FS.

LAW IMPLEMENTED: 440.491(6) FS.

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

TIME AND DATE: 1:00 p.m., January 18, 2005

PLACE: Dale Mabry Campus, Hillsborough Community College, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, 2728 Centerview Drive, Suite 101A, Tallahassee, FL 32399-0400, (850)245-3470

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-22.009 Employee Responsibilities.

(1) Upon approval of Department sponsored reemployment services, the injured employee and Department staff shall sign and date a Department and student agreement for sponsorship of training and education form DWC-24, which is incorporated by reference in Rule 6A-22.011, F.A.C.

(2) An employee who refuses retraining and education after the recommendation of a vocational evaluator and approval by the Department, will forfeit his or her entitlement to further training and education benefits, as well as additional payment for lost wages under Chapter 440, Florida Statutes. The following shall not be deemed a refusal of training and education:

(a) Failure to participate in a recommended retraining program due to medical instability;

(b) Failure to participate in a recommended retraining program due to an adverse change in the employee's medical status;

(c) Failure to participate in a recommended retraining program due to the school's failure to offer the approved program, and

(d) Failure to participate in a recommended retraining program due to a family medical emergency.

Specific Authority 440.491(5),(6) FS. Law Implemented 440.491 FS. History--New 7-1-96, Amended 6-26-01, Formerly 38F-55.012, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Parnell, Interim Director, Division of Vocational Rehabilitation, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2004

DATE NOTICE OF PROPOSED DEVELOPMENT PUBLISHED IN FAW: October 1, 2004

DEPARTMENT OF COMMUNITY AFFAIRS

Florida Communities Trust

RULE CHAPTER TITLE: Land Acquisition Procedures With Florida Forever Program

RULE CHAPTER NO.: 9K-8

RULE TITLES: Election by Recipient of Titleholder and Negotiating Entity; Rules Governing Acquisitions; Title

RULE NOS.: 9K-8.004

Appraisal Procedures, Appraisal Report Requirements and Determination of Maximum Approved Purchase Price

9K-8.004

Preparation and Acceptance of Project Plans Examination for Hazardous Materials Contamination

9K-8.007

Closing

9K-8.011

PURPOSE, EFFECT AND SUMMARY: To improve Florida Communities Trust's efficiency in administering Florida Forever Funds and ensure the rules are user-friendly for the customers.

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: 380.507(11) FS. LAW IMPLEMENTED: 259.105, 380.501-.515 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 6, 2005

PLACE: Department of Community Affairs, Room 310M, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Caroline Sutton, Community Program Administrator, Florida Communities Trust, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)922-1707, SunCom 292-1707, at least seven days before the date of the workshop. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party System, 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Caroline Sutton, Community Program Administrator, Florida Communities Trust, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)922-1707, Suncom 292-1707

THE FULL TEXT OF THE PROPOSED RULES IS:

9K-8.004 Election by Recipient of Titleholder and Negotiating Entity; Rules Governing Acquisitions; Title.

(1) through (3) No change.

(4) If a Pre-acquired or Reimbursement Acquisition, title vests in the Recipient and Recipient will provide notification that Recipient's acquisition procedures were followed. If Recipient has no such procedures, the Recipient may follow the Acquisition procedures outlined in this rule chapter.

(5)(4) No change.

Specific Authority 380.507(11) FS. Law Implemented 259.105, 380.501-.515 FS. History--New 5-27-01, Amended 5-20-02, \_\_\_\_\_.

9K-8.007 Appraisal Procedures, Appraisal Report Requirements and Determination of Maximum Approved Purchase Price.

(1) through (5) No change.

(6) The Trust shall compare the Maximum Approved Purchase Price with the cost to purchase the land as estimated in the Application. If that estimated cost is greater than the Maximum Approved Purchase Price, the Trust shall reduce the amount of the Award by a letter of notice to the Recipient an amendment to the Grant Contract.

Specific Authority 380.507(11) FS. Law Implemented 259.105, 380.501-.515 FS. History--New 5-27-01, Amended 5-20-02, \_\_\_\_\_.

9K-8.011 Preparation and Acceptance of Project Plans.

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

(g) Additional documentation as may be requested by the Trust as Reasonable Assurance that the Recipient will be able to fulfill its obligations under the Grant Contract, the Declaration of Restrictive Covenants Grant Award Agreement, and Chapter 9K-7, F.A.C.

(2) through (3) No change.





15B-2.009 Test to Determine Speed Accuracy of Doppler Radar Devices.

(1)(a) No change.

(b) Only the most recent six (6) months test certificate is required in order to establish the presumption available under Section 316.1905(3)(b), F.S. Tests will include transmitter frequency, display response to known antenna input signals for simulated target speeds over a range of speeds from 15 mph to 100 and patrol speeds over a range of speeds from 15 mph to 70 mph, the operation of all controls, tests for recertification of the tuning fork(s) meeting the manufacturer's specifications, radio frequency interference, low supply voltage, and antenna power density. These revised tests shall become effective after June 30, 2004, upon the expiration of each radar unit's prior six-month certification period. Each test shall be recorded on Form HSMV 61070 (Rev. 10/04 3/04) which is incorporated by reference. Blank forms are available by contacting the Department at the address described in subsection 15B-2.008(1), F.A.C. As a condition of purchase, manufacturers shall be required to make known to the purchaser the availability and location of manufacturer-supported test facilities to accomplish the required tests.

(2) through (3) No change.

Specific Authority 316.1905 FS, Law Implemented 316.1905, 316.1906 FS, History--New 9-11-78, Amended 7-12-82, Formerly 15B-2.09, Amended 6-12-89, 1-1-90, 10-18-94, 10-2-95, 5-23-04, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Lt. James D. Wells, Jr., Bureau of Law Enforcement Support Services, Division of Florida Highway Patrol, Department of Highway Safety and Motor Vehicles, Room A315, Neil Kirkman Building, Tallahassee, Florida 32399-0500, (850)488-5799

NAME OF SUPERVISOR OR PERSON WHO APPROVED PROPOSED RULE: Colonel Christopher A. Knight, Director, Division of Florida Highway Patrol

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 5, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF CORRECTIONS**

RULE TITLE: Community Release Programs  
RULE NO.: 33-601.602

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to correct staff titles and provide for consistency in rule and incorporated form language.

SUMMARY: The proposed rule reflects a change in the office to which the forms control administrator is assigned and reflects that the inmate personalized program plan progress review is done biweekly rather than monthly.

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: 945.091 FS.

LAW IMPLEMENTED: 945.091 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: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.602 Community Release Programs.

(1) No change.

(2) Inmate Conduct While On Community Release.

(a) through (c) No change.

(d) The work release center classification officer shall complete a Personalized Program Plan for Work Release Centers, Form DC6-118A, on all inmates assigned to the work release center within 14 days of receipt of the inmate at the center. Form DC6-118A is incorporated by reference in subsection (16) of this rule. The completed personalized program plan shall be signed by the inmate, the classification officer and the correctional officer major. Once the personalized program plan is signed, it shall be given to the staff member assigned to work with the inmate. Any changes in the personalized program plan shall be discussed with the inmate and shall be documented on Form DC6-118B, Personalized Program Plan - Modification Plan. Form DC6-118B is incorporated by reference in subsection (16) of this rule. The inmate's progress towards achieving the goals of the personalized program plan shall be reviewed bi-weekly with the inmate. The outcome of each review shall be documented on Form DC6-118C, Personalized Program Plan - ~~Monthly~~ Biweekly Progress Review. Form DC6-118C is



Specific Authority 408.061(2), 408.15(8) F.S. Law Implemented 408.061(2), 408.61(4) F.S. History—New 6-11-92, Formerly 10N-5.102, Amended 2-24-94, 3-16-03, 6-8-03, \_\_\_\_\_.

THE MATERIAL ADDED TO THE FLORIDA HOSPITAL UNIFORM REPORTING SYSTEM MANUAL AND INCORPORATED BY REFERENCE IN RULE 59E-5.102, F.A.C., IS AVAILABLE UPON REQUEST FROM THE AGENCY FOR HEALTH CARE ADMINISTRATION.

NAME OF PERSON ORIGINATING PROPOSED RULE: Christopher J. Augsburger, Regulatory Analyst Supervisor

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jeffrey N. Gregg, Bureau Chief, Health Facility Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 16, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 11, 2004

**DEPARTMENT OF MANAGEMENT SERVICES**

**State Technology Office**

RULE CHAPTER TITLE: Statewide Law Enforcement Radio System

RULE CHAPTER NO.:

60DD-8

RULE TITLES: Purpose; Definitions

RULE NOS.:

60DD-8.001

Eligible User Classifications;

Application Process 60DD-8.002

Frequencies; Licenses 60DD-8.003

Talk Group Limits 60DD-8.004

Security; Encryption Requirements; Radio

Programming; System Key Management 60DD-8.005

Service and Maintenance Priorities 60DD-8.006

PURPOSE AND EFFECT: To create a rule chapter setting out procedures to allow eligible users to utilize the Statewide Law Enforcement Radio System.

SUMMARY: The rule chapter sets out procedures to allow eligible users to utilize the Statewide Law Enforcement Radio System, providing Definitions, and addressing the topics of Eligible User Classifications, Application Process, Frequencies, Licenses, Talk Group Limits, Security, Encryption Requirements, Radio Programming, System Key Management, and Service and Maintenance Priorities.

SPECIFIC AUTHORITY: 282.102(16) FS.

LAW IMPLEMENTED: 282.1095 FS.

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

TIME AND DATE: 9:00 a.m., January 19, 2005

PLACE: Shared Resource Center, 2585 Shumard Oak Boulevard, Tallahassee, Florida

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should advise the State Technology Office at least 2 calendar days before the workshop, by contacting: Matthew Kimball, (850)922-5511

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Tom Brooks, P.E., Manager, Statewide Law Enforcement Radio System, State Technology Office, 4030 Esplanade Way, Suite 280P, Tallahassee, Florida 32399-0950, (850)414-6768, e-mail: Tom.Brooks@MyFlorida.com

THE FULL TEXT OF THE PROPOSED RULES IS:

60DD-8.001 Purpose; Definitions.

(1) The purpose of this rule chapter is to establish procedures to allow Eligible Users, as defined herein, to use the Statewide Law Enforcement Radio System. Such use benefits the state and facilitates the efficient use of radio spectrum.

(2) The following terms are defined:

(a) Contractor – Entity under contract with State Technology Office to construct the Statewide Law Enforcement Radio System.

(b) Eligible Users – All entities eligible to hold authorizations in the Federal Communication Commission Public Safety Pool as defined by 47 C.F.R. § 90.20 or to share use of the Statewide Law Enforcement Radio System pursuant to 47 C.F.R. § 90.179.

(c) Encryption – Cryptographic transformation of data (called “plaintext”) into a form (called “cipher-text”) that conceals the data’s original meaning to prevent it from being known or used.

(d) First Responder – Entities, including law enforcement, fire service and emergency medical agencies, trained or responsible for rendering initial care or treating or transporting ill or injured persons.

(e) Interoperability – An essential communication link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.

(f) Interoperability Users – Eligible Users who are not State Law Enforcement but who must necessarily communicate via radio with State Law Enforcement in the course of the Eligible User’s duties.

(g) Local Law Enforcement – Law enforcement agencies of counties and municipalities.

(h) Low radio traffic – The condition whereby a radio tower site is serving fewer transmissions than it is capable of satisfactorily serving based upon its design capacity.

(i) MHz – Megahertz, or millions of cycles per second (a measure of radio frequency or channel).

(j) Security Manager – The individual appointed by the Board of Directors of the Joint Task Force on State Agency Law Enforcement Radio Communications to be responsible for the security of the Statewide Law Enforcement Radio System, as well as any Alternate Security Manager or Deputy Security Manager appointed by the Board of Directors of the Joint Task Force on State Agency Law Enforcement Radio Communications.

(k) Special Conditions – Any terms and conditions in the Third Party Agreement for access to the Statewide Law Enforcement Radio System (Form No. STO-SLERS-001, incorporated by reference at subsection 60DD-8.002(2), F.A.C.) included to mitigate the impact of the third party's usage to other users of the system.

(l) State interoperability talk groups – Those talk groups established in the radio system for use by Interoperability Users to communicate with State Law Enforcement agencies.

(m) State Law Enforcement– Law enforcement agencies of state agencies and universities.

(n) System Key – An electronic code applied to every radio in the radio system, to prevent unauthorized radios from accessing the radio system.

(o) System Manager – The individual charged by the State Technology Office with responsibility to manage the Statewide Law Enforcement Radio System and any contracts for its construction.

(p) Talk group – A logical grouping of radio users as defined in the radio system programming that can communicate together; a radio net.

(3) Other terms shall have their commonly understood meaning.

Specific Authority 282.106(16) FS. Law Implemented 282.1095 FS. History—New \_\_\_\_\_.

#### 60DD-8.002 Eligible User Classifications: Application Process.

(1) Eligible users shall be classified as one of the following types, in order to set the requirements for their entry into and use of the Statewide Law Enforcement Radio System:

(a) State Law Enforcement – Agencies of state government and users authorized by them to directly communicate with the Law Enforcement agency. No fees shall apply to such agencies and users.

(b) Third Party Subscriber – Any agency or user other than Law Enforcement eligible to hold authorizations in the Federal Communication Commission Public Safety Pool as defined by 47 C.F.R. § 90.20, or to share use of the Statewide Law Enforcement Radio System pursuant to 47 C.F.R. § 90.179, complying with the conditions of this rule chapter. Third Party Subscribers are further classified as follows:

1. Local Law Enforcement and other First Responders – Agencies of local government and other Eligible Users providing law enforcement, fire, and emergency medical services.

2. Other Public Safety – Agencies of state or local government not directly involved with law enforcement.

3. Interoperability Users – Local government agencies requiring communications with state or local government law enforcement agencies using the State interoperability talk groups, and having no more than twenty-five (25) subscriber radios on the system.

4. Federal government entities that are authorized by the State Technology Office pursuant to 47 C.F.R. § 90.179 and the provisions of this rule chapter.

(c) Personnel that are task-assigned or liaison to a State Law Enforcement agency in direct support of the State Law Enforcement agency's mission but are not a member of the State Law Enforcement agency shall be classified as State Law Enforcement users under this rule chapter, provided that all communication on the system is in direct coordination with the State Law Enforcement agency. Separate internal talk groups set up strictly for the use of a non-State Law Enforcement entity shall constitute eligible Third Party use under this rule chapter. Such groups shall be subject to the same eligibility requirements and membership conditions as any Third Party Subscriber.

(2) Eligible entities wishing to apply to use the Statewide Law Enforcement Radio System shall complete the Third Party Application and Agreement for access to the Statewide Law Enforcement Radio System (Form No. STO-SLERS-001), which hereby incorporated by reference. Form No. STO-SLERS-001 is available on line at [www.myflorida.com](http://www.myflorida.com) or by writing to:

Statewide Law Enforcement Radio System  
System Manager  
4030 Esplanade Way, Suite 280P  
Tallahassee, Florida 32399-0950

(a) Upon receipt of the application, the State Technology Office will within 7 days request Contractor to prepare a proposal for the applicant. The proposal shall contain the proposed terms and conditions, proposed term of subscription, proposed radio coverage requirements, proposed site usage, necessary frequencies and licensing, an overview of equipment, overview of network operation, maintenance and reporting, and an analysis of traffic load impact to the system. The proposal must include a proposed Statement of Responsibilities for subscriber which defines roles and responsibilities of Third Party Subscriber and STO.

(b) After receipt of the proposal, the State Technology Office will review the proposal for compliance with paragraph 60DD-8.002(2)(a), F.A.C., and within 60 days provide the Contractor and applicant with recommendations, if any, regarding the proposal. The State Technology Office shall

review the proposal with the Technical and Standard Operations Procedures committees of the Joint Task Force on State Agency Law Enforcement Radio Communications, and present the proposal to the Board of Directors of the Joint Task Force on State Agency Law Enforcement Radio Communications. If the State Technology Office makes recommendations regarding the proposal, the Contractor shall prepare a final proposal and resubmit the proposal to the State Technology Office.

(c) The State Technology Office shall determine whether the final proposal meets the following conditions:

1. The applicant meets the definition of a Third Party Subscriber in paragraph 60DD-8.002(1)(b), F.A.C.:

2. The proposed use of the system by the applicant will not cause the hourly average waiting time per call to exceeds 0.5 seconds at any site:

3. The proposed use of the system by the applicant will not cause degradation to security or existing operations.

(d) If in response to a proposal the State Technology Office requests an applicant to provide radio frequencies for the system, the applicant shall submit with the final proposal a letter to the System Manager listing the frequencies and authorizing their use.

(e) Upon satisfactory completion of the procedures set forth in paragraphs 60DD-8.002(2)(a)-(d), F.A.C., the State Technology Office shall authorize third party use of the system by the applicant.

(3) Local Law Enforcement and other First Responders will be granted call priorities equivalent to those granted to State Law Enforcement Users. All other Third Party Subscribers shall have lower call priorities.

Specific Authority 282.106(16) FS. Law Implemented 282.1095 FS. History–New \_\_\_\_\_.

#### 60DD-8.003 Frequencies and Licenses.

(1) Third Party Subscribers shall contribute frequencies by an agreement to relinquish them to the State Technology Office for the period of Statewide Law Enforcement Radio System use. Third Party Subscribers shall provide at least six (6) months minimum notice of leaving the system before the contributed frequencies will be returned to the user. The State Technology Office may license in the State of Florida's name all such frequencies contributed to the system.

(2) Federal users and non-State Law Enforcement state agencies wishing to join the Statewide Law Enforcement System but having no frequencies to add may be requested to purchase dual band 700/800 MHz radios or to comply with other Special Conditions that may be specified in order to avoid excessive additional traffic loads on the Statewide Law Enforcement Radio System.

(3) Interoperability Users will be exempted from the requirement to provide frequencies if the State Technology Office determines through an engineering evaluation that the subscriber will have a negligible negative impact on the Statewide Law Enforcement Radio System.

Specific Authority 282.106(16) FS. Law Implemented 282.1095 FS. History–New \_\_\_\_\_.

#### 60DD-8.004 Talk Group Limits.

To prevent exhaustion of the Statewide Law Enforcement Radio System's talk group capacity, limits shall be applied as follows:

(1) Local Law Enforcement and other First Responder eligible Third Party Subscribers shall be limited to six talk groups for the first 50 radios, and one additional new talk group in the system for each additional group of 25 or more radios the eligible user requests to use with the system.

(2) Other Third Party Subscribers shall be limited to six talk groups for the first 50 radios, and one additional new talk group for each additional 50 or more radios the eligible user requests to use with the system.

(3) Interoperability Users will be limited to one individual talk group.

Specific Authority 282.106(16) FS. Law Implemented 282.1095 FS. History–New \_\_\_\_\_.

#### 60DD-8.005 Security, Encryption Requirements, Radio Programming, and System Key Management.

(1) Personnel background checks are required for Interoperability Users but are not required for Third Party Subscribers, unless required by the Third Party Subscriber. Personnel background checks are required for system users of State Law Enforcement agencies and the State Technology Office, and for all contractor personnel who install or maintain the system.

(2) Access to physical facilities of the Statewide Law Enforcement Radio System shall be limited to personnel of State Law Enforcement agencies, the State Technology Office and its contractors, or personnel who are escorted by the same.

(3) Encryption is required for access to State interoperability talk groups, but is otherwise at the option of the Third Party Subscriber.

(4) The State Technology Office and its contractors shall be responsible for all radio programming for Third Party Subscribers on the Statewide Law Enforcement Radio System. The system key shall not be released outside the State Law Enforcement agencies, the State Technology Office and its contractors.

Specific Authority 282.106(16) FS. Law Implemented 282.1095 FS. History–New \_\_\_\_\_.

60DD-8.006 Service and Maintenance Priorities.

(1) If traffic loading at a site causes queuing of calls such that the busy hour average waiting time per call exceeds 0.5 seconds, then the State Technology Office, in consultation with the Contractor and system users, may take measures to restrict system use. Such measures may include: Disabling of individual calling and telephone interconnect calling; patching of talk groups; disabling of talk groups; disallowing the addition of radios to the system; and partitioning of channels.

