

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
March 13, 2009
Action Items



ASSET MANAGEMENT

Action

I. ASSET MANAGEMENT

A. Rulemaking for Chapter 6753

1. Background

- a) Florida Administrative Code Rule Chapter 67-53 establishes the compliance procedures by which Florida Housing or any duly authorized representative of Florida Housing shall be permitted at any reasonable time to inspect and monitor developments and tenant records and facilities.
- b) At its January 23, 2009 meeting, the Board authorized staff to commence the rule amendment process for Rule Chapter 67-53 based on the need for the ability to gather tenant information from Florida Housing developments for each household which is vital in providing Florida Housing with data for asset management purposes.

2. Present Situation

- a) After entering into the rule amendment process staff recognized the need for technical revisions and to require developers to provide Florida Housing with audited statements and a cash flow form so Florida Housing can monitor the credit quality of the portfolio and to assist Florida Housing in making policy decisions as the markets dictate.
- b) After the Board's approval of the proposed rule, the Notice of Proposed Rulemaking (NOPR) will be published in the March 27, 2009 edition of the Florida Administrative Weekly. The NOPR will announce the Rule Hearing which scheduled for Monday, April 20, 2009 in Tallahassee.
- c) Following review of the public comments received at the April 20th Rule Hearing and the comments received from the Joint Administrative Procedures committee following its review of the NOPR, staff will proceed as follows:
 - (1) If modification of the proposed rule is not required, staff will file the Rule for adoption on Tuesday, May 5, 2009; and
 - (2) If modification of the proposed rule is required, staff will prepare a Notice of Change (NOC) to incorporate all proposed modifications to the proposed rule and, if required, will submit the NOC for Board approval.

3. Recommendation

Authorize staff to broaden the scope of the rule amendment and approve the proposed underline/strike through rule, and authorize staff to file the rule for adoption if a NOC is not required, and, if a NOC is required, authorize the Chair to determine whether a NOC makes material, substantive changes to the Rule Chapter. If the Chair determines that it does not, staff recommends that the Board approve such NOC without the requirement of another Board meeting.

ELDERLY HOUSING COMMUNITY LOAN PROGRAM (EHCL)

Action

II. ELDERLY HOUSING COMMUNITY LOAN PROGRAM (EHCL)

A. Request Approval of Rule Amendments to Rule Chapter 67-32, F.A.C.

1. Background/Present Situation

- a) On October 31, 2008, the Board approved staff's request to proceed with the rule amendment process to amend Rule Chapter 67-32, F.A.C., which governs the Elderly Housing Community Loan (EHCL) Program.
- b) On November 21, 2008, a Notice was published in the Florida Administrative Weekly announcing the Rule Development Workshop to be held on December 8, 2008. Comments were received.
- c) On December 19, 2008, a Notice of proposed Rule Amendments and strikethrough version of Rule Chapter 67-32.004, F.A.C., was published in the Florida Administrative Weekly. A Rule Hearing was scheduled for January 12, 2009. No comments were received.
- d) On February 13, 2009, a Notice of proposed Rule Amendments and strikethrough version of Rule Chapter 67-32.005, F.A.C., was published in the Florida Administrative Weekly. A rule hearing was scheduled for March 9, 2009.

2. Present Situation

Staff has submitted the strikethrough version of Rule Chapter 67-32, F.A.C. to the Joint Administrative Procedures Committee (JAPC). Staff has made the suggested changes from JAPC.

3. Recommendation

Approve the final Rule Chapter 67-32, F.A.C. ([Exhibit A](#)) and direct staff to continue the rule amendment process in accordance with the Rule Amendment Timeline ([Exhibit B](#)).

HOMEOWNERSHIP LOAN PROGRAM

Action

III. HOMEOWNERSHIP LOAN PROGRAM

- A. **Request for Approval for an the Extension of the Homeownership Loan Program (HLP) Construction Period and an Extension of the Maturity Date for the Predevelopment Loan Program (PLP) Loan for-We Help Community Development Corporation for Abidjan Estates**

Applicant Name (“Applicant”):	We Help Community Development Corporation (Non-Profit)
Development Name (“Development”):	Abidjan Estates
Developer/Principal (“Developer”):	Dr. D.M. Walker
Number of Units: 76	Location: Palm Beach County, Florida
Type: Purchase Assistance Loan, Predevelopment Loan	Allocated Amount: \$2,000,000 (HLP) \$500,000 (PLP)

