

CHAPTER 67-48
AFFORDABLE MULTIFAMILY RENTAL HOUSING
SAIL/HOME/HC

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PART I ADMINISTRATION

67-48.001 Purpose and Intent. The purpose of this rule chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, 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 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.

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.

(4) "Affiliate" means any person that, (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant, (ii) serves as an officer or director of the Applicant or of any Affiliate of the Applicant, or (iii) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i) or (ii) above.

(5) "Allocation Authority" means the total dollar volume of Housing Credits available for distribution by the Corporation and authorized pursuant to Section 42 of the Code.

(6) "Annual Owner Compliance Certification Form" or "Form AOC-1" means, with respect to a Housing Credit Development, a report format which is required to be completed and submitted to the Corporation, pursuant to subsection 67-48.006(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.

(7) "Applicable Fraction" means the fraction, the numerator of which is the number of Housing Credit Rent-Restricted Units and the denominator of which is the total number of residential rental units less any unit exempted by Internal Revenue Ruling 92-61, or the fraction, the numerator of which is the floor space of the Housing Credit Rent-Restricted Units and the denominator of which is the total floor space of the residential rental units less any

unit exempted by Internal Revenue Ruling 92-61, whichever is less. The Applicable Fraction is applied to the eligible basis of a building to determine the qualified basis of a building for Housing Credit purposes.

(8) "Applicant" means any person or entity, public or private, for-profit or not-for-profit, proposing to build or rehabilitate affordable rental housing (i) with respect to the SAIL and HOME Program(s) for Low-Income or Very Low-Income persons or households, and (ii) with respect to the HC Program for qualified tenants, as defined in Section 42 of the Code.

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

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

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

(12) "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.

(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 Code.

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

(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.

(16) "Calendar Days" means, with respect to computing any period of time allowed by this rule, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

(17) "Carryover" means the provision under Section 42 of the Code which allows a Development, under certain conditions allowed by Section 42 of the Code, to receive a Housing Credit Allocation in a given calendar year and be placed in service within a period of two calendar years from the date the Applicant qualifies for Carryover, pursuant to Rule 67-48.028, F.A.C.

(18) "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.

(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.

(20) "Commercial Fishing Worker" means a laborer who is employed on a seasonal, temporary, or permanent basis in fishing in saltwater or freshwater and who derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. The term includes a person who has retired as a laborer due to age, disability, or illness. In order to be considered retired due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a commercial fishing worker. In order to be considered retired due to disability or illness, a person must:

(a) Establish medically that the person is unable to be employed as a commercial fishing worker due to such disability or illness; and

(b) Establish that he or she was previously employed as a commercial fishing worker.

(21) "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.

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

(23) "Competitive Housing Credits" or "Competitive HC" means those Housing Credits which come from Florida Housing's annual Allocation Authority.

(24) "Compliance Period" means, with respect to a SAIL Development, a minimum period of 15 years from the date the first residential unit is occupied; with respect to a HOME Development, a minimum period of 15 years for rehabilitation Developments and 20 years for new construction Developments, beginning from the date the first residential unit is occupied. However, for SAIL and HOME Developments which contain occupied units to be rehabilitated, the Compliance Period shall begin at closing of the SAIL or HOME loan. With respect to any building that is included in a Housing Credit Development, "Compliance Period" means a minimum period of 15 years beginning on the first day of the first taxable year of the Housing Credit Period with respect thereto in which a Housing Credit Development shall continue to maintain the Housing Credit Set-Aside chosen by the Applicant in the Application, pursuant to Section 42 of the Code.

(25) "Consolidated Plan" means the plan prepared in accordance with HUD Regulations, 24 CFR § 91, which is adopted and incorporated herein by reference, and which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs, including the HOME Program.

(26) "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.

(27) "Corporation" or "Florida Housing" or "FHFC" means the Florida Housing Finance Corporation created pursuant to the Act.

(28) "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.

(30) "Department" or "DCA" means the Department of Community Affairs of the State of Florida.

(31) "Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing pursuant to this rule chapter. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

(32) "Development," "Project," or "Property" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, 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.

(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 and as adjusted for items including but not limited to extraordinary fees and expenses, payments on debt subordinate to the SAIL loan and capital expenditures.

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

(35) "Development Expenses" means, with respect to SAIL Developments, usual and customary operating and financial costs, such as the compliance monitoring fee, the financial monitoring fee, replacement reserves, the servicing fee and the debt service reserves. As it relates to the application of Development Cash Flow described in subsection 67-48.010(4), F.A.C., the term does not include extraordinary capital expenses, developer fees and other non-operating expenses.

