

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

INDEPENDENCE VILLAGE, LLC,

Petitioner

SAIL LOAN NO. 2008-01-05

v.

FHFC File No. 2013-017VW

FLORIDA HOUSING  
FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OR VARIANCE FROM  
RULE 67-48.010(8)(a), F.A.C.

Petitioner, INDEPENDENCE VILLAGE, LLC (“Independence”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (FHFC) for a waiver or variance from Rule 67-48.010(8)(a), Florida Administrative Code. Specifically, Petitioner seeks a waiver or variance from the requirement to maintain its books on a calendar year ending December 31 and from the requirement to file its audited financial statements by May 31 of each year of the SAIL loan term, as well as other rule provisions directly tied to these reporting deadlines. This Petition is filed pursuant to Chapter 28-104, Florida Administrative Code and Section 120.542, Florida Statutes.

THE PETITIONER

1. The address, telephone number and telefax number of the Petitioner is:

Independence Village, LLC  
525 N. Martin Luther King Jr. Blvd  
Tallahassee, Florida 32301  
Phone: (850) 410-1020  
Fax: (850) 410-1076  
Email Address: lgulledge@bigbendcbc.org

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2. The address, telephone number, telefax number and e-mail address of Petitioner's counsel is:

Jon Moyle  
Moyle Law Firm  
The Perkins House  
118 North Gadsden Street  
Tallahassee, Florida 32312  
Phone: (850) 681-3828  
Telefax: (850) 681-8788  
Email Address: jmoyle@moylelaw.com

3. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL") funding during FHFC's 2008 funding period. The proposed development was targeted to assist individuals who are foster care recipients, but age out of eligibility for foster care when they become eighteen (18) years old, but are still in need of affordable housing. The project is a demonstration project.

**THE RULE FOR WHICH A WAIVER OR VARIANCE IS SOUGHT**

4. Petitioner requests of waiver or variance from Rule 67-48.010(8)(a), Florida Administrative Code, as the rule existed at the time Independence Village was awarded its SAIL loan, in 2008.

5. The language of this particular rule provision is set forth below:

67-48.010 Terms and Conditions of SAIL Loans (excerpted to only reference reporting provision for which waiver/variance is sought).

(8) 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 percent 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. 9/05, which is incorporated by reference. Form SR-1 can be obtained from the Credit Underwriter acting as the assigned servicer or on the Corporation's Website under the 2008 Universal Application link labeled Related Information and Links. 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. If the Applicant has not

submitted the required audited financial statements, the Corporation servicer shall deem the Development Cash Flow sufficient and issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by July 31. After receipt of the audited financial statements, the Corporation servicer shall issue revised billing, if necessary.

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(8), 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.

6. Petitioner is specifically seeking a waiver or variance of that portion of the rule which requires it to provide FHFC with audited financials by May 31 each year and that it use a

calendar fiscal year ending December 31. (Petitioner is not seeking a waiver of the requirement to submit its audited financial statements, just a waiver of the dates by which such submission must be made). Reporting and accounting flexibility that Independence Village seeks with this petition is currently is provided to recent recipients of SAIL loans under the current version of Rule 67-48.010(8)(a), but this reporting flexibility was not included in the previous version of Rule 67-48.010(8)(a) in place when Independence Village was awarded its SAIL loan. The previous version of Rule 67-48.010(8)(a), with its specific reporting and fiscal year dates, governs the conduct of Independence Village related to financial reporting according to FHFC.

Petitioner also seeks a waiver of that portion of the rule which directs that FHFC will deem the project cash flow sufficient and issue an invoice of interest by July 31, a waiver of the rule provision that failure to submit audited financial statements by May 31 will constitute a default of the SAIL loan, a waiver of the \$500 penalty provision for failure to submit audited financials by May 31, and a waiver that the FHFC servicer shall invoice Independence Village by July 31 for interest due for the preceding year. Again, put simply, Petitioner is merely seeking accounting flexibility to avoid an economic hardship. The result Petitioner seeks is consistent with the current rule governing the provision of audited financial statements. The portions of Rule 67-48.010(8)(a) for which a waiver or variance is sought are underlined above in paragraph 5 above.