(2) In no case shall any Third Party Subscriber be granted a higher priority for traffic or provided a faster response for maintenance than required for the State Law Enforcement users of the Statewide Law Enforcement Radio System.

Specific Authority 282.106(16) FS. Law Implemented 282.1095 FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tom Brooks, P.E., Manager, Statewide Law Enforcement Radio System, State Technology Office

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Simone Marsteller, Chief Information Officer, State Technology Office

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 7, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 1, 2004

**DEPARTMENT OF MANAGEMENT SERVICES**

**Division of Facilities Management and Building Construction**

RULE CHAPTER TITLE: Lease or Sublease of State-Owned Property for E911 System

RULE CHAPTER NO.:

Wireless Communication Facility

60H-9

RULE TITLES:

RULE NOS.:

Definitions

60H-9.001

Intent

60H-9.002

Properties Acquired for Transportation

Purposes Excluded

60H-9.003

Requests for Location and Determination

60H-9.004

Negotiation of Lease Agreement

60H-9.005

PURPOSE, EFFECT AND SUMMARY: The purpose and effect of this rulemaking is to promulgate a set of rules defining a process for the use of State-owned Property to site Wireless Communication Facilities to support the Wireless E911 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: 365.172(11)(e) FS.

LAW IMPLEMENTED: 365.172(3) FS.

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

TIME AND DATE: 9:00 a.m. – 12:00 Noon, January 18, 2004

PLACE: Shared Resources Center, 2585 Shumard Oak Boulevard, Tallahassee, Florida

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should advise the Department of Management Services at least 2 calendar days before the workshop, by contacting: Marta McPherson, (850)488-2707.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Owen, Senior Management Analyst II, Facilities Management and Building Construction, 4030 Esplanade Way, Suite 360, Tallahassee, Florida 32399-0950, (850)488-0439, Suncom 278-3239, owenj@dms.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

60H-9.001 Definitions.

(1) For purposes of this rule chapter, each of these words shall have the following meaning:

(a) Agency – An official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of the executive or judicial branch of state government.

(b) Available – A decision that State-owned Property may be used for the placement of a Wireless Communication Facility, based on a determination that placement meets the evaluation requirements of the Owner Agency and Managing Agency.

(c) Department – Department of Management Services

(d) Determination of Availability – A process for assessing an identified State-owned Property for placement of a Wireless Communication Facility. A Determination of Availability consists of a Provider’s proposal for placement and the Owner and Managing Agency’s evaluation that the placement is in the best interest of the State, is consistent with the current and future use of the State-owned Property and balances the Agencies’ mission with the public need for a reliable E911 System.

(e) Division of State Lands – Florida Department of Environmental Protection, Division of State Lands.

(f) E911 – The designation for a wireless enhanced 911 system or wireless enhanced 911 service that is an emergency telephone system or service that provides a subscriber with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the State plan under Section 365.171(4), Florida Statutes, and that provides for

automatic number identification and automatic location-identification features in accordance with requirements of the Order.

(g) Lease Agreement – An agreement that is negotiated and executed by the Department as set forth in Rule 60H-9.005, F.A.C., under which a Provider leases or subleases State-owned Property directly from the Managing Agency if a lease agreement is in effect or the Owner Agency, for the installation of a Wireless Communications Facility.

(h) Managing Agency – An Agency with exclusive lease agreement or other proprietary authorization from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or other Owner Agency to occupy and manage a particular State-owned Property.

(i) Order – Federal Communications Commission orders referenced in Section 365.172(3)(m), Florida Statutes.

(j) Owner Agency – A state entity vested with title to State-owned Property.

(k) Owner Representative – The agency serving as title-holder, managing entity or agency employee with oversight responsibilities regarding State-owned real estate.

(l) Preliminary Determination of Availability – Initial site evaluation by the Provider for viability of a specific site and suitability by the Owner Agency and Managing Agency before proceeding with the Availability assessment.

(m) Provider – A private person or entity who is subject to the requirements of an Order and provides E911 Service in this state.

(n) Request For Locations – A Provider’s written request to the Department to locate an E911 Service on state-owned land or buildings in a defined area within the state.

(o) Service – Commercial mobile radio service as defined in Section 365.172(3)(s), Florida Statutes.

(p) State-owned Property – Real or personal property, structures or buildings, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or any agency (as defined in Section 255.502(3), Florida Statutes), except those properties for which the Department of Transportation serves as the owner-representative, on behalf of the Owner Agency, for State-owned Property acquired for transportation purposes.

(q) Viable – A determination by a Provider that a specific state-owned property is acceptable for their needs as a site to place a tower with antenna or antenna on an existing state-owned structure.

(r) Wireless Communication Antenna Support Structure – A structure, including related equipment, intended to support wireless communication equipment used in the provision of Service. Wireless Communication Antenna Support Structures are generally described as either monopole (freestanding), lattice (self-supporting), guyed (anchored with guy wires or cables) or camouflaged (disguised so as to not appear to be an antenna support structure).

(s) Wireless Communication Antenna – A device designed to transmit or receive communications authorized by the Federal Communications Commission (FCC).

(t) Wireless Communication Facility – Any equipment or facility used to provide E911 Service, including Wireless Communication Antenna, Wireless Communication Antenna Support Structure, accessory equipment enclosures, and ancillary cabling, brackets, and other such ancillary equipment.

(2) Other terms shall have their commonly understood meaning.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS. History–New \_\_\_\_\_.

#### 60H-9.002 Intent.

The State of Florida supports the use of State-owned Property for the siting of Wireless Communication Facilities for the purpose of supporting the E911 Systems. The siting of such facilities entails a balanced approach between the ability of providers to locate wireless facilities necessary to comply with E911 System requirements using the Provider’s own network and the Availability of State-owned Property as determined by current and future use of land, local government requirements, agency functions, and public welfare goals. Co-location of more than one antenna per tower is encouraged where there are multiple antennae or structure siting requests for the same location. The process to lease State-owned Property for a Wireless Communication Facility shall be a three-step process consisting of the Preliminary Determination of Availability, the Final Determination of Availability, and the negotiated and, if agreed, the execution of the Lease Agreement.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS. History–New \_\_\_\_\_.

#### 60H-9.003 Properties Acquired for Transportation Purposes Excluded.

This chapter shall not include property for which the Florida Department of Transportation serves as the owner-representative, on behalf of an Owner Agency, for State-owned Property acquired for transportation purpose.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS. History–New \_\_\_\_\_.

#### 60H-9.004 Requests for Locations and Determination of Availability.

(1) Overview. The Department will negotiate leases between the Providers and Owner Agencies or subleases between the Providers and Managing Agencies (if the State-owned Property is under an existing lease agreement) for the installation of Wireless Communications Facilities following a Determination of Availability by the Division of State Lands (acting as agent for the Owner Agency, the Board of Trustees of the Internal Improvement Trust Fund) or other Owner Agency, as well as from the Managing Agency when applicable, as described below.



(2) All Owner and Managing Agencies of State-owned Property shall provide contact information to the Department and the Department shall advise Providers of the appropriate contact information. A Provider shall initially submit a Request for Locations to the Department which, in turn, shall forward the request to the Owner Agency and Managing Agency with responsibility for the subject property. All Managing Agencies that perform as the owner-representative, on behalf of an Owner Agency, for real property not acquired for transportation purposes shall provide a contact individual to the Department. Contact information and the Request for Locations shall be submitted to:

Department of Management Services

Facilities Program Director

Division of Facilities Management and Building Construction

4050 Esplanade Way

Building 4030, Suite 380

Tallahassee, Florida 32399-0950

(3) Provider shall communicate with the Managing Agency, followed by communication with the Owner Agency, to discuss the availability of the subject State-owned Property for the requested placement of a Wireless Communication Facility. If requested by the Provider, a physical site review shall be scheduled to determine if the site is viable for placement of a Wireless Communications Facility.

(4) Once a Provider has located a viable site, the Preliminary Determination of Availability process begins, which involves the Provider, Owner Agency and Managing Agency. The Provider shall submit a written request for Preliminary Determination of Availability to the Managing Agency, Owner Agency and the Facilities Program. The Department shall accept, on a first come, first served basis, the written request for Preliminary Determination of Availability. The request for Preliminary Determination of Availability shall contain sufficient basic evaluation information as follows:

(a) Information regarding the business of Provider, including services provided, qualification to transact business in Florida, and required governmental entity licenses;

(b) Location of the proposed site with general description;

(c) Type of proposed Wireless Communication Facility including a sketch of proposed project with placement on the premises;

(d) Build out size of any proposed antenna support structure;

(e) Proposed Project schedule;

(f) Letter from the Owner Agency and the Managing Agency acknowledging the potential of the proposed site.

(5) If more than one request for Preliminary Determination of Availability is filed for the same State-owned Property, applications for the same general type of facility (e.g. two applications for a Wireless Communication Antenna Support Structure or two applications for the placement of Antennas on

the same building) in the same general location on the Property, shall be processed on a first come, first served basis, as determined by the date a completed request for Preliminary Determination of Availability is received by the Facilities Program.

(6) After review of the Provider's request pursuant to section (4) above, the Owner Agency and Managing Agency shall make a Preliminary Determination within sixty (60) days as to whether the State-owned Property is potentially available as a site for the proposed Wireless Communication Facility. Such determination shall be based on the following evaluation criteria:

(a) Whether the placement and operation of the proposed wireless communications facility will interfere with the current or planned future use of the State-owned Property;

(b) Whether the placement and operation of the proposed Wireless Communications Facility will compromise or negatively impact the operation, security, or function of the agency currently managing the State-owned Property; and

(c) Whether the placement and operation of the proposed Wireless Communications Facility is in the best interest of the State, balancing the benefits of the Owner and Managing Agency's mission, safety of the public and the benefits of reliable E911 Service.

(7) If the Preliminary Determination of Availability by the Owner Agency is that the property is Available, but the Managing Agency makes a Preliminary Determination of Availability that the property is not available, the Provider may request a meeting with the Managing Agency to seek to change the Preliminary Determination. After such meeting, if the Preliminary Determination by the Managing Agency is not changed, the request shall be considered denied.

(8) If the Preliminary Determination by the Owner Agency is that the property is not available, the Preliminary Determination of Availability request shall be considered denied.

(9) If the Preliminary Determination by the Owner Agency and Managing Agency is that the State-owned Property is Available, the Provider shall submit the following additional documentation at its own expense to the Owner Agency and Managing Agency for a Final Determination of Availability.

(a) Construction Drawings must contain:

1. A scaled site plan of the proposed leased or subleased premises clearly indicating the location, type, cross-section and height of the proposed Wireless Communication Facility, on-site land uses, adjacent land uses, proposed means of access, setbacks from property lines, and parking;

2. Time frame for building the proposed facility;

3. Other information applicable to the proposed lease or sublease premises and the subject structure, including the following: grading of the property; sanitary and storm sewers

requirements; paving and retaining walls; water; gas and electric distribution systems; and extra-ordinary excavation or foundations; and

4. A description of compliance with the requirements of this section and all applicable federal, state, or local laws, including applicable Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) regulations; and

5. For proposed Wireless Communication Antenna Support Structures or portions of the facility to be placed on the ground:

a. A signed and sealed boundary or field survey of the proposed lease or sublease premises on which the support structure and equipment will be located, with legal description of the property proposed to be leased or subleased, which also indicates access to adjacent roadways, and

b. Elevation drawings of the proposed Communication Antenna Support Structure and any other structures associated with the proposed Wireless Communication Facility.

c. A landscape plan of the proposed leased or subleased premises showing specific landscape materials.

d. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

(b) For proposed Wireless Communication Antenna Support Structures, a notarized statement by Provider as to whether construction of the Antenna Support Structure will accommodate the co-location of additional antennas for future users.

(c) A signed and sealed document completed by an engineer licensed to perform engineering services in the State that all applicable structural requirements will be met.

(d) A notarized statement by the Provider that the Wireless Communication Facility will provide E911 Service.

(10) Subsequent to the provision of the above-required documentation the Owner Agency and Managing Agency will conduct an initial review of Provider's information for sufficiency. The Managing Agency shall review the Lease Agreement and provide any security, access, or other site-specific language necessary to protect the interests of the Managing Agency for inclusion in the Lease Agreement. The Owner Agency and the Managing Agency will inform Provider of the need for any additional information, review and reporting requirements necessary due to statutory, legal, or internal requirements.

(11) The Owner Agency and Managing Agency will each provide written notification to Provider of the agency's Final Determination regarding the property's availability.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS. History--New \_\_\_\_\_.

#### 60H-9.005 Negotiation of Lease Agreement.

(1) After the Provider obtains written notification of Final Determination from the Owner Agency and Managing Agency that the identified property is Available, the Provider shall submit to the Department a written request to initiate the review of the Lease Agreement for negotiations of the lease fee. Copies of the request shall be sent to the Owner Agency and the Managing Agency. Such request shall attach the proposed Lease Agreement for the identified State-owned Property including any additional language requested by the Managing Agency regarding security, access or other site-specific issues necessary to protect the Managing Agency's interests and copies of the Final Determination documents.

(2) Upon receiving a proposed Lease Agreement with written notification(s) of Final Determination, the Department shall review for sufficiency, identify missing information required of the Provider and enter into negotiations with the Provider when the Lease Agreement is completed. Upon notification by the Department of incomplete documentation to execute a Lease Agreement, the Provider shall have 45 days to complete the remaining requirements as defined by the Department in accordance with Rule Chapter 60H-9, F.A.C. A completed proposed Lease Agreement shall address conditions and technical specifications, as described below. The date and time of receipt of the written request for Preliminary Determination of Availability by the Department will determine the order of review of each specific site for the Lease Agreement.

(3) The Department shall negotiate each proposed Lease Agreement as follows:

(a) All leases or subleases for use of telecommunication facilities on State-owned Property not acquired for transportation purposes shall be on a Lease Agreement approved by the Department. The Lease Agreement shall include the following requirements:

1. Definition of the lease type as to land for a tower, building rooftop or collocation on existing vertical structure;

2. Access rights for the Provider to the State-owned Property;

3. Defined time for terms and any extended terms of the Lease Agreement;

4. Defined requirements for any fees and payments under the Lease Agreement, including clearly defined rental terms and fees;

5. Requirements that the Provider is responsible for payment of all required taxes, obtaining all required permits, and providing a Project Manager to coordinate with all government entities.

6. Defined terms for assignment and subleasing under the Lease Agreement;

7. Defined terms and conditions for subleasing or licensing tower space for collocation of other Providers' equipment;

8. Requirements for installation, maintenance and repairs of installed equipment by the Provider;

9. A Statement regarding compliance with the regulatory requirements of all regulatory agencies;

10. A Statement defining ownership of real property;

11. Requirements for notification for approval of all material modification of the facilities on leased property and associated additional rent;

12. Requirements for collocation of additional wireless communication equipment and services;

13. Requirements for equipment removal at termination of lease agreement or abandonment and restoration of property;

14. Requirements for entry by Sublessor to subleased property and fire and casualty damage responsibilities;

15. Requirements for security and subcontractor or subcontractor agent access;

16. Requirements covering asbestos containment and performance bonds;

17. Requirements covering compliance with Chapter 119, the Florida Public Records Act;

18. Requirements for dispute resolution;

19. Requirements for insurance, general liability, Workers' Compensation, commercial auto liability and owner's contractor coverage, with no provisions for waiver;

20. A statement that the Provider will indemnify the parties for any claims arising out of the lease or sublease;

21. Requirements covering default and termination;

22. Requirements covering maintenance, lighting, marking, inspection, utilities, environmental conditions, waiver of liens, and force majeure;

23. A site plan of the leased property, diagrams of proposed tower or installation of antenna, survey of leased property and technical specifications of the proposal;

24. A copy of any lease agreement on the property currently in place, including leases with the Board of Trustees of the Internal Improvement Trust Fund; and

25. Signatures required to execute the Lease Agreement.

Department of Management Services

Facilities Program

Division of Facilities Management and Building Construction

4050 Esplanade Way

Building 4030, Suite 380

Tallahassee, Florida 32399-0950

(b) Lease Agreements shall be submitted in writing to the Director, with copies to the Owner Agency and Managing Agency and state with reasonable particularity why the change or addition is necessary and in the best interest of the State. The Owner Agency and/or Managing Agency shall provide to the

Department any objections to the request for change within thirty (30) days of receipt of such notice. Notice shall be provided to by registered mail to:

Department of Management Services

Facilities Program Director

Division of Facilities Management and Building Construction

4050 Esplanade Way

Building 4030, Suite 380

Tallahassee, Florida 32399-0950

(c) The Department's approval must be obtained in accordance with this rule chapter for each Lease Agreement pursuant to Section 365.172(11)(e), F.S., for all State-owned property not purchased for transportation purposes.

(d) The Department, or its designated representative, shall negotiate reasonable fees for leasing State-owned property that reflect the market rate for the type of facility or geographic location of the property. Rental rate will be derived from use of set rate schedules, and other reasonable means of determining fair market value for the specific location and placement in question and as described in subsection (4) below. Distribution of Lease Agreement proceeds between the Owner Agency and Managing Agency shall be defined in and pursuant to the Lease Agreement. In cases of a Lease Agreement between a Provider and an Owner Agency, the Owner Agency shall receive 100% of the proceeds.

(e) If agreement is reached, the Department will circulate the negotiated Lease Agreement among the Owner Agency, Managing Agency and Provider for final signature and execution.

(4) If the Department and the Provider are unable to negotiate a satisfactory lease or sublease rental rate, the parties may mutually agree on the selection of a licensed appraiser to assist in minimizing differences between the parties. The appraisal shall be non-binding and the expense of said appraiser shall be borne solely by the Provider. The Appraiser shall conduct an appraisal study to establish the fair market rate for use of the Property based upon the geographic area and type of Wireless Communication Facility, which is the subject of the lease or sublease. If the parties are unable to negotiate a satisfactory lease or sublease, whether an appraisal is conducted or not, negotiations shall be terminated. DMS will then undertake negotiations based on a first-come, first-served basis with the next Provider, who has filed a written request for Preliminary Determination of Availability and thereafter, if necessary, with the next Providers.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(11) FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
John Owen, Senior Management Analyst II, Facilities  
Management and Building Construction

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cindy Marsiglio, Deputy Secretary, Department of Management Services  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2004  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 1, 2004

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Pilot Commissioners**

RULE TITLE: Percentage of Gross Pilotage Assessed  
 RULE NO.: 61G14-19.001

PURPOSE AND EFFECT: The proposed rule amendment is intended to increase the gross pilotage assessment.

SUMMARY: The proposed rule amendment increases the gross pilotage assessment from 0.6% to 1.0%.

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: 310.131, 310.185 FS.

LAW IMPLEMENTED: 310.131 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: Anthony Spivey, Executive Director, Board of Pilot Commissioners, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G14-19.001 Percentage of Gross Pilotage Assessed.

(1) ~~The Effective July 1, 2003, the~~ Department of Business and Professional Regulation shall assess the pilots in the respective ports of the state ~~six tenths of one percent (0.6%)~~ one percent (1.0%) of the gross amount of pilotage earned by said pilots during each year. For the purposes of said assessment, the gross amount of pilotage earned shall be the amount of money collected by each pilot or by each entity of which the pilot is a member for piloting which shall include and not be limited to payment for piloting vessels to and from ports of this state, docking or undocking vessels, shifting vessels, running lines, delivering orders at sea, cancelled orders, boat service, detention, pilots being carried to sea, anchoring vessels, and any other related services rendered. Funds collected due under this are to be made payable to the Board and paid by the

fifteenth of the following month. When received, the funds are paid into the Professional Regulation Trust Fund as created within the Department.

(2) In order to insure compliance with the requirements of subsection (1), each pilot or the entity of which the pilot is a member shall, on an annual basis, not later than April 15, beginning with the fiscal year ending December 31, 1980:

(a) Submit to the Department a statement prepared by a certified public accountant showing the gross amount of pilotage earned during the previous year; or

(b) Submit to the Department the first page of the Federal Income Tax return filed by the pilot or entity for the previous year. If the income tax return discloses income other than pilotage, there must also be submitted any other schedules necessary to reconcile the amount of pilotage earned with the amount of the assessment submitted to the Department. In the event that the pilot or the entity of which the pilot is a member fails to submit either a statement prepared by a certified public accountant or the first page of the appropriate Federal Income Tax return and other required schedules, the Department shall hire certified public accountants to audit the pilot or the entity of which the pilot is a member for the purpose of determining the gross amount of pilotage earned during the previous year. The cost of such an audit will be borne by the pilot or the entity of which the pilot is a member.