1. Background

a) **Homeownership Loan Program (HLP)**

- (1) The Applicant was funded during the 2003 Homeownership Loan Program Cycle for Abidjan Estates. On February 2, 2004, the Applicant was invited into credit underwriting.
- (2) On September 10, 2004, the Board approved the final credit underwriting report, dated September 2, 2004. On September 13, 2004, a firm commitment letter was issued with a 3-year construction period through September 13, 2007.
- (3) On January 25, 2008 the Board granted the Developer’s request for a one-year extension of the construction period, from September 13, 2007 to September 13, 2008, contingent upon satisfactory resolution of the issues identified in the market study and appraisal, the purchase price increase, a firm commitment from Palm Beach County for down payment assistance for all homes in this Development, and a plan for the developer to repay the Predevelopment Loan Program (PLP) loan.
- (4) To date, the Developer has completed and closed on 7 homes, utilizing \$313,050 out of the original \$2,000,000 that was awarded. The Developer has provided 33 homebuyer purchase contracts with matching building permits for those lots. At the September 26, 2008, meeting, the Board granted an additional extension of the HLP construction period until December 12, 2008, contingent upon: (1) satisfactory resolution of the issues identified in the market study, appraisal and CASI Plan Review; (2) a commitment to repay the \$500,000 PLP loan at \$15,000 per home; and (3) the 13 homes that have already been constructed must be sold before other closings can occur.

HOMEOWNERSHIP LOAN PROGRAM

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- (5) The Developer, upon the request of the Board, attended the December 12, 2008 Board meeting to discuss the status of the Development. At that meeting, the Board granted an extension until March 12, 2009 to complete the closings on the twenty units that are either completed or under construction. The Board agreed to discuss the status of this project and consider whether a further extension should be granted at its March 13, 2009 meeting, and invited the Developer to return at that time.
- (6) At the December 12, 2008 Board meeting, the Developer provided a letter of interest from City National Bank regarding construction/permanent financing. The Board requested that the Developer provide a firm commitment from City National Bank detailing all of the terms and conditions under which these loans will be made. To date, staff has not received a firm commitment from the Developer.
- (7) On January 27, 2009, the technical assistance provider submitted an updated client list and status report which is attached as [Exhibit A](#). The report shows that there are 7 borrowers that have closed loans, 1 borrower has been approved by Seltzer Management, 1 borrower has been submitted to Seltzer Management, and 1 borrower has been submitted to the lender, with 5 more to be submitted shortly.

b) Predevelopment Loan Program (PLP)

- (1) The Developer also received a PLP loan for this Development, which closed on June 20, 2003, in the amount of \$500,000. The Developer has drawn \$498,819.92. The Developer has repaid \$105,000 from the sale of the first seven homes towards the principal and accrued interest on the PLP loan.
- (2) Prior to the PLP Loan maturing on June 20, 2006, the Developer requested an extension to the maturity period.
- (3) On October 14, 2005 the Board approved a request to allow all active developers to increase the level of subsidy that a homebuyer could receive up to 25% of the purchase price of the home, which would reduce the amount of units provided by the Developer. As a result, the Developer has reduced the number of units that will require HLP funding from 76 to 40. The Developer has also agreed to repay the PLP loan through the sale of these 40 units with each payoff being estimated to be \$15,000 to cover the principal and accrued interest. However, Florida Housing has a mortgage and a LURA to secure the PLP loan on all 76 lots and will not release the entire mortgage until the PLP loan is fully repaid.
- (4) On March 13, 2008, the Board approved an extension to the PLP Loan maturity date from June 20, 2006, to December 20, 2008, to allow the Developer time to meet the conditions of the Board approval related to the HLP funding extension.

HOMEOWNERSHIP LOAN PROGRAM

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2. **Recommendation**

- a) Based upon the additional information submitted by the Developer, and due to the fact that there is currently no construction loan, staff recommends that the Board grant an extension to the HLP construction period until September 13, 2009 to allow the Developer time to complete the closings on the twenty units that are either completed or under construction. Staff further recommends that HLP funds in excess of those necessary to close on these twenty (20) homes be deobligated now and that any remaining HLP funds as of September 13, 2009 be deobligated at that time. The construction period will not be further extended beyond this date.
- b) Staff also recommends an extension to the maturity date for the Predevelopment Loan Program loan until September 13, 2009.
- c) Both loan extension approvals are subject to further verifications and approvals by the credit underwriter, counsel and the appropriate Florida Housing staff.