(36) "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. A list of the 2003 Florida DDAs is adopted and incorporated herein by reference. A copy of such list is available on FHFC's web site www.floridahousing.org. The United States Department of Housing and Urban Development maintains the official DDA list. The incorporated Florida DDA list is designed to assist the Applicant in the Application process. Applicants are responsible for providing Florida Housing with accurate DDA information.

(37) "Document" means any written or graphic matter of

any kind whatsoever, however produced or reproduced, including but not limited to records, reports, memoranda, minutes, notes, graphs, maps, charts, contracts, opinions, studies, analysis, photographs, financial statements and correspondence as well as any other tangible thing on which information is recorded.

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

(39) "Elderly" means a person 62 years of age or older. With respect to the SAIL, HOME and HC Programs, persons meeting the Federal Fair Housing Act requirements for Elderly shall be considered Elderly.

(40) "Eligible Persons" or "Eligible Household" means one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the Corporation to be of low or very low income. In determining the income standards of eligible persons for its various programs, the Corporation shall take into account the following factors:

(a) Requirements mandated by federal law.

(b) Variations in circumstances in the different areas of the state.

(c) Whether the determination is for rental housing.

(d) The need for family size adjustments to accomplish the purposes set forth in this rule chapter.

With respect to the HC Program, an "Eligible Person" or "Eligible Household" shall mean one or more persons or a family having a combined income which meets the income eligibility requirements of the Program and Section 42 of the Code.

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

(42) "Extended Use Agreement," "Extended Low-Income Housing Agreement" or "EUA" means, with respect to the HC Program, an agreement between the Corporation and the Applicant which sets forth the Set-Aside requirements and other Development requirements, if any, under the HC Program.

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

(44) "Farmworker" means any laborer who is employed on a seasonal, temporary or permanent basis in the planting, cultivating, harvesting or processing of agricultural or aquacultural products and who has derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. "Farmworker" also includes a person who has retired as a laborer due to age, disability or illness. In order to be considered retired from farmwork due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker immediately preceding retirement. In order to be considered retired from farmwork due to disability or illness, it must be:

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

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

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

(46) "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 August 2001, 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. 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.

(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 Form FCCA pursuant to subsections 67-48.023(6)—(7), F.A.C.

(49) "Financial Beneficiary" means any Developer and its principals and principals 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.

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.

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

(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.

(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.

(53) "General Contractor" means an entity duly licensed in the State of Florida 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.

(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.

(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 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 Code, and this rule chapter.

(56) "HOME" or "HOME Program" means the HOME Investment Partnerships Program administered by the Corporation pursuant to HUD Regulation 24 CFR § 92, which is adopted and incorporated herein by reference, and Section 420.5089, F.S.

(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.

(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.

(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.

(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.

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

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

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

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

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

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

(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 Code.

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

(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 Code.

(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.

(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 the Code. Gross rent must be determined from the rent charts included in the Application and must correspond to the percentage of area median income committed to by the Applicant in the Application.

(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 chosen by the Applicant in the Application.

(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.

(71) "Housing Provider" means, with respect to a HOME Development, local government, consortia approved by HUD under the HUD Regulations, for-profit and non-profit Developers, and qualified CHDOs, with demonstrated capacity to construct or rehabilitate affordable housing.

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

(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 6/2002, 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.

(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.

(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.

(77) "Local Government" means a unit of local general-purpose government as defined in Section 218.31(2), F.S.

(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.

(79) "Low Income" means, with respect to the HOME Program, income which does not exceed 80% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations

are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, provided; however, with respect to the HC Program, "Low Income" shall mean income which is at or below 50% or 60% of the area median income, adjusted for family size, whichever is elected.

(80) "Match" means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations.

(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 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. 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.

(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. The Note will provide the interest rate and will be secured by a mortgage.

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

(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.

(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.

(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 Rule 67-48.006, F.A.C., and is adopted and incorporated herein by reference, effective October 2002. A copy of such form is available on FHFC's web site www.floridahousing.org.

(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 subsection 67-48.028(4), F.A.C., and is adopted and incorporated herein by reference, effective August 1997. A copy of such form is available on FHFC's web site www.floridahousing.org.

(90) "Project," "Property" or "Development" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, 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.

(91) "Qualified Allocation Plan" or "QAP" means, with respect to the HC Program, the 2003 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 Code and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on FHFC's web site www.floridahousing.org.