Specific Authority 310.131, 310.185 FS. Law Implemented 310.131 FS. History—New 2-5-76, Amended 1-19-77, 1-1-78, 12-7-78, 11-1-81, 6-8-82, 8-9-82, 7-31-83, Formerly 21SS-3.01, Amended 5-30-89, 2-19-90, 12-30-91, 12-2-92, Formerly 21SS-3.001, 21SS-19.001, Amended 3-20-94, 1-5-95, 1-30-96, 3-17-96, 11-21-96, 8-25-97, 1-26-99, 1-31-01, 8-1-02, 7-8-03,

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pilot Commissioners

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 7, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 18, 2004

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF HEALTH**

**Board of Massage Therapy**

RULE TITLE: Continuing Education  
 RULE NO.: 64B7-28.009

PURPOSE AND EFFECT: The purpose of the rule is to expand the available sources for licensees to use in obtaining CPR training for continuing education licensure renewal credit.

SUMMARY: The rule adds other approved sources for providing CPR training to licensed massage therapists for continuing education credit.

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 regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.013(7),(8), 480.035(7), 480.0415 FS.

LAW IMPLEMENTED: 456.013(7),(8), 480.0415 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: Pamela E. King, Executive Director, Board of Massage Therapy, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B7-28.009 Continuing Education.

(1) through (2) No change.

(3) Effective for the biennium beginning September 1, 2001, the continuing education contact hours shall be in the following areas:

(a) At least 12 continuing education hours shall be relevant to and focus on massage therapy techniques, which may include history of massage therapy, human anatomy, physiology, kinesiology, and/or pathology.

(b) Except as provided in subsection 64B7-28.009(1), F.A.C., two hours must cover instruction in professional ethics, two hours must be in a course relating to the prevention of medical errors, and two hours must cover instruction in Chapters 480 and 456, F.S., and Rule Chapter 64B7, F.A.C.

(c) The remaining hours may include courses on communications with clients and other professionals, insurance relating to third party payment or reimbursement for services, psychological dynamics of the client-therapist relationship, risk management, including charting, documentation, record keeping, or infection control (other than the HIV/AIDS course required by Section 456.034, F.S.), or massage practice management. The remaining hours may also include up to 4 hours credit for adult cardio-pulmonary resuscitation (CPR), provided the course is sponsored by the American Red Cross, ~~or the American Heart Association;~~ or the American Safety and Health Institute, or is instructed by persons certified to instruct courses for those organizations.

(4) through (5) No change.

Specific Authority 456.013(7),(8),(9) 480.035(7), 480.0415 FS. Law Implemented 456.013(7),(8),(9) 480.0415 FS. History--New 4-21-86, Amended 2-25-88, 8-29-88, 1-30-90, 10-2-90, Formerly 21L-28.009, Amended 8-16-94, 6-5-95, 2-12-97, Formerly 61G11-28.009, Amended 8-16-98, 3-15-99, 9-20-99, 11-28-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 29, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 1, 2004

**DEPARTMENT OF HEALTH**

**Board of Orthotists and Prosthetists**

RULE TITLE: Continuing Education Requirement RULE NO.: 64B14-5.002

PURPOSE AND EFFECT: For the biennial licensure renewal period beginning December 1, 2005, the Board proposes to revise the requirements for obtaining continuing education hours in cardiopulmonary resuscitation (CPR) to obtaining an up to date registration showing competency as a healthcare provider from the American Red Cross or the American Heart Association, which is dependent on CPR instruction.

SUMMARY: Effective for the biennium beginning December 1, 2005, the rule revises the biennial CPR continuing education requirements to require up to date registration as a health care provider from the American Red Cross or the American Heart Association.

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 regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 468.802, 468.806 FS.

LAW IMPLEMENTED: 456.013, 456.024, 468.806 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: Joe Baker, Jr., Executive Director, Board of Orthotists and Prosthetists, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B14-5.002 Continuing Education Requirement.

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

(c) For each biennium ending after May 31, 2001, each licensee's continuing education must include one hour of continuing education on cardiopulmonary resuscitation; one

hour on infectious diseases including HIV/AIDS, two hours of continuing education relating to prevention of medical errors which shall include a study of root-cause analysis, error reduction and prevention, and patient safety and two hours on Chapters 456, 468, Part XIV, F.S., and Rule Chapter 64B14, F.A.C. The two hour course relating to the prevention of medical errors shall count toward the total number of continuing education hours required and shall be a course approved by the Board.

For the biennium beginning December 1, 2005, each licensee's continuing education must include one hour of infectious diseases including HIV/AIDS; two hours on Chapters 456, 468 Part XIV F. S. and Rule Chapter 64B14, F.A.C.; an up to date registration showing competency as a Healthcare Provider by the American Heart Association or American Red Cross; and two hours of continuing education relating to the prevention of medical errors, which shall include a study of root cause analysis, error reduction and prevention, and patient safety. The two hour medical errors course shall be a course approved by the Board and shall count toward the total number of continuing education hours required for the biennium.

(2) through (9) No change.

Specific Authority 468.802, 468.806 FS. Law Implemented 456.013, 456.024, 468.806 FS. History—New 7-1-98, Amended 5-18-00, 7-18-02, 11-11-02,

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Orthotists and Prosthetists  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Orthotists and Prosthetists  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 5, 2004  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 26, 2004

**FLORIDA HOUSING FINANCE CORPORATION**

RULE TITLES:	RULE NOS.:
Definitions	67-21.002
Application and Selection Process for Developments	67-21.003
Applicant Administrative Appeal Procedures	67-21.0035
Federal Set-Aside Requirements	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 MMRB 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
Non-Credit Enhanced 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
Transfer of Ownership	67-21.017
Refundings and Troubled Development Review	67-21.018
Issuance of Bonds for Section 501(c)(3) Entities	67-21.019

**PURPOSE AND EFFECT:** The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall administer the Application process, determine bond allocation amounts and implement the provisions of the Multifamily Mortgage Revenue Bond (MMRB) Program authorized by Section 142 of the Code and Section 420.509, 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 and/or Application. 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 2005 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:** 420.507, 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 7, 2005

**PLACE:** Tallahassee City Hall, Commission Chambers, 891 South Adams Street, Tallahassee, Florida 32301

**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 32031-1329, (850)488-4197

## THE FULL TEXT OF THE PROPOSED RULES IS:

## 67-21.002 Definitions.

(1) "Acknowledgment Resolution" means the official action taken by ~~the Corporation Florida Housing~~ to reflect its intent ~~to attempt~~ to finance a Development provided that the requirements of ~~the Corporation Florida Housing~~, the terms of the MMRB 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, F.S., ~~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 and closest designated intersection, city, state and zip 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) "ALF" or "Assisted Living Facility" means a Florida licensed living facility that complies with Sections 400.401 through 400.454, F.S., and Rule Chapter 58A-5, F.A.C. "Annual Recertification" means ~~the compilation of the gross income of all persons or families in a given development qualified as lower income residents to continue to meet the requirements established in section 142(d) of the Code.~~

(6) "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 ~~the Corporation Florida Housing~~, as of the date of occupancy shown on the Income Certification promulgated by ~~the Corporation Florida Housing~~.

(7) "Applicant" means any person or legally formed entity; ~~for profit or not for profit~~, that is seeking a loan or funding from ~~the Corporation Florida Housing~~ for a multifamily Development and that by submitting an Application for one of the Corporation's programs, has agreed to subject itself to the regulatory powers of Florida Housing.

(8) "Application" means the ~~completed forms and from the Universal Application Package, together with all exhibits created by the Corporation for the purpose of providing the means to apply for one or more of the Corporation's programs submitted to Florida Housing.~~ A completed Application may include additional supporting documentation provided by an Applicant in accordance with the provisions of this rule chapter 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.

(10) "Application Period" means a period during which Applications shall be accepted, as posted on the Corporation's website Florida Housing's web site and with a deadline no less than thirty days from the beginning of the Application Period.

~~(11) "Assisted Living Facility" or "ALF" means a Florida licensed living facility that complies with Sections 400.401 through 400.454, F.S., and Rule Chapter 58A-5, F.A.C.~~

~~(11)(12) "Board" or "Board of Directors" means the Board of Directors of the Corporation Florida Housing.~~

~~(12)(13) "Bond Counsel" means the attorney or law firm retained by the Corporation Florida Housing to provide the specialized services generally described in the industry as the role of bond counsel.~~

~~(13)(14) "Bond" or "Bonds" or "Revenue Bonds" means the Bonds as defined in Section 420.503, F.S. 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.~~

~~(14)(15) "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 the Corporation Florida Housing, in enforcing the terms of the Program Documents.~~

~~(15)(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.~~

~~(16)(17) "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, F.S.~~

~~(18) "Code" or "IRC" is 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 or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States, and is adopted and incorporated herein by reference.~~

~~(17)(19) "Commercial Fishing Worker" means Commercial fishing worker as defined in Section 420.503, F.S. 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.

(18)(20) "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 at the time of initial occupancy.

(19)(21) "Contact Person" means the person with whom the Corporation Florida Housing will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

(20)(22) "Corporation" or "Florida Housing" or "FHFC" means the Florida Housing Finance Corporation as defined in Section 420.503, F.S. created pursuant to the Act.

(21)(23) "Cost of Issuance Fee" means the fee charged by the Corporation 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 the Corporation Florida Housing.

(22)(24) "Credit Enhancement or Guarantee Instrument" means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to the Corporation 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 the MMRB Program Florida Housing's. A Credit Enhancement or Guarantee Instrument of less than ten years must be approved by the Board of Directors prior to being accepted to secure any Bonds.

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

(24)(26) "Credit Underwriter" means the independent contractor under contract with the Corporation Florida Housing having the responsibility for providing 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.

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

(26)(28) "Credit Underwriting Report" means the a report for a particular Development that is a product of of 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.

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

(28) "DDA" or "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 IRC.

(29)(30) "Developer" means the 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 identified as such in the Application. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

(30)(31) "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 payments for Application consultants, construction management or supervision, or local government consultants. 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 of Directors 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)~~(32) "Development" means Project as defined in Section 420.503, F.S. 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)~~(33) "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.

~~(34)~~ "Difficult Development Area" or "DDA" 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. The United States Department of Housing and Urban Development maintains the official DDA list. Applicants are responsible for providing Florida Housing with accurate DDA information.

~~(33)~~(35) "Disclosure Counsel" means the Special Counsel designated by the Corporation Florida Housing to be responsible for the drafting and delivery of the Corporation's 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.~~

~~(34)~~(36) "Elderly" means Elderly as defined in Section 420.503, F.S. persons 62 years of age or older or qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), F.S.

~~(35)~~(37) "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), F.S., provided that such

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

~~(36)~~(38) "Family" or "Family Household" describes a household composed of one or more persons.

~~(37)~~(39) "Farmworker" means Farmworker as defined in Section 420.503, F.S. 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.~~

~~(38)~~(40) "Farmworker Development" means a Development:

(a) Of not greater than 160 units, at least ~~40~~ 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.~~

~~(39)~~(41) "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at the time of initial occupancy.

~~(40)~~(42) "Financial Advisor" means, with respect to an issue of Bonds, a professional who is either under contract to the Corporation 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.

~~(41)~~(43) "Financial Beneficiary" means any Developer and its Pprincipals or the Pprincipals of the Applicant entity who 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.

~~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 subsection 67-21.002(48), F.A.C.

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

(42)(45) "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.

(46) "Funding Cycle" means the period of time established by pursuant to this rule chapter and concluding with the issuance of allocations or Loans to Applicants who applied during a given Application Period.

(43)(47) "General Contractor" means a person or an 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, and which meets the criteria described in Rule 67-21.007, F.A.C. which to be eligible for the maximum 14% fee, must meet the following conditions:

(a) The 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) The 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 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.;

(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 of Directors for a specific Development.

(48) "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 Indentity 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.

(44)(49) "Geographic Set-Aside" means, with respect to a MMRB Development, the amount of allocation that has been designated by the Corporation Florida Housing to be allocated for Developments located in specific geographical regions within the State of Florida.

(50) "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.

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

(46)(52) "Homeless" or "Homeless Household" means a an individual or Family who lacks a fixed, regular, and adequate nighttime residence or a 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.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

(47)(53) "HUD" means the United States U.S. Department of Housing and Urban Development.

(48)(54) "HUD Risk Sharing Program" means the program authorized by section 542(c) of the Housing and Community Development Act of 1992, which is adopted and incorporated herein by reference.

(49)(55) "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.

~~(56) “Income Certification,” “Tenant Income Certification” or “Form TIC 1” means the form which is adopted and incorporated herein by reference, effective January 2004, and which shall be used to certify the income of all tenants residing in a Set Aside unit in a Development. A copy of such form is available on FHFC’s web site at [www.floridahousing.org](http://www.floridahousing.org) or by contacting the Compliance Department at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 1329.~~

(50) “IRC” is 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 or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States, and is adopted and incorporated herein by reference and available on the Internal Revenue Service website at [www.irs.gov](http://www.irs.gov).

(51)(57) “Issuer” means the Florida Housing Finance Corporation.

~~(58) “LURA” or “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, the rules and policies of Florida Housing and any requirements of a Credit Enhancer. Such document shall be recorded prior to the Mortgage in the public records in the county where the Development is located, unless the Board of Directors expressly agrees to subordinate the LURA to facilitate the financing.~~

(52)(59) “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 Continuum of Care Plan, in accordance with Section 420.624, F.S.

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

(61) “Loan Agreement” means the Program Documents or Loan Documents wherein Florida Housing and the Applicant agree to the terms and conditions upon which the proceeds of the Bonds shall be loaned, and the terms and conditions for repayment of the Loan.

(62) “Loan Commitment” means the 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.~~

~~(53)(63) “Local Government” means a unit of Local general purpose government as defined in Section 420.503 218.31(2), F.S.~~

~~(54)(64) “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, F.S.~~

~~(55)(65) “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 the Corporation Florida Housing for the purpose of receiving public comment or input regarding the financing of a proposed Development with Bonds by the Corporation Florida Housing.~~

~~(56)(66) “Lower Income Residents” 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 if all the occupants of a unit are students as defined in section 151(c)(4) of the IRC Code or if the residents do not comply with the provisions of the IRC Code defining Lower Income Residents. (See section 142 of the IRC 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 Residents 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(e)(3) of the Code, the Set Aside shall not be less than that required by the section 501(e)(3) documents.~~

(57) “MMRB Funding Cycle” means the period of time established by the Corporation pursuant to this rule chapter and concluding with the issuance of allocations to Applicants who applied during a given Application Period.

(58) “MMRB LURA” or “MMRB Land Use Restriction Agreement” means an agreement among the Corporation, the Bond Trustee and the Applicant which sets forth certain set-aside requirements and other Development requirements under Rule Chapter 67-21, F.A.C.

(59) “MMRB Loan” means the loan made by the Corporation to the Applicant from the proceeds of the Bonds issued by the Corporation.

(60) “MMRB Loan Agreement” means the Program Documents or Loan Documents wherein the Corporation and the Applicant agree to the terms and conditions upon which the proceeds of the Bonds shall be loaned and the terms and conditions for repayment of the Loan.

(61) “MMRB Loan Commitment” means the Program Documents or Loan Documents executed by the Corporation and the Applicant after the issuance of a favorable Credit Underwriting Report that defines the conditions under which the Corporation agrees to lend the proceeds of the Bonds to the Applicant for the purpose of financing a Development.

(62) “MMRB Program” means the Corporation’s Multifamily Mortgage Revenue Bond Program.

(63) “MMRB Rehabilitation Development” means a Development, the Rehabilitation Expenditures with respect to which equal or exceed 15% of the portion of the cost of acquiring such Development to be financed with Bond proceeds.

(64)(67) “Mortgage” means Mortgage as defined in Section 420.503, F.S. the instrument securing the Loan which creates a first, co-equal or acceptable subordinate lien on the Development, subject to permitted encumbrances.

(65)(68) “Mortgage Loan” means the Mortgage Loan as defined in Section 420.503, F.S. secured by the Mortgage and evidenced by a Note or Mortgage Note.

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

(70) “Preservation Development” means an existing Development currently subject to documented rent restrictions or income restrictions through a federal, state or local government affordable housing program, where the rent restrictions or income restrictions for the Development will end within five years.

(67)(71) “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 any individual acting in their individual capacity or acting as president, vice president, treasurer or secretary, member of the Board 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)(72) “Private Placement” or “Limited Offering” means the sale of the Corporation 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.

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

(69)(74) “Program Documents or Loan Documents” means the MMRB Loan Commitment, MMRB Loan Agreement, Note, Mortgage, Credit Enhancement or Guarantee Instrument, MMRB 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 the Corporation Florida Housing.

(70) “QCT” or “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%, in accordance with section 42(d)(5)(C) of the IRC.

(75) “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 June 2003. A copy of such form is available on FHFC’s web site at [www.floridahousing.org](http://www.floridahousing.org) or by contacting the Compliance Department at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(76) “Public Policy Criteria and Qualified Resident Programs” means the requirements and guidelines established by Florida Housing and set forth in Rule 67-21.004, F.A.C., and the Universal Application package. The programs and 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.~~

~~(71)(77)~~ “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, which is adopted and incorporated herein by reference;

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, which is adopted and incorporated herein by reference;

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, which is adopted and incorporated herein by reference;

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, which is adopted and incorporated herein by reference;

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, which is adopted and incorporated herein by reference;

8. Any organization described in section 501(c)(3) of the IRC 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, which is adopted and incorporated herein by reference, 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, which is adopted and incorporated herein by reference.

(b) Any dealer registered under section 15 of the Securities Exchange Act, which is adopted and incorporated herein by reference, 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, which is adopted and incorporated herein by reference, acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

(d) Any investment company registered under the Investment Company Act, which is adopted and incorporated herein by reference, 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, which is adopted and incorporated herein by reference, 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.

~~(78) “Qualified Census Tract” or “QCT” 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%, in accordance with section 42(d)(5)(C) of the IRC Code. The United States Department of Housing and Urban Development maintains the official QCT list. Applicants are responsible for providing Florida Housing with accurate QCT information.~~

~~(72)(79)~~ “Qualified Lending Institution” means any lending institution designated by the Corporation Florida Housing.

~~(73)(80)~~ “Qualified Project Period” means Qualified Project Period as defined in Section 142(d) of the period of time, as provided in the IRC Code, that a Development financed with Tax-exempt Bonds must comply with the Lower Income Tenant Set-Aside.

~~(74)(81)~~ “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.

~~(82) “Rehabilitation Development” means a Development, the Rehabilitation Expenditures with respect to which equal or exceed 15% of the portion of the cost of acquiring such Development to be financed with Bond proceeds.~~

~~(75)(83)~~ “Rehabilitation Expenditures” has the meaning set forth in section 147(d)(3) of the IRC Code.

~~(76) “SBA” or “State Board of Administration” means the State Board of Administration created by and referred to in s. 9, Article XII of the State Constitution.~~

~~(77)~~(84) “Scattered Sites” for a single Development means a Development consisting of more than one parcel in the same county where two or more of the parcels (i) are not contiguous to one another or are divided by a street or easement and (ii) it is readily apparent from the proximity of the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.

~~(85)~~ “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 a Family whose Annual Household Income does not exceed 80 percent of the state or county median income, whichever median income is higher, provided, however, that if such taxable bonds are being issued in connection with Tax-exempt Bonds, the requirement of ~~(b)~~ below shall govern.

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

~~(78)~~(86) “Single Room Occupancy” or “SRO” 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.

~~(79)~~(87) “Special Counsel” means any attorney or law firm retained by the Corporation Florida Housing, pursuant to an RFQ, to serve as counsel to the Corporation Florida Housing, including Disclosure Counsel.

~~(88)~~ “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.