MISCELLANEOUS

Action

IV. MISCELLANEOUS

A. Implementation of Chapter 2009-1, Laws of Florida

1. Background

- a) During the 2009 Special Session, the Florida Legislature passed Senate Bills 2-A and 4-A to address the revenue shortfall of the 2008-2009 fiscal year and grant the Corporation emergency rulemaking authority to implement the provisions. The legislation was signed into law on January 27, 2009 as Chapters 2009-1 and 2009-2, Laws of Florida.
- b) Staff prepared draft emergency rules which establish the procedures by which the Corporation shall de-obligate, return and transfer unexpended funds held by the Corporation as directed by Chapter 2009-1, Laws of Florida. A public meeting was held on February 17, 2009 to solicit comment on the draft rules.

2. Present Situation

- a) As a result of the public meeting, staff has revised the emergency rules. A supplement to the Board Package will be provided which contains the proposed emergency rules.
- b) After the Board's approval of the proposed emergency rules, the rules will be filed for adoption with the Department of State. The rules become effective immediately upon filing and are exempt from Section 120.54(4)(c), F.S.

3. Recommendation

Approve the proposed emergency rules and authorize staff to file the rules for adoption.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

V. PROFESSIONAL SERVICES SELECTION (PSS)

A. Hearing Officer Services

1. Background

- a) At its March 16, 2007 meeting, Florida Housing's Board of Directors authorized staff to issue a RFP for hearing officer services.
- b) An RFP process was initiated and RFP 2007-04 was issued on Friday, May 18, 2007. The deadline for receipt of Responses was 2:00 p.m., Friday, June 15, 2007.

2. Present Situation

- a) A contract was signed with Chris Bentley and Diane Tremor of Rose, Sundstrom & Bentley, LLP for an initial term of one year. The contracts may be renewed twice. Each renewal is for an additional one-year period. The initial term of the contract with Chris Bentley and Diane Tremor of Rose, Sundstrom & Bentley, LLP expired August 23, 2008. Due to a clerical oversight, the contract was not renewed in a timely manner.
- b) Because of the amount of litigation Florida Housing is anticipating in 2009, it is prudent to ensure the availability of hearing officers that are familiar with Florida Housing's rules. The Corporation has signed a renewal of the contract in February of 2009 that will expire August 23, 2009.

3. Recommendation

The Corporation requests that the Board ratify the decision to renew the hearing officer services contract with Chris Bentley and Diane Tremor, of Rose, Sundstrom & Bentley, LLP.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

B. Technical Assistance Provider Services for Predevelopment Loan Program and Demonstration Loans Request for Proposals (RFP) 2007-07

1. Background

- a) At the October 26, 2007 Board Meeting, Florida Housing's Board of Directors selected the Florida Housing Coalition, Inc. to provide technical assistance provider services for the predevelopment loan program (PLP) and Demonstration loans, and authorized staff to enter into contract negotiations.
- b) A contract for these services was signed with Florida Housing Coalition, Inc., on January 11, 2008 for an initial one-year term.
- c) The Contract states in Paragraph (4), "The initial term of this Contract shall begin on the Effective Date. The term of the Contract shall be for one (1) year, subject to satisfactory performance at the sole discretion of Florida Housing. If the parties mutually agree in writing, the Contract may be renewed twice. Each renewal shall be for an additional one-year period."

2. Present Situation

- a) Staff believes that the Florida Housing Coalition has provided excellent service in providing technical assistance to non-profit and community based developers in their pursuit to provide affordable housing and looks forward to continuing the relationship.
- b) Due to a clerical oversight, staff did not request permission to renew the contract prior to the end of the first one-year term. Due to continued technical assistance being an integral part of the PLP and Demonstration loan process, staff believed it was important to renew the contract immediately. As a result, Florida Housing signed a renewal of the contract on February 9, 2009 that will expire January 11, 2010. Prior to that expiration, staff will present a recommendation as to whether a third one-year term should be undertaken.

3. Recommendation

Staff recommends that the Board ratify the decision to renew the PLP and Demonstration technical assistance provider contract with the Florida Housing Coalition, Inc., for one-year through January 11, 2010.

SINGLE FAMILY BONDS – FINANCE

Action

VI. SINGLE FAMILY BONDS – FINANCE

A. Single Family Homeowner Program

1. Background

- a) Through its First Time Homebuyer (“FTHB”) program, Florida Housing makes 30-year fixed-rate mortgages and down payment assistance available to homebuyers throughout Florida by use of a network of participating lenders. Florida Housing has been able to keep funds continuously available to our lenders and homebuyers since 2002.
- b) On October 31, 2008 the Board authorized US Bank, on behalf of Florida Housing, to sell loans directly to Fannie Mae through its “cash window process” on an as needed basis to maintain its continuous lending program.
- c) On December 12, 2008 the Board authorized and approved the issuance in aggregate of up to \$250 million of bonds (2009 Phase One Bonds) and an advance of up to \$50 million of Florida Housing’s monies to provide interim financing between bond issues, if needed to keep funding continuously available.
- d) US Bank, Florida Housing’s Master Servicer for the 2009 Phase One bonds and other prior issues, was selected via an RFP process in 2002.
- e) Section 420.508(1)(a) Florida Statutes, grants Florida Housing the right to purchase mortgage loans from lending institutions. Section 420.508(1)(d) permits Florida Housing to sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by Florida Housing.