(92) "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 Code. A list of the 2003 Florida QCTs is adopted and incorporated herein by reference. A copy of such list is available on FHFC's web site www.floridahousing.org. The United States Department of Housing and Urban Development maintains the official QCT list. The incorporated Florida QCT list is designed to assist the Applicant in the Application process. Applicants are responsible for providing Florida Housing with accurate QCT information.

(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.

(94) "Rehabilitation" means, with respect to the HOME Program, the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction. "Rehabilitation" means, with respect to the Housing Credit Program, what is stated in Section 42(e) of the Code, with the exception of Section 42(e)(3)(A)(ii)(II) which is changed to read: "II. The requirement of this

subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units, in the building, is \$20,000 or more."

(95) "Review Committee" means a committee 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") means 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.

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

(98) "SAIL Development" means a residential development which provides one or more housing units proposed to be constructed or substantially rehabilitated with SAIL funds for Eligible Persons. If a Development received a tentative allocation or tentative funding commitment from a prior cycle, 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; 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, 2002, or if the Development received an allocation of Housing Credits, the IRS Forms 8609 have not been issued; and

(c) The Application and attached exhibits demonstrate that SAIL funds will enable the SAIL Development to provide additional amenities, or incorporate some additional features which benefit Very Low-Income persons or households. Developments that are not eligible to obtain SAIL funds are those Developments that have already received funding through the SAIL Program, unless otherwise specified in the Universal Application. 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.

(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. 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.

(100) "Scattered Sites" means two or more parcels in the same county, contiguous to one another, sharing at least one common boundary between them, or within such reasonable proximity to each other as to appear to the public to be under the dominion and control of the Applicant.

(101) "Section 8 Eligible" means one or more persons or families who have incomes which meet the income eligibility requirements of Section 8 of the United States Housing Act of 1937, which is adopted and incorporated herein by reference, as in effect on the date of this rule chapter.

(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.

(103) "Sponsor" means any individual, association, corporation, joint venture, partnership, trust, local government, or other legal entity or any combination thereof which:

(a) Has been approved by the Corporation as qualified to own, construct, acquire, rehabilitate, reconstruct, operate, lease, manage, or maintain a Development; and

(b) Except for a local government, has agreed to subject itself to the regulatory powers of the Corporation.

(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.

(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.

(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 Code.

(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 Scattered Site Developments the Applicant must select a single point on one Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

(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 approval by the Credit Underwriter and the Corporation as reasonable and necessary. Such costs include, for example, the following:

(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties.

(b) The cost of site preparation, demolition, and development.

(c) Any expenses relating to the issuance of tax-exempt bonds or taxable bonds, if any, related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, 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.

(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. 4-03)" 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.

(112) "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.

(113) "Very Low-Income" means

(a) With respect to the SAIL Program,

1. If using tax-exempt bond financing for the first mortgage, income which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as in effect on the date of this rule chapter; or

2. If using taxable financing for the first mortgage, total annual gross household income which does not exceed 50% of the median income adjusted for family size, or 50% of the median income adjusted for family size for households within the MSA, within the county in which the person or family resides, or within the State of Florida, whichever is greater; or

3. If used in a Development using Housing Credits, income which meets the income eligibility requirements of Section 42 of the Code; or

(b) With respect to the HOME Program, income which does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 50% of the median for the area on a basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(c) With respect to the HC Program, if residing in a Development using the Housing Credit, income which is at or below 40% or 45% of the area median income whichever is selected in the Application.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.002, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.

ANNOTATIONS

Validity

DOAH dismissed the petition challenging the validity of Rule 67-48.002(10), F.A.C. DOAH held that the rule was not an invalid exercise of delegated legislative authority. Petitioner's argument that the challenged rule was arbitrary and capricious was without merit. Regency Gardens Apartments, Ltd. v. Florida Housing Finance Corporation, 22 FALR 1868 (1999).

67-48.004 Application and Selection Procedures for Developments.

(1) All Applications must be complete, legible and timely when submitted, except as described below. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application.

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

in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the 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 7 Calendar Days of the date of receipt of the preliminary scores, a written Notice of Possible Scoring Error (NOPSE). Each NOPSE must specify the assigned Application number and the scores in question, as well as describe the alleged deficiencies in detail. Each NOPSE is limited to the review of only one Application's score. Any NOPSE that seeks the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of NOPSEs that may be submitted. The Corporation's staff will review each written NOPSE timely Received.

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

(6) Within 9 Calendar Days of receipt of the notice set forth in subsection (5) above, 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. Where specific pages of the Application are revised, changed or added, each new page(s) must be marked as "revised," and submitted. Failure to mark each new page(s) "revised" will result in the Corporation not considering the revisions, changes or additions to that new page. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. The Applicant shall submit an original and three copies of all additional documentation and revisions. Only revisions, changes and other information Received by the deadline set forth herein will be considered. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s).