~~(80)~~(89) “State Bond Allocation” means the allocation of the State private activity bond volume limitation pursuant to Chapter 159, Part VI, F.S., administered by the Division of Bond Finance and allocated to the Corporation Florida Housing for the issuance of its Tax-exempt Bonds by either the SFMRB or MMRB Programs.

~~(81)~~(90) “State Office on Homelessness” means the office created within the Department of Children and Family Services under Section 420.622, F.S.

~~(91)~~ “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.

~~(82)~~(92) “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 IRC Code.

~~(83)~~(93) “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 IRC Code.

~~(84)~~(94) “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 IRC Code.

~~(85)~~(95) “Tie-Breaker Measurement Point” means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.

~~(86)~~(96) “TEFRA Hearing” means a public hearing held pursuant to the requirements of the IRC Code and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), section 147(f) of the IRC Code, 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 Bond financing of a Development by the Corporation Florida Housing.

~~(87)~~(97) “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 review and approval by the Credit Underwriter and the Corporation pursuant to this rule chapter, shall be approved by Florida Housing as reasonable and necessary. Such costs may include:

~~(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 subsection 67-21.002(43), 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 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 Florida Housing for working capital, 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, as shall determine to be reasonable and necessary for the construction or rehabilitation of the Development.~~

~~(98) "Universal Application Package" or "UA1016 (Rev. 3-04)" means the 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 Program. The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.~~

~~(88)(99) "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, 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.~~

~~(89) "Website" means the Florida Housing Finance Corporation's website, the Universal Resource Locator (URL) of which is [www.floridahousing.org](http://www.floridahousing.org).~~

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.503, 420.507, 420.508 FS. History—New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 2-6-97, 1-7-98, Formerly 91-21.002, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 10-5-03, 3-21-04, \_\_\_\_\_.

67-21.003 Application and Selection Process for ~~Developments Loans~~.

(1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA1016 (Rev. 2-05) consists of the 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 MMRB Program. The Universal Application Package is adopted and incorporated herein by reference, effective on February 7, 2005.

~~(b)(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 the failure to meet threshold, rejection of the Application, ~~or~~ 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.

(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.

(4) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 8 ~~7~~ Calendar Days of the date ~~of receipt~~ of 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 Applicant's score. Any NOPSE that seeks the review of more than one Applicant'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 11 9 Calendar Days of the date receipt of the notice set forth in subsection (5) 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 (3) and (5) 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 may 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).

(7) Within 7 Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (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 document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (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 subsections (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 subsections (3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) and (7) 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 (14) 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.

(10) Based on the order of the ranked Applications after informal appeals and the availability of State Bond Allocation designated by the Board of Directors for multifamily housing, the Board of Directors shall designate Applications for funding and offer the opportunity to enter Credit Underwriting, and shall designate those that are below the funding line on the MMRB ranked list. Any additional allocation designated by the Board of Directors for MMRB shall be applied to the next unfunded Application(s) on the ranked list, but only to the extent said Application's request can be fully funded. Any remaining allocation designated by the Board of Directors for multifamily housing, which as of December 1 of each year 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. After December 1, 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 of Directors, be carried over and applied to the next calendar year allocation or applied to single family housing. The Corporation Florida Housing may, after the cure period and upon a determination that such is necessary to assure timely processing of Applicants, invite Applicants who meet threshold into Credit Underwriting at their own risk. 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 without designation for funding do so at their own risk, and said opportunity does not ensure that the Application will be funded. Any Applicant that declines invitation to Credit Underwriting, when invited by the Board of Directors, shall be removed from the ranked list.

(11) Applications shall be limited to one submission per subject property with the exception that Local Government-issued Tax-Exempt Bond-Financed Developments may submit a separate Application for noncompetitive Housing Credits. 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, 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. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Two Applications by Applicants with common Financial Beneficiaries for Developments that are contiguous, or that are divided by a street or easement, or that are otherwise part of a common or related scheme of development, will not be considered to be submissions for the same Development site if one of the Applicants applies for SAIL pursuant to paragraph B.7.c.(6) of the Ranking and Selection Criteria of the Universal Application Instructions ~~only~~. Financial Beneficiary, as defined in Rule 67-21.002, F.A.C., 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 contractors whose total fees are within the limit described in Rule 67-21.007, F.A.C.

(12) If the Board of Directors 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 of its Developments, or within the current Application or in any previous applications for financing or an allocation of Housing Credits administered by the Corporation;
- (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 of Directors 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.

(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 subsection (6) above:

- (a) The Development is inconsistent with the purpose of the MMRB Program 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 ~~provide all required copies and~~ file all applicable Application pages and exhibits 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 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 Applicant;
- (b) Identity Name of each Developer, including all co-Developers;
- (c) Program(s) applied for;
- (d) Applicant applying as a Non-Profit or for-profit organization;
- (e) Site for the Development;
- (f) Development Category;
- ~~(g)~~ (f) Development Type;
- ~~(h)~~ (g) Designation selection;
- ~~(i)~~ (h) County;
- ~~(j)~~ (i) Total number of units;
- ~~(k)~~ (j) Funding request, except for Taxable Bonds and as provided in subsection 67-21.003(10), F.A.C.; notwithstanding the foregoing, requested amounts exceeding the Corporation and ~~p~~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);
- ~~(l)~~ (k) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the ~~p~~Program(s) applied for in the ~~T~~otal Set-Aside Commitment section of the Application;
- ~~(m)~~ (l) Submission of one original hard copy with the required number of photocopies of the Application by the Application Deadline;
- ~~(n)~~ (m) Payment of the required Application fee and TEFRA fee by the Application Deadline.

All other items may be submitted as cures pursuant to subsection (6) above.

(15) A Development will be withdrawn from funding and any outstanding commitments for funds will be rescinded if at any time the Board of Directors 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 IRC Code, this rule chapter, or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of 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 of Directors 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 Corporation's 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) When two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the Application instructions.

(18) At no time during the Application, scoring and appeal process may Applicants or their representatives contact members of the Board of Directors 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 subsection (9) above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Application. If an Applicant or its representative does contact a member of the Board of Directors member in violation of this section, the Board of Directors shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) Applicants may withdraw an Application from consideration only by submitting a written notice of withdrawal to the Corporation Clerk. Applicants may not rescind any notice of withdrawal that was submitted to the Corporation Clerk. For ranking purposes, the Corporation Florida Housing shall disregard any withdrawal that is submitted after 5:00 p.m., Eastern Time, 14 Calendar Days prior to the date the on the Friday preceding Board of Directors is scheduled to convene to consider approval of the final rankings of the Applications and such Application shall be included in the ranking as if no notice of withdrawal had been submitted. After the Board of Directors has approved the final ranking, any notice of withdrawal submitted during the time period prohibited above after that Friday and before the Board of Directors approves the final ranking, shall be deemed withdrawn immediately after Board approval of the final ranking. If an Applicant has applied for two or more

pPrograms, the withdrawal by the Applicant from any one pProgram will be deemed by the Corporation Florida Housing to be a withdrawal of the Application from all pPrograms.

(20) 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 approved by the Corporation.

(21) If an Applicant or any Affiliate of an Applicant has offered or given consideration, other than the consideration to provide affordable housing, with respect to a local contribution and this is discovered prior to Board of Directors approval of the ranking, the Corporation Florida Housing shall reject the Application and any other Application submitted by the same Applicant and any Affiliate of the Applicant. If discovered after the Board of Directors approves final ranking, any tentative funding or allocation for the Application and any other Application submitted in the same cycle by the same Applicant and any Affiliate of the Applicant will be withdrawn. Such Applicant and any of such 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 the date the Board of Directors issues a ~~f~~Final ~~o~~Order on such matter in a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S.

(22) The Corporation 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 the Corporation Florida Housing to finance the proposed Development in any way.

(23) Upon receipt of the Credit Underwriting Report, the Corporation 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.

~~(24)~~(23) Proposed Developments that are ranked, but not selected by the Board of Directors 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 of Directors for the MMRB Program multifamily housing is insufficient to fully finance a Development, subject to the provisions of subsection 67-21.003(10), F.A.C., permitting reduction of the requested amount, a new Application must be filed to be eligible for a future year's State Bond Allocation.

(25) The Corporation Florida Housing shall notify the Applicant, in writing, of the Board of Directors 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.

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

(27) Following receipt of one-half of the Good Faith Deposit, ~~the Corporation's Florida Housing's~~ assigned Special Counsel shall begin preparation of the Loan Commitment.

(28) Upon execution of a Loan Commitment, Applicant shall pay the balance of the Good Faith Deposit and ~~the Corporation Florida Housing~~ shall authorize Bond Counsel and Special Counsel to prepare the Program Documents.

~~(29) The Corporation may disqualify an Applicant if, after a hearing before the Board, the Board determines that the Applicant or its principal(s):~~

- ~~(a) Has been convicted of fraud, theft or misappropriation of funds; or~~
- ~~(b) Has made material misrepresentations; or~~
- ~~(c) Has been excluded from federal or Florida procurement programs; or~~
- ~~(d) Has been convicted of a felony.~~

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 91-21.003, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

#### 67-21.0035 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-21.003, F.A.C., each Applicant will be provided with its final score and notice of rights, which shall constitute the point of entry to contest any issue related to the Applicant's Application for the MMRB Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation within 22 on or before the 21st Calendar Days of the date the Applicant's ~~after the date Applicant receives its~~ notice of rights is sent by overnight delivery by the Corporation. 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 of Directors.

(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 of Directors. 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 ~~the 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. ~~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 of Directors. Parties will not be permitted to make oral presentations to the Board of Directors in response to recommended orders. The Board of Directors shall consider all recommended orders and written arguments and enter the appropriate final orders.

(4) Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with Rule Chapter 67-21, F.A.C., ~~the Corporation~~ shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board of Directors, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board of Directors, provide the requested allocation from the next available allocation, whether in the current year or a subsequent year. Nothing contained herein shall affect any applicable Credit Underwriting requirements.

(5) Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the MMRB Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if:

(a) The competing Applicant files a petition ~~within 22 on or before the 21st~~ Calendar Days of the date after the receipt of the notice of rights is sent by overnight delivery by the Corporation pursuant to this subsection (5). 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, score or ranking sought to be challenged.

(b) For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-21.003(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-21.003(6), F.A.C.

(c) The competing Applicant alleges facts in its petition sufficient to demonstrate that, but for the specifically identified threshold, scoring or ranking errors in the challenged Application, its Application would have been in the funding range at the time ~~the Corporation Florida Housing~~ provided the Applicant with its final ranking.

(d) If the petition does not raise a disputed issue of material fact, the appeal 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 which will then be considered by the Board of Directors.

(6) 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 as described in subsection (5) above concerning the final ranking of another Application, shall be allowed the opportunity to submit written arguments to the Board of Directors. Any written arguments 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 ~~the 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 of Directors. Parties will not be permitted to make oral presentations to the Board of Directors in response to recommended orders. The Board of Directors shall consider all recommended orders and written arguments and enter the appropriate final orders.

(7) For those Applicants that have filed a petition pursuant to subsection (5) above, the Corporation shall, if any such Applicant ultimately obtains a final order that demonstrates that its Application would have been in the funding range of the applicable final ranking, provide the requested allocation from the next available allocation, whether in the current year or a subsequent year. Nothing contained herein shall affect any applicable credit underwriting requirements. The filing of a petition pursuant to subsection (5) above shall not stay the Corporation's provision of funding to Applicants per the final rankings referenced in subsection (4) above.

Specific Authority 420.507, 420.508 FS. Law Implemented 120.569(2)(b), 120.57, 420.502, 420.507, 420.508 FS. History—New 11-14-99, Amended 2-11-01, 3-17-02, 10-8-02, 12-4-02, 4-6-03, 3-21-04, \_\_\_\_\_.

67-21.004 Federal Set-Aside Requirements.

Each Application shall designate one of the following minimum federal ~~s~~Set-a~~S~~ide requirements that the Development shall meet commencing with the first day on which at least 10 percent of the units in the property are occupied:

(1) Twenty percent of the residential units in the Development shall be occupied by or reserved for occupancy by ~~one or more persons or a F~~family whose Annual Household Income does not exceed 50 percent of the area median income limits adjusted for Family size (the 20/50 ~~s~~Set-a~~S~~ide); or

(2) Forty percent of the residential units in the Development shall be occupied by or reserved for occupancy by ~~one or more persons or a F~~family whose Annual Household Income does not exceed 60 percent of the area median income limits adjusted for Family size (the 40/60 ~~s~~Set-a~~S~~ide).

(3) For Developments financed solely through the issuance of Taxable Bonds or refundings of Tax-exempt Bonds originally issued under section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended, which is adopted and incorporated herein by reference, 20 percent of the residential units in the Development shall be occupied by or reserved for occupancy by ~~one or more persons or a F~~family whose Annual Household Income does not exceed 80 percent of the area median income limits adjusted for Family size (the 20/80 ~~s~~Set-a~~S~~ide).

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, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended \_\_\_\_\_.

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.~~

~~(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 Application may be only changed to other Public Policy Criteria and Qualified Resident Programs set forth in Rule 67-21.0041, F.A.C., 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.~~

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 1-7-98, Formerly 91-21.0045, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01, Amended 3-17-02, Repromulgated 4-6-03, 3-21-04, Repealed \_\_\_\_\_.

67-21.0045 Determination of Method of Bond Sale.

(1) ~~The Corporation 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 of Directors shall authorize a resolution specifying the method of sale.

(2) Following receipt of the Credit Underwriting Report, staff shall provide ~~the Corporation's 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 of Directors, 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) ~~The Corporation's 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 ~~the Corporation's Florida Housing's~~ Financial Advisor recommends as candidates for a competitive sale, ~~the Corporation 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 subsection 67-21.002(31), F.A.C.

(6) For those transactions that ~~the Corporation's Florida Housing's~~ Financial Advisor recommends for a negotiated sale, ~~the Corporation Florida Housing~~ shall appoint a bond underwriter ~~an investment banker~~.

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, 2-11-01, Amended 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, \_\_\_\_\_.

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, 2-11-01, Amended 3-17-02, Repromulgated 4-6-03, 3-21-04, Repealed \_\_\_\_\_.

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 five or more dwelling units and functionally related facilities, in accordance with section 142(d) of the IRC Code.

(3) The Development shall consist of similar units, containing complete facilities for living, sleeping, eating, cooking and sanitation for a 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 ~~the Corporation 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 IRC 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 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 ~~sSet-a~~Aside, of the occupied and completed residential units in the Development shall be occupied by Lower Income Residents, prior to the satisfaction of which no additional units shall be rented or leased, except to a Family that is also a Lower Income Resident;

(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, at least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal ~~sSet-a~~Aside, of the completed residential units in the Development at all times shall be rented to and occupied by Lower Income Residents as required by section

142(d) of the IRC 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.

(9) The Applicant shall obtain and maintain on file income certifications from each Lower Income Resident 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 IRC Code, Florida-Statutes, and ~~the Corporation's Florida Housing~~ Rules.

(12) 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) 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 ~~the Corporation 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 of Directors' approval that the Development no longer qualifies as Elderly Housing.

(14) 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) The owner of a Development must notify ~~the Corporation Florida Housing~~ of an intended change in the management company. ~~The Corporation Florida Housing~~ must approve, pursuant to subsection 67-53.003(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 representative must attend a ~~Corporation Florida Housing~~-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(16) 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) 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 the Corporation Florida Housing to comply with continuing disclosure requirements imposed by law.

(18) Unless otherwise approved by the Board of Directors, 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 91-21.006, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04,\_\_\_\_\_.

#### 67-21.007 Fees.

In addition to the fees specified in the Universal Application Package, the Corporation Florida Housing shall collect the following fees and charges in conjunction with the MMRB Program:

(1) TEFRA Fee: Applicants shall submit a non-refundable TEFRA fee to the Corporation Florida Housing in the amount of \$500 by the Application Deadline, or, for refundings or 501(c)(3) Applicants, upon submission of the Application or request for refunding. This 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 the Corporation Florida Housing. If the first TEFRA approval period has expired and a second TEFRA notice and hearing are required, Applicant is responsible for all costs associated with the additional TEFRA process.

(2) Credit Underwriting and Appraisal Fee: Applicants shall submit the required non-refundable Credit Underwriting and Appraisal Fee for each Development to the Credit Underwriter designated by the Corporation Florida Housing within seven Calendar Days of the date the Applicant accepts of the invitation by the Corporation 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 the Corporation Florida Housing and the Credit Underwriter.

(3) 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. The Applicant shall pay a total deposit equal to one percent of the aggregate

principal amount of proposed Taxable and Tax-~~e~~Exempt Bonds, or \$75,000, whichever is greater, to the Corporation Florida Housing, which deposit may be applied toward the Cost of Issuance Fee. The maximum Good Faith Deposit required is \$175,000. 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 of Directors approves the Credit Underwriting Report. The balance is payable no later than the date when the Applicant executes the Loan Commitment. If the Good Faith Deposit is exhausted, the Applicant shall be required to pay, within three days of notice, an additional deposit to ensure payment of the expenses associated with the processing of the Application, the sale of the Bonds, including document production and the securitization of the Loan. The Good Faith Deposit shall be remitted by certified check or wire transfer. In the event the MMRB 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 the Corporation 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 the Corporation Florida Housing subsequent to a determination that the MMRB Loan will not close and refunding any unused funds to the Applicant, which invoices related to costs incurred prior to such determination and refunding, Applicant shall be responsible for payment of the balance due as invoiced.

(4) Cost of Issuance Fee: the Corporation Florida Housing shall require Applicants or participating Qualified Lending Institutions selected for participation in the ~~p~~Program, to deliver to the Corporation Florida Housing, or, at the request of the Corporation Florida Housing, directly to the Trustee, before the date of delivery of the Bonds, a Cost of Issuance Fee in an amount determined by the Corporation 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. The Corporation 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 the Corporation Florida Housing in connection with the issuance of the Bonds, the expenditure of the MMRB Loan proceeds, and provision of 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) 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 the Applicant shall pay will be determined by contract between the Corporation Florida Housing and the environmental professional.

(b) Subsidy Layering Review Fee – The fee the Applicant shall pay will be determined by the contract between the Corporation Florida Housing and the Credit Underwriter.

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

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

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

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

(9) Other Corporation 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 pProgram.

(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 the Corporation Florida Housing.

(10) Developer 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 payments for Application consultants, construction management or supervision, or Local Government consultants. Fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against the Corporation 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 cap on Financial Advisor fees. The Corporation shall not authorize fees to be paid for duplicative services or duplicative overhead. 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) General Contractor's Fees are inclusive of general requirements, profit and overhead and 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 Indentity of Interest as defined herein between the Applicant or Developer 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. The Corporation shall not allow fees for duplicative services or duplicative overhead. In order for the General Contractor to be eligible for the maximum fee stated above, it must meet the following conditions:

(a) The 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) The 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 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.;

(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 of Directors for a specific Development.

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 9F-21.007, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04,

67-21.008 Terms and Conditions of MMRB Loans.

(1) Each Mortgage Loan for a Development made by the Corporation Florida Housing shall:

(a) Be evidenced by a properly executed Note or other evidence of indebtedness and be secured by a recorded Mortgage;

(b) Provide for a fully amortized payment of the Mortgage Loan in full beginning on the earlier of 36 months after closing, or stabilized occupancy, or conversion to permanent financing under the loan documents and ending no later than



the expiration of the useful life of the property, and in any event, no 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 the Corporation 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;

(f) Be serviced by such Qualified Lending Institution or other private entity engaged in the business of servicing mortgage loans in Florida as the Corporation Florida Housing shall approve; and

(g) Require the submission to the Corporation Florida Housing of an annual audited financial statement for the Development, and for the Applicant if revenue from multiple projects is being pledged. An annual financial statement compiled or reviewed by a licensed Certified Public Accountant may be submitted in lieu of an audited financial statement for the Development prior to the issuance of a certificate of occupancy for any unit in the Development, provided that the subsequent annual audited financial statement shall include all operations since inception.

(h) If Credit Enhancement is used, a Credit Enhancement instrument of less than ten years must be approved by the Board of Directors.