2. Present Situation

- a) Due to market turmoil, investors have not demonstrated a strong or consistent appetite for housing bonds for the past five months and it is expected that there will continue to be market turmoil in the future.
- b) Selling loans to Fannie Mae through its “cash window process” is not currently a financially viable option.
- c) Florida Housing only has \$24 million of bond funds remaining from the 2008 Series 4 bond issue available for reservations as of February 23, 2009. The current lending rate is 6.50% and the reservations for the week ending February 20, 2009 were \$3.9 million.
- d) Florida Housing is scheduled to price the first tranche of the 2009 Phase One Bonds in the second week of May 2009. If we are advised by our financial advisor and investment bankers that the pricing will not attract enough interest from investors to make the sale cost effective, or if the mortgage rate generated from this potential sale is higher than a rate deemed either competitive with the market or acceptable to program borrowers, Florida Housing will not sell bonds.

SINGLE FAMILY BONDS – FINANCE

Action

- e) If Florida Housing determines not to sell bonds now or in the future and/or determines it is not financially viable to sell loans through Fannie Mae's cash window process, Florida Housing must seek an alternative in order to keep funds available for our lenders and homebuyers through the FTHB program. One option is to direct reservations generated in an open bond issue or during the interim period to be sold via a security forward transaction agreement ("Forward MBS Sale").
- f) Florida Housing has the ability to direct US Bank to deliver mortgage backed securities to an investment bank pursuant to a Forward MBS Sale, to sell loans directly to Fannie Mae through the cash window process or pool the loans into a mortgage backed security to become collateral in a bond issuance.
- g) Sale of mortgagee assets under the Fannie Mae cash window process or a Forward MBS sale represent an agreement by Florida Housing to deliver a specified dollar amount of mortgage assets to the counter party by a specified date. In the event Florida Housing is unable to deliver the specified assets, Florida Housing will be obligated to purchase such assets in the open market at the prevailing market to satisfy the conditions in the agreement. Pricing in the prevailing market at any given time can vary significantly. Florida Housing intends to create a pipeline of loans whereby an alternative source, such as bond proceeds or the interim financing facility, is available to fund the purchase. In order to mitigate the risk of non-delivery of mortgage assets, Florida Housing will only commit to sell mortgage assets through the Fannie Mae cash window process or the Forward MBS Sale if the approach is financially advantageous and there is a sufficient dollar amount of loans that have been closed to meet the forward purchase obligation.
- h) Florida Housing will select from the multiple available funding mechanisms described above by taking into consideration, among other things: a) volume of loan originations, b) velocity of loan delivery; c) tax exempt bond market conditions; and d) MBS/Loan pricing.
- i) Florida Housing would not retain any interest in the mortgage backed securities sold through a Forward MBS Sale.
- j) [Exhibit A](#): Resolution

3. Recommendation

Staff recommends the Board allow Florida Housing to direct US Bank to deliver mortgage backed securities to an investment bank through a Forward MBS Sale on an as needed basis so that Florida Housing can continue to originate loans in its First Time Homebuyer Program.

SPECIAL PROGRAMS

Action

VII. SPECIAL PROGRAMS

A. Request Approval of Allocation of Funds for Local Governments that Reduce Impact Fees or Do Not Impose Impact Fees for Homeownership Purposes

1. Background

- a) In the 2008 session, the Legislature appropriated \$20 million in non-recurring funds from the State Housing Trust Fund for the following purpose: “for homeownership assistance in counties and municipalities in the state which have reduced impact fees within the twelve months prior to the effective date of this act, or reduce impact fees subsequent to the effective date of this act, by a minimum of 25% for a period not less than 18 months, or which impose no impact fees entirely for homeownership purposes.”
- b) Specifically, the appropriation is intended to:
 - (1) Be expended for homeownership assistance including, but not limited to, down payment assistance, foreclosure prevention and rehabilitation.
 - (2) Be committed and expended in a short time frame.
 - (3) Reduce the amount of excess housing stock.
 - (4) Assist homeowners in the very low, low and moderate income categories.
 - (5) Incentivize a jurisdiction to reduce impact fees on new construction to stimulate construction.
- c) In the 2009 special session, the Legislature reduced the appropriation for this purpose from \$20 million to \$10 million.