(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 documents revised and/or added 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 the 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. 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 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/or HOME Program, this rule subsection does not include permissible deferral of SAIL and/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 the Applicant;

(b) Name of the Developer;

(c) Program(s) applied for;

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

(e) Site for the Development;

(f) Type of Development category;

(g) Designation selection;

(h) County;

(i) Total number of units;

(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 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 Percentage section of the Application, unless the change results from the revision allowed under (l) below;

(k) CHDO election for the HOME Program;

(l) Funding Request (except for Taxable Bonds) amount; notwithstanding the foregoing, requested amounts exceeding

the Corporation and Program funding limits can be reduced by the Applicant to reflect the maximum request amount allowed (and no other changes to this amount will be allowed);

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

(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 the 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 Programs for the subsequent cycle and continuing until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(17) With respect to the 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 Development. If an Applicant or its representative does contact a Board member in violation of this section, the Board shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is mandated by local, state or federal governmental authorities, or otherwise approved by the Corporation. Evidence of such mandate must be submitted to the Corporation within 30 Calendar Days of notification by the local, state or federal authorities. *Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.004, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.*

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 on or before the 21st Calendar Day after the date Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), F.A.C., and specify in detail each issue and score sought to be challenged. Submission by facsimile or other electronic means will not be accepted. 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 (as applicable) from the next available funding and/or allocation, whether in the current year or a 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 on or before the 21st Calendar Day after the receipt of the notice of rights pursuant to this subsection (5). Submission by facsimile or other electronic means will not be accepted. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), F.A.C., as applicable, 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 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. 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.

(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 (as applicable) from the next available funding and/or allocation, whether in the

current year or a 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 91-48.005, 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.

67-48.006 Compliance and Reporting Requirements.

(1) Any duly authorized representative of the Corporation shall be permitted at any time during normal business hours to inspect and monitor the construction or rehabilitation of a Development. Any duly authorized representative of the Corporation or the Treasury shall be permitted at any time during normal business hours to inspect and monitor Development and resident records and facilities. All resident records shall be maintained by the owner of the Development within 50 miles of the Development site.

(2) On-site inspections for HC Developments:

(a) An authorized representative of the Corporation will, at the Applicant's expense, conduct four on-site construction inspections during the construction or rehabilitation of a Competitive HC Development. Any required re-inspection due to a finding of non-compliance will be at the Applicant's expense.

(b) An authorized representative of the Corporation will, at the Applicant's expense, conduct a minimum of one on-site construction inspection of a Non-Competitive HC Development which has not received any other Florida Housing financing. Any required re-inspection due to a finding of non-compliance will be at the Applicant's expense.

(3) The Corporation or its representative shall conduct on-site Development inspections at a minimum of every three years, with a typical frequency of annual reviews.

(4) The Corporation must approve the selection or replacement of a management company prior to such company assuming responsibility for the Development, using the following criteria:

(a) Review of company information including key management personnel, management experience and procedures;

(b) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;

(c) Key management company representatives attendance at a Corporation compliance workshop; and

(d) A meeting between Corporation compliance staff and the key management company representative.

(5) The Corporation will document approval of the management company to the owner of the Development after successful completion of items (4)(a)—(d).

(6) The owner of the Development shall maintain complete and accurate income records pertaining to each resident occupying a Low-Income or Very Low-Income unit. Records for each occupied Low-Income or Very Low-Income unit shall contain the following documentation:

(a) The resident's rental application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;

(b) An executed lease agreement listing the term of the

tenancy and all of the residents residing in the unit;

(c) Verification of the income of each resident as is acceptable to prove income under Section 8 of the United States Housing Act of 1937, as in effect on the date of this rule chapter;

(d) Information as to the assets owned by each resident; and

(e) Income Certification Form TIC-1 for each resident.

(7) The Applicant shall submit Program Reports pursuant to the following:

(a) The initial HC Program Report shall be submitted upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any unit. Subsequent Program Reports shall be submitted each year of the Housing Credit Compliance Period and shall be due no later than the dates assigned by the Corporation. The Program Reports shall be accompanied by copies of Tenant Income Certifications executed since the last Program Report for at least 10% of the Housing Credit Set-Aside units in the Development (to be sent to the monitoring agent only); and

With respect to the HC Program, the Annual Owner Compliance Certification Form to be signed by the owner of the Development certifying that for the preceding 12 month period the Development met its Housing Credit Set-Aside requirements (to be sent to the Corporation only). Forms PR-1 and AOC-1 shall be provided by the Corporation and shall be submitted for all Developments receiving Housing Credit Allocations since January 1, 1987.