(2) Upon approval, execution, and satisfaction of the terms of the Program Documents by the Applicant and the Corporation Florida Housing, the Bond sale and the MMRB 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 IRC 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) The Corporation Florida Housing shall charge such pProgram administration fees as are required to pay the cost of administering the pProgram during the life of the Bonds and MMRB Loan.

(6) The interest rate on the MMRB Loan shall be determined by the Corporation 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) The Corporation Florida Housing shall appoint a Trustee and servicing agent when necessary to administer the pProgram and service the MMRB Loan.

(9) All MMRB Florida Housing Loans are contingent upon:

(a) The sale, issuance and delivery of the Bonds and the availability of Bond proceeds.

(b) The Applicant obtaining title insurance on the property.

(c) The Applicant obtaining all governmental approvals for constructing and operating the Development as a multifamily housing Development.

(d) The Applicant providing to the Corporation 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 the Corporation 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 the Corporation Florida Housing, the Bonds being validated pursuant to Chapter 75, F.S., and a certificate of no appeal issuing.

(f) Receipt of TEFRA approval for Tax-exempt Bonds.

(10) All MMRB Loans shall be reviewed and originated by a servicer designated by the Corporation Florida Housing, in conformance with the Act.

(11) The Applicant shall agree to execute or cause to be executed all of the MMRB Program Loan Documents required by the Corporation Florida Housing to secure the unconditional payment of the MMRB 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 the Corporation Florida Housing the following documents with respect to the Development being financed, together with any other documents required by the MMRB 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 the Corporation 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 ~~the Corporation Florida Housing~~ or its Trustee or designated servicer, with only standard exceptions and such other exceptions as are usually permitted in ~~M~~mortgage ~~L~~loans of this nature and that are acceptable to ~~the Corporation Florida Housing~~. Such policy shall be in an amount not less than the MMRB Loan amount plus an amount sufficient to cover any debt service reserve required by ~~the Corporation 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 ~~the Corporation 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 ~~the Corporation Florida Housing~~, by the MMRB Loan Commitment, or by ~~the Corporation's Florida Housing's~~ respective counsel to protect the interest of ~~the Corporation 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 ~~the Corporation Florida Housing~~.

(14) ~~The Corporation Florida Housing~~ shall require all MMRB Loans to be secured to the extent necessary to protect ~~the Corporation Florida Housing~~ and Bond holders.

(15) Any MMRB Loan financed with proceeds of Tax-exempt Bonds, except for 501(c)(3) Bonds, shall provide that the portion of any debt service reserve fund associated therewith to be financed with ~~the~~ Tax-exempt Bonds shall not exceed six months of debt service on the Bonds.

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 91-21.008, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

#### 67-21.009 Interest Rate on Mortgage Loans.

~~The Corporation 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 91-21.009, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, 4-6-03, 3-21-04, Amended \_\_\_\_\_.

#### 67-21.010 Issuance of Revenue Bonds.

~~The Corporation 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 ~~the Corporation 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 Credit Underwriting Report, as the same may be amended, ~~the Corporation Florida Housing~~ shall terminate its MMRB Loan Commitment and such other agreements as were executed in conjunction with the proposed MMRB 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 91-21.010, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended \_\_\_\_\_.

#### 67-21.011 No Discrimination.

~~Florida Housing, its staff or agents, Applicants, or participants under the Program shall not discriminate 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 in compliance with the requirements of the Code or with the requirements of Section 420.509(19), F.S., for Tax-exempt Bonds.~~

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(14) FS. History—New 12-3-86, Amended 2-22-89, 12-4-90, 1-7-98, Formerly 91-21.011, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Repealed \_\_\_\_\_.

#### 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 91-21.012, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, 4-6-03, 3-21-04, Repealed \_\_\_\_\_.

#### 67-21.013 Non-Credit Enhanced Multifamily Mortgage Revenue Bonds.

Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. Such non-Credit Enhanced revenue Bonds may only be utilized for financings where the Applicant has demonstrated that the issuance produces a substantial benefit to the Development not otherwise available from Credit Enhancement structures. The analysis of the substantial benefit must be provided in a format acceptable to ~~the Corporation Florida Housing~~ and shall include the initial issuer cost of issuance, underwriter's discount or placement agent fee, annual debt service, total debt service and any other factors necessary and appropriate to

demonstrate that the issuance produces a substantial benefit to the Development. This analysis must be provided both prior to the review of the method of ~~B~~ bond sale conducted by the Corporation's Florida Housing's ~~F~~ financial Advisor, and again prior to the pricing of the ~~B~~ bonds, showing any changes affecting the original estimated substantial benefit. The Corporation Florida Housing shall designate the bond underwriter or placement agent with respect to such Bonds, who shall be on the Corporation's Florida Housing's approved bond underwriters list. The Corporation Florida Housing, in its discretion, will allow only an underwriting discount or a placement agent fee, but not both. Unless such Bonds are rated in one of the four 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 (subject to reduction by means of redemption) and each purchaser of such Bond, including subsequent purchasers unless the requirements of subsection (2) or (3) below are met, shall certify to the Corporation 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 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation 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 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation 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, 2-11-01, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

#### 67-21.014 Credit Underwriting Procedures.

(1) An invitation into Credit Underwriting shall require that the Applicant submit the Credit Underwriting and Appraisal Fee and information required to complete the Credit Underwriting, to the Credit Underwriter in accordance with the schedule established by the Corporation Florida Housing upon

the recommendation of the Credit Underwriter. Failure to submit the Credit Underwriting and Appraisal Fee or meet the deadlines 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 Credit Underwriting analyze and verify all information in the Application, or any proposed changes made subsequent thereto, in order to make a recommendation to the Board of Directors on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement. Credit Underwriting 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 MMRB 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.

(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 MMRB 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 the Corporation's Florida Housing's approval.

(d) The Corporation 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.
3. The past performance of the Applicant, Developer, General Contractor, or management agent, in developing, constructing or managing Developments financed by the

Corporation Florida Housing or its predecessor, including, by way of example and not limitation, nonpayment of fees and noncompliance with program requirements.

4. Percentage of ~~the Corporation's 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 the Corporation Florida Housing determines upon recommendation of the Credit Underwriter after evaluation of conditions in subparagraphs 1. through 3., above, that additional surety is needed.

(e) The Credit Underwriter shall review and make a recommendation to the Corporation Florida Housing whether the number of existing loans and construction commitments of the Applicant and its ~~P~~principals will impede its ability to proceed with the successful development of each proposed Corporation 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-a~~Asides committed to within the Application. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove an allocation when the proposed Development would financially impair an existing Development previously funded by the Corporation Florida Housing.

(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 the Corporation 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:

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 ~~guarantors Principals 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 in accordance with SSARS No. 1~~ 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 January 7, 2002~~, which is adopted and incorporated herein by reference, and the two most recent years tax returns.

3. 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.

4. For the Applicant and General Partner, 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 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) The Credit Underwriter shall require an operating deficit guarantee. The operating deficit guarantee will be released when the Development achieves a minimum 1.10 debt service coverage ratio on the MMRB ~~L~~loan and 90% occupancy and 90% of the gross potential rental income, all for six consecutive months as certified by an independent ~~C~~ertified ~~P~~ublic ~~A~~ccountant, and verified by the Credit Underwriter.

(j) The Credit Underwriter shall also require environmental indemnity and recourse obligation guarantees.

(k) Required appraisals, market studies, pre-construction analyses, physical needs assessments, and environmental studies (other than Phase I Environmental Site Assessments) shall be completed by professionals approved by the 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.

(l) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice, which is adopted and incorporated herein by reference, 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 Credit Underwriting. The Credit Underwriter shall review the appraisals to properly evaluate the MMRB Lloan request in relation to the property value.

(m) 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.

(n) The Credit Underwriting Report shall include a thorough analysis of the proposed Development and a statement as to whether a MMRB Loan is recommended, and if so, the amount recommended. The Credit Underwriter or the Corporation may request such additional information as is necessary to properly analyze the credit risk being presented to the Corporation and the Bond holders.

(3) The Applicant shall review and provide written comments on the draft Credit Underwriting Report to the Corporation Florida Housing and the Credit Underwriter within the time frame established by the Corporation Florida Housing. The Corporation 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 the Corporation's Florida Housing's and, if deemed appropriate, the Applicant's comments and release the revised report to the Corporation Florida Housing and the Applicant. Any additional comments from the Applicant shall be received by the Corporation 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 the Corporation Florida Housing.

(4) After approval by the Board of Directors following presentation of the Credit Underwriting Report and payment of one-half of the Good Faith Deposit, the Board Corporation Florida Housing staff and Special Florida Housing Counsel shall begin negotiations of the MMRB Loan Commitment with the Applicant.

(5) At a minimum, a 10% retainage will be held by the Trustee or the servicer administering the construction loan funds until the Development is 50% complete. At 50% completion, no additional retainage will be held from the remaining draws. The total retainage dollars will be held by the Trustee or the servicer and released pursuant to the terms of the construction loan agreement.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508, 420.508(3)(b)3., 420.509 FS. History--New 1-7-98, Formerly 91-21.014, Amended 1-26-99, 11-14-99, 1-26-00, 2-11-01, 3-17-02, 4-6-03, 3-21-04,\_\_\_\_\_.

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

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

(2) 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 91-21.015, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04,\_\_\_\_\_.

67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of this section Rule 67-21.017, F.A.C., provided that transfers of the limited partnership interest or limited liability company interest in the owner 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 MMRB Land Use Restriction Agreement and other Program Documents for such Development. Owners shall advise the Corporation 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 the Corporation 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 for the current owner or prospective purchaser describing the scope of the proposed transaction must also be provided. The Corporation Florida Housing shall review the letter and, if acceptable, assign a Credit Underwriter. The Credit Underwriter will notify the current owner and prospective potential purchaser of any additional information necessary to complete its Credit Underwriting Report for the Board to make an informed decision.

(3) Upon demonstration of compliance with the provisions of this section Rule 67-21.017, F.A.C., and favorable consideration by the Board of Directors of the Credit Underwriting Report to a request for transfer, the Corporation 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 Credit Underwriter shall conduct a Credit Underwriting of the prospective purchaser upon any transfer of ownership. Additionally, the prospective purchaser shall be notified that any refunding of Bonds associated with such Development shall require a full Credit Underwriting of the Development. 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 the Corporation Florida Housing as meeting the stated purposes of the Corporation Florida Housing.

(b) All outstanding fees owing to the Corporation or any of its assigned professionals Florida Housing shall be paid,

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

(d) If the ~~sSet-a~~Side requirements in the MMRB 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 be subject to all conditions of the Credit Underwriting Report including the requirements for 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 91-21.017, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04,\_\_\_\_\_.

67-21.018 Refundings and Troubled Development Review.

(1) Refunding of previously issued Bonds shall in all instances be at the option of the Corporation Florida Housing and not an obligation of the Corporation Florida Housing.

(2) The Corporation Florida Housing shall endeavor where feasible to refund Bonds which are either in default or face a pending default.

(3) Approval by the Corporation 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 of the impending default;

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

(c) Submission of sworn certificate from the owner 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 owner Developer or Credit Enhancer;

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

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

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

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

(i) New Credit Underwriting by the Corporation Florida Housing, with new Bond amount determined by the Corporation Florida Housing based upon real estate underwriting criteria and equal to the lesser of the amount determined by the Corporation 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 the Corporation Florida Housing; with consideration given to personal indemnification from the owner Developer if sufficient financial strength can be demonstrated;

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

(l) Retention of annual fees by the Corporation Florida Housing;

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

(n) Retention of the Credit Enhancement, or an acceptable non-Credit Enhancement structure; and

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

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

(4) In connection with all refundings, the following shall apply:

(a) All outstanding fees of the Corporation and any of its assigned professionals Florida Housing shall be paid in connection with the refunding;

(b) The ~~sSet-a~~Sides required by the original MMRB Land Use Restriction Agreement shall be increased by an amount and extended for a period determined by the Corporation Florida Housing;

(c) A Credit Underwriting Report 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 MMRB 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 it exceed the economic remaining life of the property, provided that, in the case of a refunding relating to a pending financial 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 91-21.018, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, \_\_\_\_\_.

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

(1) The Corporation Florida Housing shall entertain requests, on a non-competitive basis, for it to serve as the issuer of Tax-exempt 501(c)(3) 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 IRC Code.

(2) In connection with all Bonds issued pursuant to this section Rule 67-21.019, F.A.C., Applicants shall be required to comply with the applicable provisions of Rules ~~67-21.003, 67-21.0041 and 67-21.0045~~ through 67-21.018, F.A.C., Florida Statutes, and the IRC, including all safe harbor provisions as if the section 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.

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

(a) An initial Bond Counsel fee of \$1,000 along with IRS Form 1023, which is adopted and incorporated herein by reference, and all attachments and correspondence to and from the IRS relative to section 501(c)(3) status of the Applicant. A copy of IRS Form 1023 is available on the IRS web site at www.irs.gov; and

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

(c) 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 section 501(c)(3) entity.

(d) The completed Universal Application in effect at the time the Applicant submits the Application. Applicants must meet all threshold requirements of the Application as well as achieve 50% of all points (excluding tie-breaker points) available in the Application. Specific information otherwise required to be submitted in an Application as requested by Florida Housing.

Specific Authority 420.507(12) FS. Law Implemented 420.502, 420.507(14), (24), 420.508 FS. History--New 11-14-99, Amended 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne Conner, 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: Orlando Cabrera, 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 3, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 30, No. 31, July 30, 2004

**FLORIDA HOUSING FINANCE CORPORATION**

RULE TITLES:	RULE NOS.:
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Definitions	67-48.002
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<b>PART II STATE APARTMENT INCENTIVE LOAN PROGRAM</b>	
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Sale, Refinancing or Transfer of a SAIL Development 67-48.0105  
 SAIL Credit Underwriting and Loan Procedures 67-48.012  
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**PART III HOME INVESTMENT PARTNERSHIPS PROGRAM**  
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 Match Contribution Requirement for HOME Allocation 67-48.015  
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**PART IV HOUSING CREDIT PROGRAM**  
 Housing Credit General Program Procedures and Requirements 67-48.023  
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 Housing Credit Underwriting Procedures 67-48.026  
 Tax-Exempt Bond-Financed Developments 67-48.027  
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 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 IRC 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 2005 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 7, 2005

**PLACE:** Tallahassee City Hall, Commission Chambers, 300 South Adams Street, Tallahassee, Florida 32301

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Stephen P. Auger, 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:**

**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 ~~R~~rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, F.S., and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, F.S.; 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 IRC Code and Section 420.5099, F.S.

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 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended.



## 67-48.002 Definitions.

(1) "Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, F.S., ~~as in effect on the date of this rule chapter.~~

(2) "Address" means the address 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 and 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, which is adopted and incorporated herein by reference and available on the HUD website [www.hud.gov](http://www.hud.gov).

(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 IRC 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 subsection 67-53.008(7), F.A.C., and is adopted and incorporated herein by reference, effective 1/2001. A copy of such form is available on FHFC's web site [www.floridahousing.org](http://www.floridahousing.org) or by contacting the Compliance Department at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.~~

~~(6)(7) "Applicable Fraction" means Applicable Fraction as defined in Section 42(c)(1)(B) of the IRC. 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.~~

~~(7)(8) "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, 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.~~

~~(8)(9) "Application" means, with respect to the SAIL, HOME and HC Programs, the completed forms and exhibits created by the Corporation for the purpose of providing the means to apply for one or more Corporation programs 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 or HC Program(s). A completed Application may include additional supporting documentation provided by an Applicant.~~

~~(9)(10) "Application Deadline" means 5:00 p.m., Eastern Time, on the final day of the Application Period.~~

~~(10)(11) "Application Period" means a period during which Applications shall be accepted as posted on the Corporation's Website Florida Housing's web site and with a deadline no less than thirty days from the beginning of the Application Period.~~

~~(11)(12) "ALF" or "Assisted Living Facility" or "ALF" means a Florida licensed living facility that complies with Sections 400.401 through 400.454, F.S., and Chapter 58A-5, F.A.C.~~

~~(12)(13) "Binding Commitment" means, with respect to a Housing Credit Development, an agreement between the Corporation and an Applicant by which the Corporation allocates and the Applicant accepts Housing Credits from a later year's Allocation Authority in accordance with Section 42(h)(1)(C) of the IRC Code.~~

~~(13)(14) "Board of Directors" or "Board" means the Board of Directors of the Corporation.~~

~~(14)(15) "Building Identification Number" means, with respect to a Housing Credit Development, the number assigned by the Corporation to describe each building in a Housing Credit Development, pursuant to Internal Revenue Service Notice 88-91, which is incorporated by reference and available on the Internal Revenue Service website [www.irs.gov](http://www.irs.gov).~~

~~(15)(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.~~

~~(16)(17) "Carryover" means the provision under Section 42 of the IRC and Rule 67-48.028, F.A.C., 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 by the close of the second within a period of two calendar years following the calendar year in which the allocation is made from the date the Applicant qualifies for Carryover, pursuant to Rule 67-48.028, F.A.C.

~~(17)~~<sup>(18)</sup> “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, F.S.

~~(18)~~ “CHDOs” or “Community Housing Development Organizations” means Community housing development organizations as defined in Section 420.503.F.S. and 24 CFR Part 92.

~~(19)~~ “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, notices, and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States, which is adopted and incorporated herein by reference.

~~(19)~~<sup>(20)</sup> “Commercial Fishing Worker” means Commercial fishing worker as defined in Section 420.503, F.S. 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.~~

~~(20)~~<sup>(21)</sup> “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 at the time of initial occupancy.

~~(22)~~ “Community Housing Development Organizations” or “CHDOs” means organizations that are organized pursuant to the “CHDO” definition in 24 CFR Part 92.

~~(21)~~<sup>(23)</sup> “Competitive Housing Credits” or “Competitive HC” means those Housing Credits which come from the Corporation’s Florida Housing’s annual Allocation Authority.

~~(22)~~<sup>(24)</sup> “Compliance Period” means a period of time that the Development shall conform to all set-aside requirements as described further in the rule chapter and agreed to by the Applicant in the Application, 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 not later than 60 days from the termination of the lease in effect at the time of 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.

~~(23)~~<sup>(25)</sup> “Consolidated Plan” means the plan prepared in accordance with HUD Regulations, 24 CFR Part § 91, which is adopted and incorporated herein by reference and available on the HUD website www.hud.gov, and which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs, including the HOME Program.

~~(24)~~<sup>(26)</sup> “Contact Person” means the person with whom the Corporation will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

~~(25)~~<sup>(27)</sup> “Corporation” or “Florida Housing” or “FHFC” means the Florida Housing Finance Corporation as defined in Section 420.503, F.S. created pursuant to the Act.

~~(26)~~<sup>(28)</sup> “Credit Underwriter” means the independent contractor 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.

~~(29)~~ “Default Interest Rate” means the rate of interest charged when the borrower is in default of the terms and conditions of the loan documents.

~~(27)~~<sup>(30)</sup> “Department” or “DCA” means the Department of Community Affairs as defined in Section 420.503, F.S. of the State of Florida.

~~(28)~~<sup>(31)</sup> “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 as

required in the Application pursuant to this rule chapter. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

~~(29)(32)~~ “Development;” “Project;” or “Property” means Project as defined in Section 420.503, F.S. any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

~~(30)(33)~~ “Development Cash Flow” means, with respect to SAIL Developments, cash flow of a SAIL Development 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 but not limited to extraordinary fees and expenses, payments on debt subordinate to the SAIL loan and capital expenditures.

~~(31)(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.

~~(32)(35)~~ “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 SAIL Developments and to the application of Development Cash Flow described in subsections 67-48.010(3) and (4), F.A.C., the term includes only those expenses disclosed in the operating pro forma included in the final credit underwriting report, as approved by the Board does not include extraordinary capital expenses, developer fees and other non-operating expenses.

~~(33)(36)~~ “DDA” or “Difficult Development Area” or “DDA” means any areas 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 IRC Code. The United States Department of Housing and Urban Development maintains the official DDA list. Applicants are responsible for providing Florida Housing with accurate DDA information.

~~(34)(37)~~ “Document” means any written, electronic media, 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.

~~(35)(38)~~ “Draw” means the disbursement of funds to a Development under the SAIL and HOME Programs.