#### **STATUTES IMPLEMENTED BY THE RULE**

7. Rule 67-48.010(8)(a), F.A.C., set forth above, implements section 420.5087, Florida Statutes.

8. FHFC has the express authority pursuant to section 120.542(1), Florida Statutes, to grant variances or waivers to its rules under certain circumstances. Specifically, FHFC may

grant relief from strict application of a rule in particular instances when application of the rule would lead to unintended consequences, an unreasonable result, or an unfair result. A waiver should be granted when the person subject to the rule demonstrates that the application of the rule would 1) create a substantial hardship or violate principles of fairness; and 2) the purpose of the underlying statute has been or will be achieved by other means. The Legislature has indicated that a “substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver.

9. Petitioner seeks a waiver of select portions of Rule 67-48.010(8)(a) to afford Petitioner additional time and flexibility to submit its audited financials to FHFC and to use a fiscal year of its choosing. Independence Village is a not-for-profit entity that is working hard to provide transitional housing for foster children in Leon County, Florida who age out of foster home placement. Its resources are limited and it has largely been funded and capitalized to date by contributions from the local community development district, Big Bend Community Based Care (Big Bend CBC). Big Bend CBC is responsible for a number of other properties, and audits all its properties during the same time period. In order to comply with Rule 67-48.010(8)(a) as it existed when the SAIL loan in question was awarded, an audit would have to be performed that is not in conjunction with other audits performed for Big Bend CBC. This would have an additional cost to Independence Village of approximately Twelve Thousand Five Hundred Dollars (\$12,500). Paying an additional \$12,500 dollars to have an audit performed without coordinating the audit with Big Bend CBC presents an economic hardship to Independence Village. If the variance or waiver request is granted, these funds will be available for the project and assist the project financially. Given the above, an economic hardship is

demonstrated and Petitioner's request for a variance or waiver from Rule 67-48.010(8)(a) should be granted.

**GRANTING THE VARIANCE OR WAIVER WILL  
SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

10. Granting the variance or waiver as requested will serve the purpose of the underlying statute. Specifically, section 420.5087, which is implemented by the rule in question, seeks to provide safe, sanitary and affordable housing pursuant to the SAIL loan program. The Independence Village housing development seeks to provide safe, sanitary and affordable housing to a targeted population of foster care children who are 18 years or older and have aged out of foster care housing. Accordingly, granting of the variance or waiver will comport with the objectives of section 420.5087, Florida Statutes, and will promote the development of affordable housing in Leon County, serving the underlying purpose of the section 420.5087, which is the statute Rule 67-48.010(8)(a) implements.

**REQUEST FOR PERMANENT RELIEF**

11. The variance or waiver being sought is permanent in nature.

**RELIEF REQUESTED**

12. Petitioner requests the following:

- a. Independence Village respectfully requests that its Petition for a variance or waiver of Rule 67-48.010(8)(a) be granted so that it is not required to maintain its financial books and records on a calendar fiscal year ending December 31, that it is not required to submit audited financial statements by May 31 annually, that FHFC not deem the project cash flow sufficient and issue an invoice of interest by July 31 if audited financials are not submitted by May 31, that failure to submit audited financial statements by May 31 will not

constitute a default of the SAIL loan, that the \$500 penalty provision for failure to submit audited financials by May 31 not be imposed, and that the FHFC servicer shall not invoice Independence Village by July 31 for interest due for the preceding year.

b. Independence Village requests such other relief as the Board deems appropriate.

13. A copy of this Petition has been provided by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

Respectfully submitted this 9<sup>th</sup> day of July, 2013.



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Counsel for Petitioner,  
Independence Village, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that this Petition was provided by hand-delivery for filing to the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 with a copy being provided by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399 this 9<sup>th</sup> day of July, 2013.



Jon Moyle