(b) The initial HOME Program Report shall be submitted prior to the time of loan closing, if occupied, or if not occupied at loan closing upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any unit. Subsequent Program Reports shall be submitted annually on the dates assigned by the Corporation. The Program Reports shall be accompanied by copies of Tenant Income Certification executed since the last Program Report for at least 10% of the HOME-Assisted Units in the Development (to be sent to the monitoring agent only).

(c) The initial SAIL Program Report shall be submitted prior to the time of loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by copies of all Tenant Income Certifications executed since the last Program Report (to be sent to the monitoring agent).

(8) HC Developments will submit copies of each building's completed IRS Low-Income Housing Credit Allocation Certification Form 8609, Rev. 1-2000, and Schedule A, Annual Statement, Form 8609, Rev. 1-2000, for the first year housing credits are claimed to the Compliance Section of Florida Housing Finance Corporation. These forms are adopted and incorporated herein by reference and are due at the same time they are filed with the Internal Revenue Service. Form 8609 and Schedule A (Form 8609) can be obtained from the Internal Revenue Service by calling 1(800)829-4477. Additionally, correspondence shall accompany these forms which indicates the first taxable year in which the Housing Credits were claimed and the fiscal

operating year for the property.

(9) Compliance monitoring for each program will begin:

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

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

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

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

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.006, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.

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.

All of the fees set forth above with respect to the SAIL Program are part of Development Cost and can be included in the Development Cost pro forma and paid with SAIL loan proceeds. Failure to pay any fee shall cause the firm loan commitment under any Program to be terminated or shall constitute a default on the respective loan documents.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.007, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.

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) Applicants cannot request additional SAIL funding for the same Development, unless otherwise specified in the Universal Application.

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

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.009, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.

67-48.0095 Additional SAIL Application Ranking and Selection Procedures.

(1) During the first six months following the publication date of the first Notice of Funding Availability published each year within the State of Florida, SAIL funds shall be allocated based upon the requirements specified in Section 420.5087(3), 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) 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.

(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 carried forward and shall be added to the funds reserved for counties with a population of 100,000 or less for the next successive three-year period.

(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.

67-48.010 Terms and Conditions of SAIL Loans.

(1) The proceeds of all SAIL loans shall be used for new construction or Substantial Rehabilitation of affordable, safe and sanitary rental housing units.

(2) The SAIL loan may 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 (a) above;

(c) Payment on the loans shall be based upon the Development Cash Flow. 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) 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. 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. The Applicant shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant's principal financial or accounting officer, covering such financial matters as the Corporation or its servicer may reasonably request, including without limitation, monthly statements with respect to the Development. A late fee of \$500 will be assessed by the Corporation for failure to submit the required audited financial statements 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.

(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, as applicable. Such fees shall be computed by determining the present value of the annual compliance monitoring fee and multiplying that by the number of years for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. For Developments with perpetual set-asides, the period for which compliance fees shall be collected shall be limited to 50 years. The present value discount rate shall be 2.75% per annum. Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Development provided:

(a) The compliance monitoring fee covers some or all of the period following the anticipated SAIL loan repayment date; and

(b) The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another Corporation program for which the compliance monitoring fee was collected.

(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 September 10, 2002, which is adopted and incorporated herein by reference.

(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. 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 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 35, which is adopted and incorporated herein by reference. The Corporation shall allow units dedicated to occupancy by the Elderly in a Development designed for occupancy by elderly households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR 100.

(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 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.

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

(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.

(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.

(24) Failure to provide the Corporation and its servicer with the SAIL available Cash Flow Statement detailing the information needed to determine the annual payment to be made pursuant to this rule chapter shall constitute a default on the SAIL loan.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.010, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.

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. For Developments with set-asides in perpetuity, the period for which compliance fees shall be collected shall be limited to 50 years. Such amount shall be reduced by the amount of any compliance monitoring fees collected by the Corporation for the Development, provided:

1. The compliance monitoring fee covers some or all of the period following the anticipated SAIL repayment date; and

2. The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another program of the Corporation for which the compliance monitoring fee was collected.

(d) 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.

67-48.012 SAIL Credit Underwriting and Loan Procedures.

(1) Following the appeals process, the Corporation shall issue preliminary commitment letters to those Applicants whose Developments were awarded final scores and rankings which placed them into the funding range.