~~(36)(39)~~ “Elderly” means Elderly as defined in Section 420.503, F.S. 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.

~~(37)(40)~~ “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 Income or Very Low Income, as further described in Rule 67-48.0075, F.A.C. 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)~~ “Executive Director” means the Executive Director of the Corporation.

~~(38)(42)~~ “EUA” or “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.

~~(39)~~ “Executive Director” means the Executive Director of the Corporation.

~~(40)(43)~~ “Family” or “Family Household” describes a household composed of one or more persons.

~~(41)(44)~~ “Farmworker” means Farmworker as defined in Section 420.503, F.S. any laborer who is employed on a seasonal, temporary or permanent basis in the planting, cultivating, harvesting or processing of agricultural or aquacultural products and who has derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. “Farmworker” also includes a person who has retired as a laborer due to age, disability or illness. In order

to be considered retired from farmwork due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker immediately preceding retirement. In order to be considered retired from farmwork due to disability or illness, it must be:

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

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

~~(42)~~(45) "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at the time of initial occupancy.

(46) "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".

(47) "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 January 2003, 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 subsections 67-48.023(6)-(7), F.A.C., along with the executed 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 Form FCCA is available on FHFC's web site [www.floridahousing.org](http://www.floridahousing.org) or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. IRS Form 8821 is adopted and incorporated herein by reference and can be obtained from the Internal Revenue Service by calling 1(800)829-4477.

~~(43)~~(48) "Final Housing Credit Allocation" means, with respect to a Housing Credit Development, the issuance of Housing Credits 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 Final Cost Certification Application Form FCCA pursuant to Rule subsections 67-48.023(6)-(7), F.A.C.

~~(44)~~(49) "Financial Beneficiary" means any Developer and its Principals or and Principals of the Applicant entity who receives or will receive a financial benefit as outlined in paragraphs (a) and (b) below and as further described in Rule 67-48.0075, F.A.C. 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 subsection 67-48.002(53), F.A.C.~~

~~(45)~~(50) "Financial Institution" means Lending institution as defined in Section 420.503, F.S. ~~a state or federal association, bank, trust company, international bank agency, representative office or international administrative office, or credit union.~~

~~(46)~~(51) "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.

~~(47)~~(52) "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.

~~(48)~~(53) "General Contractor" means a person or an 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, and which meets the criteria described in Rule 67-48.0072, F.A.C. which, to be eligible for the maximum 14% fee, 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 or other 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.;

(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.

~~(49)~~(54) “Geographic Set-Aside” means the amount of Allocation Authority or funding which has been designated by the Corporation to be allocated for Developments located in specific geographical regions within the State of Florida.

~~(50)~~(55) “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 IRC Code and Section 420.5099, F.S., 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 IRC Code, and this Rule Chapter 67-48, F.A.C.

~~(51)~~(56) “HOME” or “HOME Program” means the HOME Investment Partnerships Program administered by the Corporation pursuant to HUD Regulation 24 CFR Part § 92, which is adopted and incorporated herein by reference and available on the HUD website [www.hud.gov](http://www.hud.gov), and Section 420.5089, F.S.

~~(52)~~(57) “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.

~~(53)~~(58) “HOME Development” means any Development which receives financial assistance from the Corporation under the HOME Program.

~~(59)~~ “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.

~~(54)~~(60) “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 6 months prior to the Application Deadline, the Development is able to provide evidence of compliance with federal labor standards (if 12 or more HOME-Assisted Units are developed under a single contract) for any work already completed, and compliance with HUD environmental requirements as well as all other federal HOME regulations as listed in Rule 67-48.014, F.A.C., and 24 CFR Part 92. The federal requirements may require completion of activities prior to submission of an Application for HOME funding.

~~(55)~~(61) “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.

~~(56)~~(62) “Homeless” or “Homeless Household” means a ~~an individual or~~ Family who lacks a fixed, regular, and adequate nighttime residence or ~~a 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. The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

~~(57)~~(63) “Housing Credit” means the tax credit issued in exchange for the development of rental housing pursuant to Section 42 of the IRC Code and the provisions of this Rule Chapter 67-48, F.A.C.

~~(58)~~(64) “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 IRC Code.

~~(59)~~(65) “Housing Credit Development” means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.

~~(60)~~(66) “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 IRC Code.

~~(61)~~(67) “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.

~~(62)(68)~~ “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 Section 42 of the IRC 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.

~~(63)(69)~~ “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 set-aside at 60% of the Area Median Income (AMI) or less as chosen by the Applicant in the Application.

~~(64)(70)~~ “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.

~~(65)(71)~~ “Housing Provider” means, with respect to a HOME Development, Local Government, consortia approved by HUD under 24 CFR Part 92 the HUD Regulations, for-profit and Non-profit Developers, and qualified CHDOs, with demonstrated capacity to construct or rehabilitate affordable housing.

~~(66)(72)~~ “HUD” means the United States U.S. Department of Housing and Urban Development.

~~(67)~~ “IRC” means Section 42 and subsections 501(c)(3) and 501(c)(4) of 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, notices, and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States, which are incorporated by reference and available on the Internal Revenue Service website www.irs.gov.

~~(73)~~ “HUD Regulations” means, with respect to the HOME Program, the regulations of HUD in 24 CFR § 92, together with subsequent amendments thereto, as in effect on the date of this rule chapter.

~~(74)~~ “Income Certification”, “Tenant Income Certification” or “Form TIC 1” means the Form TIC 1, which is adopted and incorporated by reference, effective January 2004, 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 or by contacting the Compliance Department at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.~~

~~(75)~~ “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.

~~(68)(76)~~ “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, F.S.

~~(69)(77)~~ “Local Government” means Local government a unit of local general purpose government as defined in Section 420.503 218.31(2), F.S.

~~(70)(78)~~ “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, F.S.

~~(71)(79)~~ “Low Income” means the Adjusted, with respect to the HOME Program, Income for a Family which does not exceed 80% of the area 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.

~~(72)~~ “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.

~~(73)(80)~~ “Match” means non-federal contributions to a HOME Development eligible pursuant to 24 CFR Part 92 the HUD Regulations.

~~(74)~~ “Mortgage” means Mortgage as defined in Section 420.503, F.S.

~~(75)(81)~~ “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 Code 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 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. 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.

(76)(82) "Note" means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money for the loan together with interest on a specified date, which provides the interest rate and is secured by a mortgage.

(77)(83) "Portfolio Diversification" means a distribution of SAIL and HOME Program loans to Developments in varying geographic locations with varying design structures and sizes and with different types and identity of Sponsors.

(78)(84) "Preliminary Allocation" means a non-binding reservation of Housing Credits issued to a Housing Credit Development which has successfully completed the credit underwriting process and demonstrated a need for Housing Credits and received a positive recommendation from the Credit Underwriter.

(79)(85) "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.

(80)(86) "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.

(87) "Program" or "Programs" means the SAIL, HOME and/or HC Program(s) as administered by the Corporation.

(88) "Program Report" or "Form PR-1" means the report format which is required to be completed and submitted to the Corporation pursuant to subsection 67-53.008(7), F.A.C., and is adopted and incorporated herein by reference, effective June 2003. A copy of such form is available on FHFC's web site

www.floridahousing.org or by contacting the Compliance Department at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(81)(89) "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 subsection 67-48.028(4), F.A.C., and is adopted and incorporated herein by reference, effective January 2003. A copy of such form is available on the Corporation's Website FHFC's web site www.floridahousing.org or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(82)(90) "Project," or "Property" or "Development" means Project as defined in Section 420.503, F.S. any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

(83)(91) "QAP" or "Qualified Allocation Plan" or "QAP" means, with respect to the HC Program, the 2005 2004 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC 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 the Corporation's Website FHFC's web site www.floridahousing.org or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(84)(92) "QCT" or "Qualified Census Tract" or "QCT" 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 IRC Code. The United States Department of Housing and Urban Development maintains the official QCT list. Applicants are responsible for providing Florida Housing with accurate QCT information.

(85) "RD" or "Rural Development" means Rural Development Services (formerly the "Farmer's Home Administration" or "FmHA") of the United States Department of Agriculture.

~~(86)(93)~~ “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.

~~(87)(94)~~ “Rehabilitation” means, with respect to the HOME and Housing Credit Program(s), the alteration, improvement or modification of an existing structure, as further described in Rule 67-48.0075, F.A.C. ~~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 42(e) of the Code, with the exception of Section 42(e)(3)(A)(ii)(II), which, for the purposes of Competitive HC, 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,” and, for the purposes of all other HC, 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 \$10,000 or more.”~~

~~(88)(95)~~ “Review Committee” means a committee established pursuant to Sections 420.5087 and 420.5089, F.S. ~~of FHFC staff persons and one DCA staff person appointed by the Board who will make recommendations to the Board regarding Program participation.~~

~~(96)~~ “Rural Development” or “RD” or “USDA RD” (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.

~~(89)(97)~~ “SAIL” or “SAIL Program” means the State Apartment Incentive Loan Program created pursuant to Sections 420.507(22) and 420.5087, F.S.

~~(90)(98)~~ “SAIL Development” means a residential development comprised of one or more residential buildings, each containing five or more dwelling units and functionally related facilities, proposed to be constructed or substantially rehabilitated with SAIL funds for Eligible Persons or Eligible Households or a residential development comprised of one or more buildings containing dwelling units and functionally related facilities proposed to be substantially rehabilitated with SAIL funds for Eligible Persons or Eligible Households. If a Development has received a tentative allocation or tentative funding commitment and is proposed to be constructed or substantially rehabilitated, is under construction, in the process of substantial rehabilitation, or has been completed, it may be considered for the SAIL Program funding only if:

~~(a)~~ The pro forma in the prior Housing Credit or Multifamily Mortgage Revenue Bonds Application submitted for the Development reflected SAIL funding, unless otherwise specified in the Universal Application Package; and

~~(b)~~ Permanent financing of the costs associated with construction or rehabilitation of the Development, including tax exempt bonds with conversion clauses, has not closed as of the Application Deadline, or if financed with Multifamily Mortgage Revenue Bonds or Local Government issued tax exempt bonds, the bonds did not close prior to January 1, 2003, or if the Development received an allocation of Housing Credits, the IRS Forms 8609 have not been issued, unless otherwise specified in the Universal Application Package; and

~~(c)~~ The Development has not already received funding through the SAIL Program.

~~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 obtain permission from the Board to process an Application through SAIL for additional funding.~~

~~(91)(99)~~ “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, as further described in Rule 67-48.009, F.A.C. ~~The SAIL Minimum Set Aside Requirement shall be:~~

~~(a)~~ 20% of the SAIL Development’s units set aside for residents 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, or

~~(b)~~ 40% of the SAIL Development’s units set aside for residents 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 this minimum set-aside only if the SAIL Development is scheduled to be assisted with Housing Credits, in addition to the SAIL loan, or

~~(c)~~ 100% of the SAIL Development’s units set aside for residents with annual household incomes below 120% of the state or local median income, whichever is higher, adjusted for family size. Sponsors of SAIL funded Developments shall have the option of selecting this minimum set-aside only if the SAIL Development is located in the Florida Keys Area.

~~(92)(100)~~ “Scattered Sites” for a single Development means a Development consisting of more than one parcel in the same county where two or more of the parcels (i) are not contiguous to one another or are divided by a street or easement and (ii) it is readily apparent from the proximity of



the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.

~~(93)(101)~~ “Section 8 Eligible” means a Family with an one or more persons or families who have incomes which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937, which is adopted and incorporated herein by reference and available on the HUD website www.hud.gov, as in effect on the date of this rule chapter.

~~(94)(102)~~ “Single Room Occupancy” or “SRO” 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.

~~(95)(103)~~ “Sponsor” means Sponsor as defined in Section 420.503, F.S. 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.~~

~~(96)(104)~~ “State Office on Homelessness” means the office created within the Department of Children and Family Services under Section 420.622, F.S.

~~(105)~~ “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.

~~(97)(106)~~ “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 Cost. To be considered “Substantial Rehabilitation,” there must be at least the foundations remaining from the previous structures, suitable to support the proposed construction.

~~(98)(107)~~ “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 IRC Code.

~~(99)(108)~~ “Tie-Breaker Measurement Point” means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites

which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.

~~(100)(109)~~ “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 Rule 67-48.0075, F.A.C. 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, Developer fee, 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. However, offsite improvements are not eligible to be paid with HOME funds.~~

~~(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.~~

~~(101)(110)~~ “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.

(111) “Universal Application Package” or “UA1016 (Rev. 3/04)” means the 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, HOME 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.

(102)(412) “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, 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.

(103)(413) “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 IRC 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.~~

(104) “Website” means the Florida Housing Finance Corporation’s website, the Universal Resource Locator (URL) for which is [www.floridahousing.org](http://www.floridahousing.org).

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, 3-17-02, 4-6-03, 3-21-04.

67-48.004 Application and Selection Procedures for Developments.

(1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA1016 (Rev. 2-05) consists of the 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, HOME, HC, or SAIL and HC Program(s). The Universal Application Package is adopted and incorporated herein by reference, effective on February 7, 2005.

(b)(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 the failure to meet threshold, rejection of the Application, ~~or 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.

(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.

(4) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant’s Application must file with the Corporation, within 8 ~~7~~ Calendar Days of the date of receipt of 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 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 ~~11~~ <sup>9</sup> Calendar Days of ~~the date receipt of~~ the notice set forth in subsection (5) 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 (3) and (5) 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 may 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).

(7) Within 7 Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (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 document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (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 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 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 subsections (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 subsections

(3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) and (7) 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 (14) 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.

(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 Section 42 of the IRC Code and in accordance with the Qualified Allocation Plan.

(11) Applications shall be limited to one submission per subject property with the exception that Local Government-issued Tax-Exempt Bond-Financed Developments may submit a separate Application for non-competitive Housing Credits. 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, 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. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Two Applications by Applicants with common Financial Beneficiaries for Developments that are contiguous, or that are divided by a street or easement, or that are otherwise part of a common or related scheme of development, will not be considered to be submissions for the same Development site if one of the Applicants applies for SAIL pursuant to paragraph B.7.c.(6) of the Ranking and Selection Criteria of the Universal Application Instructions only.

(12) 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 of its Developments, or within the current Application or in any previous applications for financing or an allocation of Housing Credits administered by the Corporation;

(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.

(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 subsection (6) 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;

(c) The Applicant fails to file all applicable Application pages and exhibits 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 or any agent or assignee of the Corporation. For purposes of the SAIL and HOME Programs, this rule subsection does not include permissible deferral of SAIL or HOME interest.

(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 Applicant;

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

(c) Program(s) applied for;

(d) Applicant applying as a Non-Profit or for-profit organization;

(e) Site for the Development;

(f) Development Category;

(g)(f) Development Type;

(h)(g) Designation selection;

~~(i)(h)~~ County;

~~(j)(i)~~ Total number of units;

~~(k)(j)~~ With regard to the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the ~~p~~Program(s) applied for in the ~~Total~~ Set-Aside Commitment section of the Application. With regard to the HOME Program, the Total Set-Aside Percentage as stated in the ~~Total~~ Set-Aside Commitment Percentage section of the Application, unless the change results from the revision allowed under ~~(m)(h)~~ below;

~~(l)(k)~~ CHDO election for the HOME Program;

~~(m)(l)~~ Funding Request (except for Taxable Bonds) amount; notwithstanding the foregoing, requested amounts ~~exceeding the Corporation and Program funding limits~~ can be changed only as follows:

1. Reduced by the Applicant to reflect the maximum request amount allowed in those instances where an Applicant requested more than its request limit, or (and no other changes to this amount will be allowed);

2. When the county in which the Development is located is newly designated as a Difficult Development Area (DDA) after the Application Deadline but prior to the end of the cure period outlined in Rule 67-48.004, F.A.C.: (i) an Applicant, who has not failed threshold for exceeding its Competitive HC request limit, may increase its Competitive HC request by an amount equaling 30%, rounded to whole dollars, of the remainder of the Applicant's initial request amount minus the Application's Deep Targeting Incentive Amount or, (ii) an Applicant, that failed threshold during preliminary scoring for requesting more than its Competitive HC request limit because the Development was not then designated as being in a DDA, may increase its Competitive HC request amount to the maximum allowable amount for the Development.

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

~~(o)(n)~~ Payment of the required Application fee by the Application Deadline.

All other items may be submitted as cures pursuant to subsection (6) above.

(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 Section 42 of the IRC Code, this rule chapter, or applicable loan documents, and any

applicable cure period granted for correcting such non-compliance has ended as of 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 Corporation's pPrograms 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 SAIL, HOME and HC Program Applications, when two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the Application instructions.

(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 the issuance of the final scores as set forth in subsection (9) above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Application. 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) Applicants may withdraw an Application from consideration only by submitting a written notice of withdrawal to the Corporation Clerk. Applicants may not rescind any notice of withdrawal that was submitted to the Corporation Clerk. For ranking purposes, the Corporation Florida Housing shall disregard any withdrawal that is submitted after 5:00 p.m., Eastern Time, 14 Calendar Days prior to the date the on the Friday preceding Board is scheduled to convene to consider approval of the final ranking of the Applications and such Application shall be included in the ranking as if no notice of withdrawal had been submitted. After the Board has approved the final ranking, any notice of withdrawal submitted during the time period prohibited above after that Friday and before the Board approves the final ranking, shall be deemed withdrawn immediately after Board approval of the final ranking. If an Applicant has applied for two or more pPrograms, the withdrawal by the Applicant from any one pProgram will be deemed by the Corporation Florida Housing to be a withdrawal of the Application from all pPrograms.

(20) 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 approved by the Corporation.

(21) If an Applicant or any Affiliate of an Applicant has offered or given consideration, other than the consideration to provide affordable housing, with respect to a local contribution and this is discovered prior to Board approval of the final ranking, the Corporation Florida Housing shall reject the Application and any other Application submitted by the same Applicant and any Affiliate of the Applicant. If discovered after the Board approves final ranking, any tentative funding or allocation for the Application and any other Application submitted in the same cycle by the same Applicant and any Affiliate of the Applicant will be withdrawn. Such Applicant and any of such 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 the date the Board issues a Final oOrder on such matter, in a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S.

Specific Authority 420.507, ~~420.507(22)(f)~~ FS. Law Implemented 420.5087, 420.5087(6)(c), 420.5089, 420.5089(6), 420.5099, 420.5099(2) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.004, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04,

#### 67-48.005 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-48.004, F.A.C., each Applicant will be provided with its final score and notice of rights, which shall constitute the point of entry to contest any issue related to the Applicant's Application for the SAIL Program, the HOME Program or the HC Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation within 22 on or before the 21st Calendar Days of the date the Applicant's after the date Applicant receives its notice of rights is sent by overnight delivery by the Corporation. 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. ~~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. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(4) Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with the prioritization of the QAP and Rule Chapter 67-48, F.A.C., the Corporation shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board, provide the requested funding, ~~and/or~~ allocation, ~~or both~~, ~~(as applicable)~~ from the next available funding, ~~and/or~~ allocation, ~~or both~~, whether in the current year or a subsequent year. If the final order is executed on or before the Corporation issues the current year's final scores, the funding, allocation, or both, will come from the current year. If the final order is executed after the Corporation issues the current year's final scores, the funding, allocation, or both, will come from the subsequent year. Funding refers to SAIL or HOME and allocation refers to HC. Nothing contained herein shall affect any applicable credit underwriting requirements.

(5) Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the SAIL Program, the HOME Program or the HC Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if:

(a) The competing Applicant files a petition within 22 ~~on~~ or before the 21st Calendar Days of the date after the receipt of the notice of rights is sent by overnight delivery by the Corporation pursuant to this subsection (5). 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, score or ranking sought to be challenged.

(b) For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-48.004(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole

control to cure. With regard to curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-48.004(6), F.A.C.

(c) The competing Applicant alleges facts in its petition sufficient to demonstrate that, but for the specifically identified threshold, scoring or ranking errors in the challenged Application, its Application would have been in the funding range at the time ~~the Corporation Florida Housing~~ provided the Applicant with its final ranking.

(d) If the petition does not raise a disputed issue of material fact, the appeal 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 which will then be considered by the Board.

(6) 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 as described in subsection (5) above concerning the final ranking of another Application, shall be allowed the opportunity to submit written arguments to the Board. Any written arguments 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.