2. Present Situation

- a) Local governments were given an opportunity to submit a request for funding supported by evidence that the jurisdiction qualifies for the funding based on a minimum reduction in impact fees of 25% for a period not less than 18 months or that the jurisdiction imposes no impact fees entirely for homeownership purposes. Staff evaluated the requests and verified the evidence supporting the request along with a general evaluation of each of the requesting jurisdictions’ SHIP program performance. In addition to those recommended for funding, two local governments (City of Cocoa and Broward County) requested funding, but did not meet either of the criteria. Several other local governments inquired about the funding, but did not submit a request.

SPECIAL PROGRAMS

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- b) In order to maximize the use of the reduced funding amount and meet the stated priorities from the Legislature, funding recommendations are being made with highest priority given to down payment assistance, acquisition of foreclosed homes for resale and foreclosure prevention. Rehabilitation received a lower priority and, in some cases is not being recommended for funding at the full request amount.
- c) Staff is recommending the funds be administered through the framework of the State Housing Initiatives Partnership (SHIP) program according to the attached chart ([Exhibit A](#)).
- d) If the local government is unable to encumber any or all of the funds within one year, awards may be reduced.

3. Recommendation

- a) Approve staff's recommended plan for distributing \$10 million in appropriated funds to eligible local governments.

SPECIAL PROGRAMS

Action

B. Request Approval to Issue a Request for Qualifications for Nonprofit Development Organizations to Receive Intensive Technical Assistance with MacArthur Foundation Funding

1. Background

- a) In January 2008, Florida Housing, in partnership with the Florida Housing Coalition and the Shimberg Center for Housing Studies at the University of Florida, submitted a letter of interest for funding to the John D. and Catherine T. MacArthur Foundation to carry out an initiative related to preservation of existing affordable rental housing that is aging and has expiring affordability periods.
- b) Eighty states and locales submitted letters of interest to the MacArthur Foundation in January, and the Foundation chose 21 semi-finalists to submit full proposals, Florida among them. We submitted our proposal in June 2008. The MacArthur held a national press conference on February 26, 2008 to announce that 12 awardees will receive funding ([Exhibit B](#)). The Florida Partnership has received a \$1 million grant to be used over three years.
- c) We believe that this funding will serve as an important catalyst to move Florida's preservation efforts down the field. The Partnership's overarching preservation goal is to transform the state delivery system into one that appropriately balances funding priorities between new construction and preservation of the existing affordable rental stock. For this initiative, the objective is to create nonprofit capacity to carry out preservation transactions.
- d) Florida's affordable rental housing delivery system has traditionally been dominated by for-profit developers. We believe that nonprofit development organizations will be more willing and interested to preserve the older units that are serving extremely low income, special needs populations. However, the state has few nonprofit organizations capable of doing more than one or two very small transactions at a time. Florida needs more mission-driven organizations operating at a larger scale to carry out preservation. [Exhibit C](#) summarizes how the funding will be used.

2. Present Situation

The MacArthur proposal calls for Florida Housing, working with the Florida Housing Coalition, to choose several nonprofit development organizations to receive intensive technical assistance over a three year period. The staff believes that a Request for Qualifications will allow us to bring in nonprofit groups for this purpose.

3. Recommendation

Approve the staff's request to develop and issue a Request for Qualifications for nonprofit development organizations to receive intensive technical assistance with MacArthur Foundation funding.

UNIVERSAL CYCLE

Action

VIII. UNIVERSAL CYCLE

A. 2009 Universal Application Cycle – Review Committee

1. Background/Present Situation

Chapter 420, Florida Statutes, and Rule Chapter 67-48, F.A.C., provide for a review committee to be comprised of FHFC staff and at least one DCA staff person. The review committee will make recommendations to the Board regarding program participation.

2. Recommendation

Staff recommends and requests Board approval for a review committee for the 2009 Universal Application cycle to be comprised of the following FHFC staff: Deborah Dozier-Blinderman, Wayne Conner, Barb Goltz, and Laura Cox, with Jack Gaskins as the DCA representative.