(a) The preliminary commitment shall be subject to a positive recommendation by the Corporation's Credit Underwriter and approval by the Corporation's Board of Directors.

(b) The invitation to credit underwriting shall require that the Applicant submit the credit underwriting fee to the Credit Underwriter within 7 Calendar Days of the date of the invitation. The Corporation will, within the specified 7 Calendar Days, submit a copy of the Applicant's Application to the Credit Underwriter. Unless a written extension is obtained from the Corporation, failure to submit the fee by the specified deadline shall result in rejection of the Application.

(2) The Credit Underwriter shall verify all information in

the Application, including information relative to the Applicant, Developer, Syndicator, General Contractor, and, if an ALF, the service provider, as well as other members of the Development team.

(a) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or development team is no longer the Development or development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(b) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(c) The Credit Underwriter shall review the interest rate and terms of other proposed financing as provided in the Application to determine whether or not such loans are feasible and to determine if a SAIL loan is needed.

(d) Required appraisals studies shall be completed by professionals approved by the Corporation's Credit Underwriters. Approval of appraisers shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(e) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value. Appraisals and separate market studies which have been ordered and submitted by third party credit enhancers, first mortgagors or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal or market study referenced above.

(f) Except as provided in Section 420.5087(5), 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.

(g) The minimum combined debt service coverage shall be 1.10 and the maximum debt service coverage shall be 1.50, including the SAIL mortgage and all other superior mortgages. In extenuating circumstances, such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis. Developments receiving first mortgage funding from 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 SAIL and all superior mortgages.

(h) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum amount of \$200 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

(i) The underwriters may request additional information but at a minimum the following will be required during the underwriting process:

1. For credit enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete. The audited statements may be waived if the credit enhancer is rated at least "A-" by Moody's, Standard and Poor's or Fitch.

2. For 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 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 the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective January 7, 2002, which is adopted and incorporated herein by reference, and the two most recent year's 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.

(j) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

1. Liquidity of the guarantor.

2. Developer and General Contractor's history in successfully completing Developments of similar nature.

3. Problems encountered previously with Developer or contractor.

4. Exposure of Corporation funds compared to Total Development 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 1.—4. above that additional surety is needed. However, a completion guarantee will not be required if SAIL funds are not drawn until construction is complete, as evidenced by final certificates of occupancy.

(k) The Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and SAIL loan. Developments receiving United States Department of Agriculture Rural Development funds are not required to meet the debt service coverage standards for release of operating deficit guarantee.

(l) Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Substantial Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from SAIL funds.

(m) The Credit Underwriter shall review and determine if the number of loans and/or construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation Development.

(n) The Credit Underwriter shall consider the appraisal of the Development and other market study documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove funding when the proposed Development would financially impair an existing Development previously funded by Florida Housing.

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

(3) Any changes in a firm commitment from any other source of the funding shall be consistent with the underwriting assumptions made in connection with the SAIL loan. All items required by 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. The Credit Underwriter shall advise the Corporation in writing of all items not received by the specified deadlines. Unless an extension is approved by Florida Housing, failure to submit the required credit underwriting information or fees by the specified deadlines shall result in withdrawal of the preliminary commitment and the funds will be made available to the next eligible Applicant.

(4) 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 including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours of receipt. After the 48 hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(5) After approval of the Credit Underwriter's recommendation by the Board of Directors or a committee appointed by the Board, the Corporation shall issue a firm SAIL loan commitment.

(6) Other mortgage loans related to the Development and the SAIL loan must close within 60 Calendar Days of the date of the firm SAIL loan commitment unless an extension is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board of Directors for consideration. The Corporation shall charge an extension fee of one-half of one percent of the SAIL loan amount if the Board approves the requested extension to extend the SAIL commitment beyond the period outlined in this rule chapter.

(7) The Corporation's servicer shall conduct at the Applicant's expense a preconstruction analysis and review of all the Development's costs prior to the closing of the SAIL loan.

(8) It is the responsibility of the Applicant to comply with any part of this section and to request in writing and show cause for any waiver. Failure to comply will result in the disqualification of the Applicant and withdrawal of the SAIL commitment. The Corporation shall then offer a preliminary SAIL commitment to the next eligible Applicant or, with approval of the Board, retain available funds for use in the next Application Period.

(9) At least 5 Calendar Days prior to attending any closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and Draw schedule.

Specific Authority 420.507 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.

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.*

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 the HUD Regulations.

(2) The Corporation shall utilize at least 15% of the

HOME allocation for CHDOs pursuant to the HUD Regulations, to be divided between the multifamily and single family cycles. 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 FHFC's web site www.floridahousing.org.