(7) For those Applicants that have filed a petition pursuant to subsection (5) above, the Corporation shall, if any such Applicant ultimately obtains a final order that demonstrates that its Application would have been in the funding range of the applicable final ranking, provide the requested funding, ~~and/or~~ allocation, ~~or both~~ ~~(as applicable)~~ from the next available funding, ~~and/or~~ allocation, ~~or both~~, whether in the current year or a subsequent year. If the final order is executed on or before the Corporation issues the current year's final scores, the funding, allocation, or both, will come from the current year. If the final order is executed after the Corporation issues the current year's final scores, the funding, allocation, or both, will come from the subsequent year. Funding refers to SAIL or HOME and allocation refers to HC. Nothing contained herein shall affect any applicable credit underwriting requirements. The filing of a petition pursuant to subsection (5)

above shall not stay the Corporation's provision of funding to Applicants per the final rankings referenced in subsection (4) above.

Specific Authority 420.507 FS. Law Implemented 120.569, 120.57, 420.5087, 420.5089, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.005, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 10-8-02, 12-4-02, 4-6-03, 3-21-04, \_\_\_\_\_.

#### 67-48.007 Fees.

The Corporation, the Credit Underwriter or the environmental provider shall collect via check or money order the following fees and charges in conjunction with the SAIL, HOME and/or HC Program:

- (1) Universal Application Package fee.
- (2) Application fee.
- (3) Credit Underwriting fees.
- (4) Administrative fees.
- (5) Commitment fees.
- (6) Compliance monitoring fees.
- (7) Loan servicing fees.
- (8) Construction inspection fees.
- (9) Financial monitoring fees.
- (10) Tax-exempt mortgage financing.
- (11) HUD environmental fee.
- (12) Qualified Contract Package fee.

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 pProgram 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, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended \_\_\_\_\_.

#### 67-48.0072 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 SAIL or HOME loan amount, Housing Credit allocation amount or a combined SAIL loan amount and Housing Credit Allocation amount, if any. As part of the credit underwriting review, the Credit Underwriter will consider the applicable provisions of Rule Chapter 67-48.

(1) After the final rankings are approved by the Board, 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.

(2) For SAIL and HOME Applicants, the invitation to enter credit underwriting constitutes a preliminary commitment.

(3) 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.

(4) If the credit underwriting invitation is accepted:

(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.

(b) Unless an extension is obtained from the Corporation, 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 Universal Application instructions. For HOME Applicants that apply and qualify as a Non-Profit entity, the Corporation shall bear the cost of the credit underwriting review and environmental review. However, if the HOME commitment is canceled for failure to adhere to rule deadlines or for reasons within the Applicant's control, the Development will be responsible for reimbursing the Corporation for fees incurred for credit underwriting and environmental review processing.

(c) A Tax-Exempt Bond-Financed Development that has previously received an allocation of Competitive HC for the proposed Development shall, as part of its acceptance to enter credit underwriting for SAIL (if the proposed Development will be funded with Local Government-issued tax-exempt bonds) or MMRB and SAIL (if the proposed Development will be funded with Corporation-issued tax-exempt bonds and SAIL), also acknowledge to the Corporation that it is returning any previously received allocation of Competitive HC for the proposed Development.

(5) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, Syndicator, General Contractor, and, if an ALF, the service provider(s), as well as other members of the Development team.

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

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

(8) 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.

(9) 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 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 referenced above. The market study must be completed by a disinterested party which 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 SAIL or HOME loan, a Housing Credit Allocation, or a combined SAIL loan and Housing Credit Allocation. 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.

(10) The proposed Development must demonstrate, based on current rates, that it can meet minimum 1.10 debt service coverage (DSC) requirements with all first and second mortgages for Competitive Housing Credits and non-competitive Housing Credits without SAIL. For HOME Applications, the minimum debt service coverage shall be 1.10 for the HOME loan, including all superior mortgages. Developments receiving first mortgage funding from the United States 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. For SAIL Applications, the minimum debt service coverage shall be 1.10 for the SAIL loan, including all superior mortgages. However, if the Applicant defers at least 35% of their developer fee for at least 6 months following construction completion, the minimum debt service coverage shall be 1.00 for the SAIL loan, including all superior mortgages. For SAIL and HOME Applications, the maximum debt service coverage shall be 1.50 for the SAIL or HOME loan, including all 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.

(11) 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 or Substantial Rehabilitation and a review of the Development's costs.

(12) 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.

(13) For SAIL, HOME, and HC Applications, the underwriters may request additional information, but at a minimum for SAIL and HOME, 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, and the two most recent year's tax returns. 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.

(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.



(14) 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 subparagraphs (a)-(d) above that additional surety is needed. However, a completion guarantee will not be required if SAIL funds are not drawn until evidence of lien free completion is provided.

(15) For all Developments, 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. A total Developer fee of 18% of Development Cost 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. However, the Developer fee shall be limited to 10% of Development Cost for those Developments involving Rehabilitation or Substantial Rehabilitation of buildings which have received a Corporation funding commitment or a Preliminary Allocation/Determination for other construction work within fourteen years of the Application Deadline.

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

(16) 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 or other guarantee acceptable to the Corporation) 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.

(17) For SAIL Applications, the Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.00 debt service coverage for a minimum of 6 consecutive months for the combined permanent first mortgage and SAIL loan. For HOME Applications, 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 permanent first mortgage and HOME loan. An operating deficit guarantee, to be released upon achievement of 1.00 debt service coverage for a minimum of 6 consecutive months for the combined permanent first mortgage and HOME loan will be required for Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) 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 loan and all superior mortgages.

(18) 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 or Substantial Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from SAIL or HOME funds.

(19) 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.

(20) 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 or, if applicable, the HC invitation to enter credit underwriting, and the funds will be made available to the next eligible Applicant as outlined in the Universal Application instructions.

(21) 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 select additional Application(s) as outlined in the Universal Application instructions.

(22) 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, as applicable, on the Applicant's comments. Then the Credit Underwriter shall review and incorporate, if deemed appropriate, 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 the revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(23) For SAIL and HOME Applications, the Credit Underwriter's recommendations will be sent to the Board for approval.

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

(25) For SAIL and HOME Applications, other mortgage loans related to the Development and the SAIL or HOME loan must close within 60 Calendar Days of the date of the firm SAIL or HOME 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 for consideration. For SAIL Applications, the Corporation shall charge an extension fee of one-half of one percent of the SAIL loan amount if the Board approves the request to extend the SAIL commitment beyond the period outlined in this rule chapter.

(26) At least 5 Calendar Days prior to any SAIL or HOME loan 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.

(27) For Housing Credit Applications, the Credit Underwriter shall use the following procedures during the credit 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 tax-exempt bonds.

(b) Costs such as syndication fees and brokerage fees cannot be included in eligible basis. All consulting fees and the cost of the independent market study must be paid out of the Developer fee. Consulting fees and the cost of the independent market study cannot cause the Developer fee to exceed the maximum allowable fee as set forth in subsection 67-48.0072(15), F.A.C.

(c) All contracts for hard or soft Development Costs must be itemized for each cost component.

(d) If the Credit Underwriter is to recommend a Competitive Housing Credit allocation, the recommendation will be the lesser of (i) the qualified basis calculation result, (ii) the gap calculation result, or (iii) the Applicant's request amount. In the event the Credit Underwriter is making a recommendation for non-competitive Housing Credits, the recommendation will be the lesser of the qualified basis calculation result or the gap calculation result.

(28) If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the Corporation 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. 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. The Obligation of Funding (RD or FmHA Form 1944-51), Rev. 10-97, is adopted

and incorporated herein by reference and a copy of the form can be obtained from the United States 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 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History—New \_\_\_\_\_.

67-48.0075 Miscellaneous Criteria.

(1) In addition to the alteration, improvement or modification of an existing structure, Rehabilitation with respect to the HOME and Housing Credit Programs also includes:

(a) For HOME Developments, 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.

(b) For Housing Credit Developments, what is stated in Section 42(e) of the IRC, with the exception of Section 42(e)(3)(A)(ii)(II), which, for the purposes of Competitive HC, 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," and, for the purposes of all other HC, 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 \$10,000 or more."

(2) For purposes of this rule chapter, in accordance with Section 42 of the IRC, 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. To evidence its qualification as a Non-Profit entity, the Applicant must provide within its Application 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 applies to the Corporation as a Non-Profit entity but does not qualify as such, the Application will be rejected.

(3) Total Development Cost includes 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, Developer fee, 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. However, offsite improvements are not eligible to be paid with HOME funds.

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

(i) Allowances 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, for the construction or Rehabilitation/Substantial Rehabilitation of the Development.

(4) 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 shall mean a Family having a combined income which meets the income eligibility requirements of the HC Program and Section 42 of the IRC.

(5) Financial Beneficiary, as defined in Rule 67-48.002, F.A.C., 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 contractors whose total fees are within the limit described in Rule 67-48.0072, F.A.C.

(6) To be eligible for the maximum General Contractor fee, the General Contractor employed by the Developer must meet the criteria outlined in Rule 67-48.0072, F.A.C.

(7) The Developer fee is limited to the percentages outlined in Rule 67-48.0072, F.A.C.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History—New

## PART II STATE APARTMENT INCENTIVE LOAN PROGRAM

67-48.009 SAIL General Program Procedures and Restrictions.

(1) Loans shall be in an amount not to exceed 25% of the Total Development Cost except as described in subsection (2) below, or the minimum amount required to make the Development economically feasible, whichever is less, as determined by the Credit Underwriter.

(2) 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), F.S.:

(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 Farmworkers as defined in Section 420.503(18), F.S., Commercial Fishing Workers as defined in Section 420.503(5), F.S., or the Homeless as defined in Section 420.621(4), F.S., over the life of the loan.

(3) 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.

(4) An Applicant is not eligible to apply for SAIL Program funding if any of the following pertain to the proposed Development:

(a) Construction or construction-permanent financing of the costs associated with construction or Substantial Rehabilitation of the Development, including tax-exempt bonds or conventional financing with conversion clauses, has closed as of January 1, 2004;

(b) The Applicant has received an allocation of Housing Credits or a Competitive Housing Credit commitment for the proposed Development, unless the Applicant is also applying for Corporation-issued tax exempt bonds in the current

Application cycle or provides evidence of a Local Government-issued tax exempt bond commitment as stated in the Universal Application Instructions;

(c) The Applicant has already accepted a preliminary commitment of funding for the proposed Development through the SAIL Program from a prior Funding Cycle, unless the Applicant has provided written notice to the Corporation prior to the Application Deadline for the current cycle that it is withdrawing its acceptance and returning its SAIL funding from such prior cycle, with one exception. That exception being that an Applicant who was successful in receiving SAIL funding in the 2004 Universal Application cycle may request additional SAIL funding as provided in the Universal Application Instructions.

(5) The Developer fee and General Contractor's fee shall be limited as described in Rule 67-48.0072, F.A.C. 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. A total Developer fee of 18% of Development Cost 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. However, the Developer fee shall be limited to 10% of Development Cost for those Developments involving rehabilitation of buildings which have received a Florida Housing funding commitment or a Preliminary Allocation/Determination for other construction work within fourteen years of the Application Deadline.

(6) The SAIL Minimum Set-Aside Requirement is:

(a) 20% of the SAIL Development's units set-aside for residents 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, or

(b) 40% of the SAIL Development's units set-aside for residents 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 this minimum set-aside only if the SAIL Development is scheduled to be assisted with Housing Credits, in addition to the SAIL loan, or

(c) 100% of the SAIL Development's units set aside for residents with annual household incomes below 120% of the state or local median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting this minimum set aside only if the SAIL Development is located in the Florida Keys Area. The General Contractor's fee shall be limited to a maximum of 14% of the actual construction cost.

(7) SAIL loan proceeds shall not be used to fund any contingency reserves.

~~(8) Unless otherwise provided in the Universal Application Instructions, 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, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

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 in accordance with the ranking and selection process set forth in the Universal Application Package and based upon the requirements specified in Section 420.5087(3), F.S., which specifies the required funding within the four demographic categories of:

- (a) Family;
- (b) Elderly;
- (c) Homeless; and
- (d) 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 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, F.S.

(3) Program funds designated for Commercial Fishing Workers and Farmworkers will be allocated through a request for proposal (RFP), the Universal Application Package, or both.

~~(4)(3)~~ The Corporation shall assign, in order of ranking, tentative loan amounts to the Applications in each demographic and geographic category, up to the total amount available. However, the Corporation shall make adjustments to ensure that minimum funding distribution levels by geographic category are met, as required by Section 420.5087(1), F.S., and further described in the SAIL Notice of Funding Availability.

~~(5)(4)~~ 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 equitably distributed pursuant to the instructions included in the Universal Application Package.

~~(5) Based upon fund availability, the Corporation shall select Applications for participation in the SAIL Program in accordance with the instructions included in the Universal Application Package.~~

(6) Selection for SAIL Program participation is contingent upon fund availability at the conclusion of 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, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

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 multifamily rental housing units.

(2) The SAIL loan may be in a first, second, or other subordinated lien position. 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% simple interest per annum on loans to Developments that maintain an 80% occupancy of residents qualifying as Farmworkers, Commercial Fishing Workers or Homeless, over the life of the loan;

(b) 3% simple interest per annum on loans to Developments other than those identified in paragraph (a) above;

(c) Except as provided in Section 420.5087(5), F.S., 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.

~~(d)(e)~~ Payment on the loans shall be based upon the Development Cash Flow, as determined pursuant to the SAIL Cash Flow Reporting Form SR-1. Any distribution or payment to the Principal(s) or any Affiliate of the Principal 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, will be added back to the amount of cash available for the SAIL loan interest payment, as calculated in the SAIL Cash Flow Reporting Form SR-1, for the purpose of determining interest due. Interest may be deferred as set forth in subsection 67-48.010(6), F.A.C., without constituting a default on the loan.

(4) The loans described in paragraphs 67-48.010(3)(a) and (b), 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 subsection (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

- (a) All superior ~~First~~ mortgage fees and debt service;
- (b) Development Expenses on the SAIL loan, including up to 20% of total Developer fees per year;

(c) Interest payment on SAIL loan balance equal to 1% as stated in paragraph (3)(a) above and equal to 3% as stated in paragraph (3)(b) above over the life of the SAIL loan;

(d) Interest payments on the SAIL loan deferred from previous years;

(e) Mandatory payment on subordinate mortgages.

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 subsection (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and interest payment on SAIL loan balance equal to 1% as stated in paragraph (3)(a) above and equal to 3% as stated in paragraph (3)(b) above over the life of the SAIL loan;

(b) Development Expenses on the SAIL loan including up to 20% of total Developer fees per year;

(c) Interest payments on the SAIL loan deferred from previous years;

(d) Mandatory payment on subordinate mortgages.

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.

(a) By May 31 of each year of the SAIL loan term, the Applicant shall provide the Corporation with audited financial statements and 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. 10/04 ~~12/02~~, which is incorporated by reference. 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 December 31 and shall include:

1. Comparative Balance Sheet with prior year and current year balances;
2. Statement of revenue and expenses;
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. A late fee of \$500 will be assessed by the Corporation for failure to submit the required audited financial statements and certification by May 31 of each year of the SAIL loan term. Failure to submit the required audited financial statements and certification by May 31 of each year of the SAIL loan term shall constitute an event of default on the SAIL loan. 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.

For SAIL loans applied for prior to February 22, 2001, the Corporation will extend the annual filing deadline for submission of the audited financial statements and certification detailing the information needed to determine the annual payment to be made, pursuant to subsection 67-48.010(6), F.A.C., to May 31 of each year of the SAIL loan term. 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. In addition, for SAIL loans applied for prior to December 23, 1996, so long as the executed loan agreements contain a provision to assess a late fee for failure to provide the audited financial statement and certification detailing the information needed to determine the annual payment due, such fee will be assessed by the Corporation as outlined above.

(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 interest will be due no later than August 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.

(7) After maturity or acceleration, the Note shall bear interest at the Default Interest Rate 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 is not received by the Corporation within 15 days of the due date.

(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.

(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. 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. The present value discount rate shall be 2.75% per annum. Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Development provided:

(a) The compliance monitoring fee covers some or all of the period following the anticipated SAIL loan repayment date; and

(b) The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another Corporation program for which the compliance monitoring fee was collected.

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

(11) The Corporation shall monitor compliance of all terms and conditions of the SAIL loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement and recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement will be recorded first. Violation of any term or condition of the documents evidencing or securing the SAIL loan shall constitute a default during the term of the SAIL loan. The Corporation shall take legal action to effect compliance if a violation of any term or condition relative to the set-asides of units for Very Low-Income persons or households is discovered during the course of compliance monitoring or by any other means.

(12) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective November 3, 2003, which is adopted and incorporated herein by reference and available on the Corporation's Website.

(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.

(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.

(15) 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 SAIL 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 Florida Housing must be notified of any such change.

(a) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in paragraph 67-48.010(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, but the current balance is \$3,000,000, 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 \$1,800,000, 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 \$594,000. This \$594,000 would be applied first to accrued interest and then to principal.

(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 paragraph 67-48.010(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 programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

(16) All SAIL loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR Part 100, which is adopted and incorporated herein by reference, 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. These provisions are available on the HUD website [www.hud.gov](http://www.hud.gov). 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 Part 100.

(17) Rent controls shall not be allowed on any Development except as required in conjunction with the issuance of tax-exempt bonds or federal Housing Credits; however, rents must be determined to be reasonable by the Credit Underwriter.

(18) The documents creating, evidencing or securing each SAIL loan must provide that any violation of the terms and conditions described in Rule Chapter 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.

~~(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, which is adopted and incorporated herein by reference. 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), F.S., in order to ensure continuing compliance of the Development.~~

~~(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.~~

~~(19)(21)~~ A failure to pay any principal or interest due under the terms of this section shall constitute a default on the SAIL loan.

~~(20)(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 demographic commitment for Elderly, Homeless, Farmworker or Commercial Fishing Worker, the Applicant may request to rent such units to Very Low-Income persons or households without demographic 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% loans, as described in paragraph 67-48.010(3)(a), F.A.C., to modify loan documents to conform to the terms and conditions of 3% loans, as described in paragraph 67-48.010(3)(b), F.A.C., or to accelerate payments of SAIL loan principal or interest.

~~(21)(23)~~ The Applicant shall provide to the Corporation an 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.

~~(22)(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.

~~(23)(25)~~ For SAIL loans applied for prior to March 17, 2002, at the borrower's request, the Corporation Florida Housing will include up to 20% of total Developer fees per year as a Development Expense when calculating the interest due on the SAIL loan for the 2003 calendar year for the billing issued in 2004 pursuant to paragraph 67-48.010(6)(b), F.A.C., and for the billing for interest due each calendar year thereafter. Development Expense will not include Developer



fees for determination of payment of interest on SAIL loans applied for prior to March 17, 2002 for the 2002 calendar year or any previous calendar year. For purposes in this paragraph, Development Expense has the same meaning as Project Expense and Eligible Project Expense as those terms are used in SAIL loans applied for prior to March 17, 2002.

(24) The Compliance Period for a SAIL Development shall be, at a minimum, a period of 12 years from the date the first residential unit is occupied. For SAIL Developments which contain occupied units to be Substantially Rehabilitated, the Compliance Period shall begin not later than 60 days from the termination of the last annual lease in effect at the time of closing of 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, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

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;

(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 and release of transferor 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 the buyer does not meet the criteria for assumption of the SAIL loan, the SAIL loan (principal and any outstanding interest) shall be repaid 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) 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. 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) Unpaid principal balance of the SAIL loan;

(e) Any interest due on the SAIL loan;

(f) Expenses of the sale;

(g) If there will be insufficient funds available from the proposed sale of the Development to satisfy paragraphs (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.

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, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, Repromulgated \_\_\_\_\_.

67-48.012 SAIL Credit Underwriting and Loan Procedures.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5087(6)(e) 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, 3-17-02, 4-6-03, 3-21-04, Repealed \_\_\_\_\_.

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. 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 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.

(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 91-48.013, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended \_\_\_\_\_.