UNIVERSAL CYCLE

Action

B. 2009 Universal Application Cycle – Rulemaking

1. Background/Present Situation

- a) A public meeting was held on August 8, 2008, and rule development workshops were held on September 25, 2008, October 30, 2008, December 11, 2008 and February 17, 2009, in order to solicit comments on Rule Chapters 67-21 and 67-48, F.A.C., and proposed changes to the Universal Application.
- b) As a result of these meetings, staff has revised the Universal Application and the rules governing the multifamily programs. A supplement to the Board Package will be provided which contains the proposed Rules, Application and Qualified Allocation Plan (QAP).
- c) After the Board's approval of the proposed Rules, Application and QAP, the Notice of Proposed Rulemaking (NOPR) will be published in the March 27, 2009 edition of the Florida Administrative Weekly. The NOPR will announce the Rule Hearing which is scheduled for April 17, 2009, in Tallahassee.
- d) Following review of the public comments received at the April 17, 2009 Rule Hearing and the comments received from the Joint Administrative Procedures Committee following its review of the NOPR, staff will proceed as follows:
 - (1) If modification of the proposed rules is not required, staff will file the rules for adoption. It is anticipated that the application cycle will open on May 5, 2009.
 - (2) If modification of the proposed rules is required, staff will prepare a Notice of Change (NOC) to incorporate all proposed modifications to the proposed rules and, if required, will submit the NOC for Board approval. Opening of the application cycle would then be delayed until June 2009.

2. Recommendation

Approve the proposed underline/strike through Rules, Universal Application and QAP, and authorize staff to file the rules for adoption if a NOC is not required, and, if a NOC is required, authorize the Chair to determine whether a NOC makes material, substantive changes to the rule chapters. If he determines that it does not, staff recommends that the Board approve such NOC without the requirement of another Board meeting. In the alternative, if the Chair determines that any NOC does make material, substantive changes to the rule chapters, staff recommends that a telephonic board meeting be called to obtain Board approval for any required changes.

GUARANTEE PROGRAM

Action

I. GUARANTEE PROGRAM

A. Confirmation of the Policy that the Guarantee Program Maintain a Leveraging Ratio of Unrestricted Corpus to Guaranteed Obligations of 5:1 or Less, Confirmation of Appropriate Capitalization Level for the Guarantee Fund

1. Background

- a) Since its inception 16 years ago, the Guarantee Program (“Guarantee Program” or “Program”) has guaranteed 120 transactions and helped facilitate the construction of over 28,000 housing units in Florida.
- b) As of December 31, 2008, the portfolio contained 106 guarantees totaling \$797 million of risk-in-force; 99% in credit-enhanced multifamily transactions and 1% in well-seasoned, insured single-family mortgage pools. See [Exhibit A](#) for product mix.
- c) The Legislature authorized the Corporation to issue up to \$400,000,000 in revenue bonds to capitalize the Guarantee Fund. To date, four series of FHFC (taxable) revenue bonds (the “Bonds”) have been issued for the purpose of capitalizing the Fund and are described below:

Florida Housing Finance Agency Affordable Housing Guarantee Revenue Bonds (Taxable) 1993 Series A, \$75,000,000 (original par), \$50,000,000 (outstanding)*
Remarketing Agent: Depfa First Albany Securities LLC
Insured by: MBIA
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

Florida Housing Finance Corporation Affordable Housing Guarantee Revenue Bonds (Taxable) 1999 Series A, \$50,000,000 (original par), \$46,500,000 (outstanding)*
Remarketing Agent: Depfa First Albany Securities LLC
Insured by: MBIA
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

Florida Housing Finance Corporation Affordable Housing Guarantee Revenue Bonds (Taxable) 2000 Series A, \$75,000,000 (original par), \$61,900,000 (outstanding)*
Remarketing Agent: Depfa First Albany Securities LLC
Insured by: Ambac
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

Florida Housing Finance Corporation Affordable Housing Guarantee Revenue Bonds (Taxable) 2002 Series A, \$100,000,000 (original par), \$89,925,000 (outstanding)*
Remarketing Agent: Citigroup
Insured by: Ambac
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

* After January 1, 2009 scheduled sinking fund redemptions.