(3) Within the rental cycle administered pursuant to 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 12-31-02. A copy of such chart is available on FHFC's web site www.floridahousing.org.

(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 the resident under state or local law or 30% of the adjusted monthly income for rent and utilities.

(d) With respect to rent limits, the HOME Rent Chart at 65% or 50%, or the Fair Market Rent, less the applicable utility allowance, is the maximum rent that can be charged for a HOME Rent-Restricted Unit. HOME-Assisted Units with Section 8 subsidy must compare the Section 8 gross rent (resident rent, subsidy amount, and utility allowance) to the maximum applicable HOME high or low rent limit minus utilities. However, Developments with project-based rental assistance may utilize the project-based rents as compared to the HOME High and Low rents. Compliance with the HOME rent restrictions will take precedence over the Developer's acceptance of a full Section 8 (resident-based) subsidy for the HOME-Assisted Units.

(e) The minimum period of affordability for rehabilitation Developments is 15 years.

(f) The minimum period of affordability for newly-constructed rental housing is 20 years. The period of affordability will be extended until the loan is repaid as

enumerated in 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.

(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 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.

(9) All HOME Developments must conform to the following federal requirements:

(a) Equal Opportunity and Fair Housing as enumerated in 24 CFR § 92.202 and 92.250, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), 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 5, 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.

67-48.015 Match Contribution Requirement for HOME Allocation.

(1) The Corporation is required by HUD to match non-federal funds to the HOME allocation as specified in the HUD Regulations.

(2) A Match Credit Fund funded by the State of Florida has been appropriated to the Corporation. The funds are to be used for demonstration Developments, pilot programs, or other Developments selected and approved by the Corporation's Board of Directors. Such pilot programs or Developments shall be counted as the Corporation's required match for HUD purposes and may be any eligible activity acceptable to HUD regulations and approved by the Corporation's Board of Directors.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(4) FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.015, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, 4-6-03.

67-48.017 Eligible HOME Activities. HOME funds may be used for acquisition (must include new construction and/or rehabilitation), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing

with suitable amenities pursuant to the HUD Regulations. In addition, HOME funds may be used for any activity found to be eligible by HUD in Match credit and/or disaster developments.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 91-48.017, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, Amended 4-6-03.

67-48.018 Eligible HOME Applicants. Applicants for HOME loans may include CHDOs, public housing authorities, local governments, Non-Profit organizations, and private for-profit organizations. The Applicant must be a legally-formed, existing entity at the time of Application Deadline. Pursuant to the HUD Regulations, Applicants may not request additional HOME funding during the period of affordability. However, additional funds may be committed to a Development up to one year after Development completion provided the amount does not exceed the maximum per-unit subsidy and the additional amount is not used to pay for Developer fees.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.018, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, 4-6-03.

67-48.019 Eligible and Ineligible HOME Development Costs.

(1) HOME funds may be used to pay for the following eligible costs as enumerated in the HUD Regulations:

(a) Development hard costs as they directly relate to the identified HOME-Assisted Units only for:

1. New construction, the costs necessary to meet local and State of Florida building codes and the Model Energy Code referred to in the HUD Regulations;

2. Rehabilitation, the costs necessary to meet local and State of Florida rehabilitation building codes and at a minimum, the Section 8 Housing Quality Standards under the HUD Regulations;

3. Both new construction and rehabilitation, costs to demolish existing structures, improvements to the Development site and utility connections;

(b) The cost of acquiring improved or unimproved real property. A HOME Development and HOME loan that involves acquisition must include rehabilitation or new construction in order to be an eligible Development.

(c) Soft costs as they relate to the identified HOME-Assisted Units. The costs must be reasonable, as determined by the Corporation and the Credit Underwriter, and associated with the financing, development, or both. These costs may include:

1. Architectural, engineering or related professional services required to prepare plans, drawings, specifications or work write-ups;

2. Costs to process and settle the HOME financing for a Development, such as credit reports, fees for evidence of title, recordation, building permits, attorney fees, cost certifications, and estimates;

3. Developer fee shall be limited to 16% of Development Cost. 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 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 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;
- (c) Public housing;
- (d) Administrative costs;
- (e) Developer fees unless the HOME funds include rehabilitation or new construction; or
- (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.

67-48.020 Terms and Conditions of Loans for HOME Rental Developments. All HOME Rental Development loans shall be in compliance with the Act, the HUD Regulations and, at a minimum, contain the following terms and conditions:

(1) The HOME loan may 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 the HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the 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 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 September 10, 2002, which is adopted and incorporated herein by reference.