### PART III HOME INVESTMENT PARTNERSHIPS PROGRAM

67-48.014 HOME General Program Procedures and Restrictions.

(1) Unless otherwise provided in the Application instructions, the Corporation shall utilize up to 10% of the HOME allocation for administrative costs pursuant to 24 CFR Part 92 the HUD Regulations.

(2) The Corporation shall utilize at least 15% of the HOME allocation for CHDOs pursuant to the 24 CFR Part 92 HUD Regulations, ~~to be divided between the multifamily and single family eyes.~~ 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 and other Corporation requirements identified in the CHDO Checklist. The CHDO Checklist is adopted and incorporated herein by reference, effective 11/02, and is available on the Corporation's Website ~~FHFC's web site www.floridahousing.org~~ or by contacting the HOME-Rental Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(3) Within the rental cycle administered pursuant to Rule Chapter 67-48, F.A.C., the Corporation will distribute funds as provided in the Universal Application instructions.

(4) The maximum per-unit subsidy amount of HOME funds that the Corporation shall invest on a per-unit basis in affordable housing shall not exceed the per-unit dollar limits established by the Corporation as identified in the current Application instructions and included on the HUD Subsidy Limits chart, which is adopted and incorporated by reference, effective ~~8-24-04~~ ~~12-8-03~~. A copy of such chart is available on the Corporation's Website ~~FHFC's web site www.floridahousing.org~~ or by contacting the HOME-Rental Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(5) 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) 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 whose annual income does not exceed 60% of the median family income for the area, as determined by HUD, with adjustments for family size, and

(b) 20% of the HOME-Assisted Units are occupied by families whose annual income does not exceed 50% of the median family income for the area, as determined by HUD, with adjustments of family size.

(c) When the income of a resident increases above 80% of area median income, the next unit that becomes available in the Development must be rented to a HOME income-eligible resident. If the income of a Very Low-Income household increases above the limits for a Very Low-Income household, then the Developer must rent the next available unit to a Very Low-Income household. The amount of rent the resident whose income has increased must pay is the lesser of the amount payable by resident under state or local law or 30% of the adjusted monthly income for rent and utilities.

(d) 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. 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. 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 Compliance Period of affordability for Rehabilitation Developments is 15 years from the date the first residential unit is occupied. For Developments that contain occupied units at the time of closing, the Compliance Period shall begin not later than 60 days from the termination of the last annual lease in effect at the time of closing of the HOME loan. The Compliance Period will be extended until the loan is repaid as enumerated in subsection 67-48.020(1), F.A.C.

(f) The minimum Compliance Period of affordability for newly-constructed rental housing is 20 years from the date the first residential unit is occupied. The Compliance Period of affordability will be extended until the loan is repaid as enumerated in subsection 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) The Development must comply with all applicable provisions of 24 CFR Part 92 and Rule Chapter 67-48, F.A.C.

(8) A Development that is under construction may be eligible to apply for HOME funds only if the final building permit is dated no earlier than 6 months prior to the Application Deadline, the Development is able to provide evidence of compliance with federal labor standards (if 12 or

more HOME-Assisted Units are developed under a single contract) for any work already completed, and the Development is able to provide evidence of compliance with HUD environmental requirements as well as all other federal HOME regulations as listed in Rule 67-48.014, F.A.C., and 24 CFR Part 92. The federal requirements may require completion of activities prior to submission of an Application for HOME funding.

~~(9)(8)~~ 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-276-a-5 (1994), which is adopted and incorporated herein by reference, 24 CFR § 92.354, 24 ~~CFR~~ ~~CFR~~ Part 70 (volunteers), which is adopted and incorporated herein by reference, and 40 U.S.C. 276c, which is adopted and incorporated herein by reference, 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. § 327-333 (1994), which is adopted and incorporated herein by reference, the Copeland Act (Anti-Kickback Act), 40 U.S.C. § 276c (1994), which is adopted and incorporated herein by reference, and the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.), which is adopted and incorporated herein by reference. The foregoing provisions are available on the HUD website [www.hud.gov](http://www.hud.gov).

~~(10)(9)~~ All HOME Developments must conform to the following federal requirements which are available on the HUD website [www.hud.gov](http://www.hud.gov):

(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.), which is adopted and incorporated herein by reference, Fair Housing Act (42 U.S.C. §§ 3601-3620), which is adopted and incorporated herein by reference, Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101), which is adopted and incorporated herein by reference, Executive Order 11063 (amended by Executive Order 12259), which is adopted and incorporated herein by reference, and 24 CFR § 5.105(a), which is adopted and incorporated herein by reference.

(b) Affirmative Marketing as enumerated in 24 CFR § 92.351.

(c) Environmental Review as enumerated in 24 CFR § 92.352, 24 CFR Part 58, which is adopted and incorporated herein by reference, and National Environmental Policy Act of 1969, which is adopted and incorporated herein by reference.

(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), which is adopted and incorporated herein by reference, 49 CFR Part 24, which is adopted and incorporated herein by reference, 24 CFR Part 42 (Subpart C), which is adopted and incorporated herein by reference, and Section 104(d) “Barney Frank Amendments,” which is adopted and incorporated herein by reference.

(e) Lead-based Paint as enumerated in 24 CFR § 92.355, and 24 CFR Part 35, which is adopted and incorporated herein by reference.

(f) Conflict of Interest as enumerated in 24 CFR § 92.356, 24 CFR §§ 85.36 and ~~24 CFR~~ 84.42, which are adopted and incorporated herein by reference.

(g) Debarment and Suspension as enumerated in 24 CFR Part 24, which is adopted and incorporated herein by reference.

(h) Flood Insurance as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), which is adopted and incorporated herein by reference.

(i) Handicapped Accessibility as enumerated in Section 504 of the Rehabilitation Act of 1973 (implemented in 24 CFR Part 8) and 24 CFR § 100.205, which are adopted and incorporated herein by reference.

(j) Americans with Disabilities Act as enumerated in 42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218 and 225, which are adopted and incorporated herein by reference.

(k) Equal Opportunity Employment as enumerated in Executive Order 11246 (implemented in 41 CFR Part 60), which is adopted and incorporated herein by reference.

(l) Economic Opportunity as implemented in 24 CFR Part 135, which is adopted and incorporated herein by reference.

(m) Minority/Women Employment as enumerated in 24 CFR § 85.36(e), and Executive Orders 11625, 12432, and 12138, which are adopted and incorporated herein by reference.

(n) Site and Neighborhood Standards as enumerated in 24 CFR § 983.6(b), which is adopted and incorporated herein by reference.

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 91-48.014, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

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 24 CFR Part 92 the HUD Regulations.

(2) A Match Credit Fund funded by the ~~s~~State of Florida has been appropriated to the Corporation. The funds are to be used for demonstration Developments, 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 24 CFR Part 92 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 91-48.015, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended \_\_\_\_\_.

67-48.017 Eligible HOME Activities.

HOME funds may be used for acquisition (must include new construction and/or ~~R~~rehabilitation), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities or for tenant based rental assistance pursuant to 24 CFR Part 92 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 91-48.017, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, Amended 4-6-03, Repromulgated 3-21-04, Amended \_\_\_\_\_.

67-48.018 Eligible HOME Applicants.

(1) Applicants for HOME loans may include CHDO’s, public housing authorities, local governments, Non-Profit organizations, and private for-profit organizations. The Applicant must be a legally-formed, existing entity at the time of Application Deadline. Pursuant to 24 CFR Part 92 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.

(2) For tenant based rental assistance, eligible public housing authorities shall be limited to those public housing authorities that provide a copy of their most recent Section Eight Management Assessment Program (SEMAP) and can demonstrate compliance with 24 CFR § 982.401, which is incorporated by reference and available on the HUD website [www.hud.gov](http://www.hud.gov).

(a) Eligible public housing authorities shall use the HOME Investment Partnership Program, state of Florida, TBRA Agreement (Rev. 10/04), which is incorporated herein by reference and available on the Corporation’s Website.

(b) An eligible public housing authority’s request for funding shall be based upon demonstration of recipient need; however, funding will be limited to \$50,000 per request.

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 91-48.018, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended \_\_\_\_\_.

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 24 CFR Part 92 ~~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 ~~s~~State of Florida building codes and the Model Energy Code referred to in 24 CFR Part 92 ~~the HUD Regulations~~;

2. Rehabilitation, the costs necessary to meet local and ~~s~~State of Florida rehabilitation building codes and at a minimum, the Section 8 Housing Quality Standards under 24 CFR Part 92 ~~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 ~~R~~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's and General Contractor's fees as described in Rule 67-48.0072, F.A.C.; 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. However, the Developer fee shall be limited to 10% of Development Cost for those Developments involving rehabilitation of buildings which have received a Florida Housing funding commitment or a Preliminary Allocation/Determination for other construction work within fourteen years of the Application Deadline.~~

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 24 CFR Part 92 ~~HUD Regulations~~;

8. ~~The General Contractor's fee shall be limited to a maximum of 14% of the actual 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 24 CFR § 92.206(d)(5) ~~subparagraph 67-48.021(2)(f)2., F.A.C.~~;

~~(b) Resident-based rental assistance except for pilot or demonstration Developments as approved by the Board of Directors;~~

~~(b)(e)~~ Public housing;

~~(c)(d)~~ Administrative costs;

~~(d)(e)~~ Developer fees unless the HOME funds include ~~R~~rehabilitation or new construction; or

~~(e)(f)~~ Any other expenses not allowed under 24 CFR Part 92.

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 91-48.019, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, Amended 3-17-02, 4-6-03, Repromulgated 3-21-04, 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, 24 CFR Part 92 ~~the HUD Regulations~~ and, at a minimum, contain the following terms and conditions:

(1) The HOME loan may be in a first, second, or subordinated lien position. The term of the loan shall be for a minimum 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 24 CFR Part 92 ~~the HUD Regulations~~, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the ~~IRC Code~~ 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.

(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 to 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 24 CFR Part 92 ~~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 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.

(10) All loans must provide that any violation of the terms and conditions described in this rule chapter or 24 CFR Part 92 ~~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, F.S.; 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.

(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. 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 Florida Housing must be notified of any such change.

(a) The Board shall approve requests for mortgage loan refinancing only if Development cash flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in paragraph 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, but the current balance is \$3,000,000, 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 \$1,800,000, 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 \$594,000. This \$594,000 would be applied first to accrued interest and then to principal.

(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 paragraph

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, 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

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 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

67-48.021 HOME Credit Underwriting and Loan Procedures.

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 91-48.021, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, Repealed \_\_\_\_\_.

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) 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.

(4) 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.

(5) 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.

(6) 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.

(7) To the extent excess HOME funds in the budget remain unused, the Corporation has the right to reduce the HOME loan by that amount.

(8) If 100% of the loan proceeds have not been expended within six months prior to the HUD deadline pursuant to 24 CFR § 92.500, the funds shall be recaptured by the Corporation.

(9) 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, 3-17-02, 4-6-03, Repromulgated 3-21-04, \_\_\_\_\_.

#### 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 IRC Code and federal regulations issued pursuant thereto and in effect at the time of the Funding Cycle. Noncompliance, outside of the compliance cure period, 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 IRC 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 chosen by the Applicant in the Application as shown on the rent charts provided by the Corporation 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 the Corporation 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, Rule Chapter 67-48, F.A.C., and Section 42 of the IRC Code.

(5) 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 Part § 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 Part § 35, which are adopted and incorporated herein by reference and available on the HUD website www.hud.gov.

(6) Each Competitive Housing Credit Development that receives a Carryover Allocation Agreement and each HC Development financed with tax-exempt bonds shall complete the Final Cost Certification Application within 75 ~~by the earlier of the following two dates:~~

~~(a) The date that is 60 Calendar Days after all the buildings in the Development have been placed in service, or~~

~~(b) All other Developments shall complete the Final Cost Certification Application no later than~~ 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) ~~The completed~~ The completed Final Cost Certification Application (Form FCCA) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in Rule 67-48.0072, F.A.C. Such form shall be completed, executed and submitted to the Corporation, along with the executed 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, shall include an unqualified audit report prepared by an independent certified public accountant, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCA instructions. The Final Housing Credit Allocation will not be issued until such time as all required items are received and processed by the Corporation. The Final Cost Certification Application is adopted and incorporated herein by reference, effective November 2004, and is available on the Corporation's Website or by contacting



the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1321. IRS Form 8821, Rev. 1-2000, is adopted and incorporated herein by reference and can be obtained from the Internal Revenue Service by calling 1(800)829-4477. 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 Application.

(8) After the final evaluation and determination of the Housing Credit Allocation amount has been made by the Corporation and the Extended Use Agreement has been executed in accordance with Rule 67-48.029, F.A.C., the Forms 8609 are issued to the Applicant of the Housing Credit Development. IRS Low-Income Housing Credit Allocation Certification Form 8609, Rev. 11-2003, is adopted and incorporated herein by reference and can be obtained from the Internal Revenue Service by calling 1(800)829-4477. 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 Application.

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, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, \_\_\_\_\_.

67-48.025 Qualified Allocation Plan.

(1) Pursuant to Section 420.507(12), F.S., 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 3-17-02, 4-6-03, 3-21-04, \_\_\_\_\_.

67-48.026 Housing Credit Underwriting Procedures.

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, 3-17-02, 4-6-03, Repromulgated 3-21-04, Repealed \_\_\_\_\_.

67-48.027 Tax-Exempt Bond-Financed Developments.

(1) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the IRC Code, which applied for 4% Housing Credits when applying for tax exempt bonds from the Corporation Florida Housing in calendar year 2000 or later 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 monitoring and credit underwriting fees as stated in Chapter 67-21, F.A.C.;

(c) Be deemed to have met all HC Program scoring threshold requirements upon the closing of the bonds with the Corporation Florida Housing;

(d) Receive a Preliminary Determination ~~from the Corporation~~ upon the Corporation's Florida Housing's issuance of a loan commitment in reference to the tax-exempt bonds;

(e) Be subject to the provisions of this rule chapter, specifically the applicable provisions of Part I and Part IV, except for Rules 67-48.026 and 67-48.028, F.A.C.;

(f) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification Application 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 the Corporation 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 IRC Code, seeking to obtain Housing Credits from the Treasury receiving the bonds from the Corporation Florida Housing prior to calendar year 2000 or receiving bonds from another source other than the Corporation 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 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 paragraphs (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) Be subject to the provisions in this rule chapter, pertaining to the required Extended Use Agreement;

(l) Be subject to the monitoring fee specified in this rule chapter, unless such Development has received tax-exempt bond financing through the Corporation;

(m) 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 Package instructions for receipt by the Corporation no later than July 1 of the year the Development is placed in service; and

(n) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification Application 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 91-48.027, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended \_\_\_\_\_.

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. 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) 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. 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.

(4) The Applicant for each Development for which a Carryover Allocation Agreement has been executed shall submit quarterly progress reports to the Corporation using Progress Report Form Q/M Report, ~~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.

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 91-48.028, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended \_\_\_\_\_.

67-48.029 Extended Use Agreement.

(1) Pursuant to Section 42(h)(6) of the IRC 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 Housing Credit 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 sState 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 prior to the issuance of a Final Housing Credit Allocation to an Applicant. Following execution, the Extended Use Agreement shall be recorded pursuant to Florida law as a restrictive covenant.

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, 3-17-02, 4-6-03, Amended 3-21-04,\_\_\_\_\_.

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 3-17-02, 4-6-03, 3-21-04,\_\_\_\_\_.

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 IRC 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, a Land Use Restriction Agreement under another Corporation program, or if Applicant has already knowingly and voluntarily waived its right to request the Corporation find a buyer to acquire the Applicant’s interest in the Housing Credit Set-Aside portion of the building, 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. When submitting a written request, Applicants shall utilize the Qualified Contract Package in effect at the time of the written request and shall remit payment of the required Qualified Contract Package fee. The Qualified Contract Package consists of the 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 request the Corporation find a buyer to acquire the Applicant’s interest in the Housing Credit Set-Aside portion of the building. The Qualified Contract Package, Rev. 09-04, is adopted and incorporated herein by reference.

(2) The Corporation shall have one year from the receipt of the completed Qualified Contract Package request to present a “qualified contract”, as defined in Section 42(h)(6)(F) of the IRC, obtain a qualified buyer for the Development. The one year time period shall commence upon the Corporation’s receipt of all of the accompanying information required by the Qualified Contract Package.

(3) The Applicant shall cooperate with the Corporation and its agents with respect to the Corporation’s efforts to present a “qualified contract” for the purchase of the Applicant’s interest in the Housing Credit Set-Aside portion of the Development and the Applicant’s failure to cooperate will toll the one year time period the Corporation has to present a “qualified contract”. 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) If the Corporation presents a “qualified contract” and the Applicant fails to enter into a bona fide contract to acquire the Development, as defined in Section 42(h)(6)(F) of the IRC, the Applicant shall irrevocably waive any right to further request that the Corporation present a “qualified contract” for the purchase of the Applicant’s interest in the Housing Credit Set-Aside portion of the Development and the Development will remain subject to the requirements of the Extended Use Agreement.

(5)(4) In the event no buyer is found to acquire the Housing Credit Set-Aside portion of the building within one year as described herein, the Housing Credit Extended Use Period shall be terminated, and the units converted to market-rate.

~~(6)(5)~~ Pursuant to Section 42(h)(6)(E)(ii) of the IRC 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, 3-17-02, 4-6-03, 3-21-04, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Stephen P. Auger, 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: Orlando Cabrera, 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 3, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 30, No. 31, July 30, 2004

**DEPARTMENT OF FINANCIAL SERVICES**

**Office of Insurance Regulation**

RULE TITLE: Marketing Communication Material and Marketing Guidelines

RULE NO.: 690-149.041

PURPOSE, EFFECT AND SUMMARY: The purpose is to update new and renewal policies for the Basic and Standard Health policies. It changes the dates from 1995 to 2003 in order to comply with Order, 69745-03-CO, issued on July 25, 2003.

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: 626,9611, 627.6699(13)(i),(16) FS. LAW IMPLEMENTED: 626.9541(1)(b),(g)2.,(x)3., 627.6699(3)(g),(v),(5)(a),(7),(12),(c),(13),(b) 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: 9:00 a.m., January 12, 2004

PLACE: Room 116, Larson Building, 200 East Gaines Street, 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 Office at least 5 calendar days before the program by contacting the person listed below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Frank Dino, Bureau of Life and Health Forms and Rates, Office of Insurance Regulation, e-mail: frank.dino@fldfs.com

THE FULL TEXT OF THE PROPOSED RULE IS:

690-149.041 Marketing Communication Material and Marketing Guidelines.

(1) No change.

(2) Any insurer marketing small group health plans shall comply with the following guidelines:

(a) through (c) No change.

(d) New and renewal policies for the Basic and Standard policies issued on or after August 1, 2003, ~~May 1, 1995~~, must include the ~~1995~~ Basic and Standard Health Benefit Plans approved by Order 69745-03-CO signed by the Director on July 25, 2003, (OIR-B2-95) pursuant to Section 627.6699(12), F.S., which is incorporated herein by reference and can be obtained from the Office's website at: [http://www.fldfs.com/companies/pdf/Small\\_Group\\_Order\\_7-25-03.pdf](http://www.fldfs.com/companies/pdf/Small_Group_Order_7-25-03.pdf) and benefit plans and schedule of benefits at: [http://www.fldfs.com/companies/lh\\_fr/is\\_LHFR\\_Small\\_Emp\\_Benefit\\_Plan.htm](http://www.fldfs.com/companies/lh_fr/is_LHFR_Small_Emp_Benefit_Plan.htm) ~~Bureau of Life and Health Forms and Rates.~~

(e) through (f) No change.

Specific Authority 626.9611, 627.6699(13)(i),(16) FS. Law Implemented 626.9541(1)(b),(g)2.,(x)3., 627.6699(3)(g),(v),(5)(a),(7),(12)(c),(13)(b) FS. History--New 3-1-93, Amended 11-7-93, 4-23-95, 8-4-02, 6-19-03, Formerly 4-149.041, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Frank Dino, Actuary, Bureau of Life and Health Forms and Rates, Office of Insurance Regulation

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Lisa Miller, Deputy Director, Forms and Rates, Office of Insurance Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 23, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 8, 2004