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- d) The Guarantee Fund (the Corpus) was funded from the net proceeds of the Bonds, plus accumulated “Net Guarantee Fund Revenues” (commitment fees and premiums, program fees from guarantees issued, and investment earnings less payment of claims and operating expenses) of approximately \$80,000,000.
- e) The Corpus does not secure the Bonds. The Bonds are secured by (i) “Net Guarantee Fund Revenues”, (ii) a pledge of money and investments held by the Bond Trustee and (iii) a pledge of the first documentary stamp revenues paid to the State Housing Trust Fund in the event of (and in the amount of) a “certified deficiency” in the Debt Service Reserve Fund (held by the Bond Trustee). A “deficiency” is calculated based on the largest aggregate amount of annual principal installments and interest payments coming due on the Bonds at an assumed interest rate of 12% (while the Bonds are in a variable rate mode) in any state fiscal year. The Corporation has used funds appropriated from the State Housing Trust Fund to make principal payments on the Bonds, which alleviated the need to “certify” a deficiency.
- f) The current ratings on the Guarantee Fund are A+ (S&P) and A+ (Fitch). Moody’s does not rate the Guarantee Fund. In the event that, due to claims obligations, the Guarantee Fund is rated less than in the top 3 claims paying ratings by any nationally recognized rating agency, the State CFO is directed to transfer to the Corpus the amount necessary to satisfy such obligations during the ensuing state fiscal year from the first documentary stamp revenues paid to the State Housing Trust Fund subject to certain priorities and limitations. Such transferred documentary stamp tax revenues do not secure the Bonds.

Any future rating agency actions on the Guarantee Fund are likely to take into consideration no less than the following: the leveraging ratio, claims paid and projected, financial capacity and the current performance of state documentary stamp tax revenues which are the key credit support on which the rating agencies ultimately rely.
- g) The Bonds are taxable variable rate demand obligations (VRDO). With the current and ongoing financial market crisis, weekly remarketing efforts for the Bonds over the last 12 months have substantially been unsuccessful, resulting in most of the Bonds being “put” to the corresponding liquidity facilities provided by Depfa Bank, where they currently accrue interest at prime rate (prime) which was 3.25% as of February 24, 2009.
- h) In comparison, the Corpus of approximately \$352,000,000 is invested in guaranteed investment contracts (GICs) with yields indexed to the 1-month LIBOR. Since December 2007, LIBOR has dropped from 5.24% to .47% as of February 19, 2009, resulting in a commensurate drop in the Fund’s investment earnings.

GUARANTEE PROGRAM

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2. Present Situation

- a) The Guarantee Program appears to be at a transition point in its existence. As discussed in more detail below, the Program has not issued a guarantee since 2005; the Program recently paid its first claims; the bond insurers for the Bonds were downgraded from “AAA”, affecting both the interest rate the Guarantee Program pays on the Bonds still held by the public and the fees it pays Depfa; and the market for VRDO obligations has withered, resulting in most of the Bonds being held as more expensive “bank bonds” by Depfa. These conditions which are constantly evolving make it appropriate to continue to monitor the historic practices of the Guarantee Program and take action commensurate with the current conditions.
- b) Staff has been and will continue to be in contact with the rating agencies, liquidity providers, bond insurers and the U.S. Department of Housing and Urban Development with respect to the redemption of bonds.
- c) As the market moved towards alternative credit enhancement, the need to maintain the Program’s current capacity lessened. The most recent guarantee was issued in 2005 and there are no pending applications for new guarantees.
- d) At the August 2008 meeting, the Board authorized the redemption of up to \$125,000,000 in Bonds, specifically the Series 2002 A and in part the Series 2000 A Bonds to reduce negative arbitrage. That redemption has not yet been implemented as defaults and claims in the months that followed prompted staff to postpone the redemption to further analyze the capital adequacy and leverage ratio of the Guarantee Fund.
- e) A historic review of the Guarantee Fund (see [Exhibit B](#)) evidences that the leverage ratio (excluding reserves and estimated recoveries) averaged 3.18 over the most recent 120 months in the GF data base, fluctuating between a high of 4.96.1:1 (in the month prior to issuance of the Series 1999 A Bonds) to a recent low of 2.22:1, based on changes in outstanding guarantees by mortgage loan amortization and payoffs and the Corpus (as described in 1.d) above).
- f) The Guarantee Fund Capacity is attached at [Exhibit C](#).
- g) TIBOR Memorandum is attached at [Exhibit D](#).
- h) Squires Sanders & Dempsey L.L.P. opinion at [Exhibit E](#).
- i) Nabors Giblin & Nickerson P.A. opinion at [Exhibit F](#).

GUARANTEE PROGRAM

Action

3. **Recommendation**

- a) Staff recommends that the Board ratify and confirm the Guarantee Fund unrestricted corpus to guaranteed obligations leveraging ratio of 5:1 or less, as described in TIBOR Memorandum at [Exhibit D](#).
- b) Staff recommends that the Board ratify and confirm the continuation of the suspension of issuance of additional guarantees in light of adverse current market conditions.
- c) If the Guarantee Program is determined to contain excess Fund capacity not needed in the reasonably foreseeable future, staff recommends the Board direct staff to redeem the capitalizing bonds utilizing funds in the Corpus, reducing Fund capacity to a reasonable level within the parameters ratified above. Any such reduction in the Corpus as described shall include the redemption of the 2002 Series A Bonds, and shall be made as soon as practical in accordance with the terms of the Bonds, the Trust Indentures relating to the Bonds, the Guarantee Trust Agreement and bond insurance policies and liquidity facilities applicable thereto.
- d) Staff recommends that the Board delegate to the Executive Director or Chief Financial Officer, acting alone, but in consultation with staff and advisors, the authority to determine the Bonds to be redeemed, the redemption date and other matters incidental thereto.

MULTIFAMILY MORTGAGE REVENUE BONDS

Action

I. MULTIFAMILY MORTGAGE REVENUE BONDS

A. Authorization to Provide Limited Financial Assistance to Mortgage Revenue Bond Developments in the Guarantee Program Portfolio Where Necessary

1. Background/Present Situation

- a) The financial integrity of the Guarantee Fund (GF) is critical to its performance under its continuing mortgage guarantee obligations. Three claims were filed on the fund in the last several months. Claims on the fund are reflective of the financial performance of the developments guaranteed.
- b) It is in the best interests of FHFC, its affordable housing mission and the GF to examine the financial stress of the developments in the GF portfolio and engage in developing limited debt service assistance in order to aid in their ability to remain viable developments during these historically difficult economic conditions.
- c) As with all other financing for developments, any subordinate financing resulting from these efforts will come to the Board for approval.
- d) FHFC holds unrestricted net assets as the funding resource for this subordinate financing.
- e) Staff will continue to provide informational reports on the GF portfolio including the impact of this effort to the Board at subsequent Board meetings.

2. Recommendation

Staff recommends that the Board approve FHFC, acting as issuer of the underlying development bonds and/or as mortgage lender, to engage in discussions and take actions with the owners of the developments in the Guarantee Program portfolio to support, on a limited basis, the financial stability of the development including, but not limited to, the use of a subordinate mortgage or other supplemental financing through the use of unrestricted net assets of FHFC as the funding source.

LEGAL

Action Supplement

I. LEGAL

A. Re: Emergency Rules to Implement the American Reinvestment and Recovery Act of 2009 (“ARRA”)

1. Background

- a) The ARRA (PL 111-5), which became law on February 17, 2009, made certain federal resources available to state housing credit agencies, primarily through two programs:
 - (1) First, the Tax Credit Assistance Program (“TCAP”) includes \$2.25 billion for housing credit agencies, of which \$101,134,952 will come to Florida Housing. TCAP funds are distributed to the states through the HOME program, as grants or loans to facilitate the construction of projects awarded low income housing tax credits in 2007-2009.
 - (2) Second, the ARRA provides that state housing credit agencies may exchange certain 2008 and 2009 low income housing tax credits for cash from the Treasury at 85 cents on the dollar, to use as grants to projects whether they have received tax credits or not, so long as they meet the qualifications to receive tax credits.

2. Present Situation

- a) TCAP funds may be either in the form of loans or grants, and are to be distributed according to the state’s Qualified Allocation Plan, which governs the allocation of tax credits. However, these funds are also subject to both IRS housing credit and HUD’s HOME regulations. Eligible projects are those awarded competitive (“9%”) or non-competitive (“4%”) tax credits in fiscal years 2007, 2008, or 2009. There is great emphasis on funding projects that are ready to proceed: 75% of these funds must be committed to projects by Florida Housing by February 17, 2010, and all projects are to be complete by February 2012. Florida Housing must submit a letter of intent to participate to HUD within 15 days of publication of the Notice of Funding Availability (“NOFA”); and must submit a description of how it intends to use the TCAP funds within 45 days of NOFA publication.
- b) The tax credit exchange funds will be for tax credits unused in 2008, returned in 2009, and from Florida’s 2009 national pool credits. This is purely an IRS program; these funds are subject to all the same requirements as tax credit allocations. Florida Housing is to perform compliance and asset management functions, and is to provide for recapture by liens or other means, where a project fails to comply with the governing regulations. Any funds not awarded by January 1, 2011, shall be returned to the Treasury.
- c) Florida Housing is still waiting for guidance from HUD and IRS to use in implementing the TCAP and Tax Credit Exchange programs. Due to the short event horizons and deadlines in both programs, emergency rulemaking may be necessary for Florida Housing to timely use these federal resources.

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3. **Recommendation**

Staff recommends that the Board authorize staff to proceed with emergency rulemaking to the extent necessary to implement the provisions of the ARRA outlined above. Staff further recommends that due to the time frames involved, that the Board delegate approval for final rulemaking approvals to the Chair, if such action is necessary before the next Board meeting.