(10) All loans must provide that any violation of the terms and conditions described in this rule chapter or the HUD Regulations constitute a default under the HOME loan documents allowing the Corporation to accelerate its loan and seek foreclosure as well as any other remedies legally available to it.

(11) If a default on a HOME loan occurs, the Corporation will commence legal action to protect the interest of the Corporation. The Corporation shall acquire real and personal property or any interest in the Development if that acquisition is necessary to protect any HOME loan; sell, transfer, and convey any such property to a buyer without regard to the provisions of Chapters 253 and 270, 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. 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.

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.

67-48.021 HOME Credit Underwriting and Loan Procedures.

(1) After the administrative appeal procedures have been completed, the Corporation shall assign a tentative loan amount to the Applicants ranked within funding range in accordance with the Universal Application instructions.

(2) Based upon availability of funds, the Corporation shall issue a preliminary commitment notifying each Applicant of selection for participation in the HOME Program.

(3) The preliminary commitment letter shall be subject to a positive recommendation by the Corporation's Credit Underwriter, approval by the Corporation's Board of Directors, and a certification by the Corporation of the HUD Environmental Review pursuant to 24 CFR § 92.352.

(4) 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 Florida Housing, failure to submit the required credit underwriting information by the specified deadlines shall result in withdrawal of the preliminary commitment and the funds will be made available to the next eligible Applicant. The Corporation shall select the Credit Underwriter for each 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 AFL, the service provider, as well as other members of the Development team. 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 including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter

within 48 hours after receipt. After the 48-hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(6) The underwriters may request additional information but at a minimum the following will be required during the underwriting process:

(a) For credit enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete. The audited statements may be waived if the credit enhancer is rated at least "A-" by Moody's, Standard and Poor's or Fitch.

(b) For 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 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 the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective January 7, 2002, which is adopted and incorporated herein by reference, and the two most recent year's tax returns.

(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.

(d) 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.

(7) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected. The Corporation shall bear the cost of the underwriting review under contract with the

Credit Underwriter. However, if the HOME commitment is canceled for failure to adhere to rule deadlines or for reasons within Applicant's control, the Development will be responsible for reimbursing the Corporation for fees incurred for credit underwriting and environmental review processing.

(8) The Credit Underwriter shall use the following procedures during the underwriting evaluation:

(a) Minimum debt service coverage of 1.10 and maximum debt service coverage of 1.50 for the HOME loan and all other superior mortgages. In extenuating circumstances such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis. Developments receiving first mortgage funding from 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 HOME and all superior mortgages.

(b) Minimum replacement reserve of \$200 per unit for all Developments. However, the amount may be increased based on a physical needs analysis. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

(c) 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.

(d) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

1. Liquidity of the guarantor.
2. Developer and General Contractor's history in successfully completing Developments of similar nature.
3. Problems encountered previously with Developer.
4. Problems encountered previously with contractor.
5. Exposure of Corporation funds compared to Total Development Costs. At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity.

In addition, a letter of credit or payment and performance bond will be required in an amount as determined by the Credit Underwriter if the Credit Underwriter determines after evaluation of subparagraphs 1.—5. above that the additional surety is needed.

(e) Require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and HOME loan.

(f) Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from HOME funds.

(g) 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.

(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 loan request in relation to the property value. Appraisals and separate market studies which have been ordered and submitted by third party credit enhancers, first mortgagors or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal or market study referenced above. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove funding when the proposed Development would financially impair an existing Development previously funded by Florida Housing.

(10) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time is approved by the Corporation's Board, shall result in the Application being rejected and the Corporation funding additional Applications as outlined in the Universal Application instructions.

(11) A preconstruction analysis and review of the Development's costs shall be required prior to the closing of the HOME loan.

(12) The Applicant will bear the cost of all documentation submitted to the Credit Underwriter for review (i.e., appraisal, credit report, environmental study, etc.). The Applicant may reimburse itself for these costs with HOME funds from the first Draw.

(13) After approval of the Credit Underwriter's recommendation by the Board of Directors, or a committee appointed by the Board, the Corporation shall issue a firm HOME loan commitment.

(14) The HOME loan shall close within 60 Calendar Days from the date of the firm commitment letter.

(15) The Applicant must submit a written request for any extensions needed or any changes to the Development or its financing from the original Application. All requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request must be submitted to the Corporation Board of Directors for consideration.

(16) At least 5 Calendar Days prior to attending any closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and Draw schedule.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.021, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.

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.

PART IV HOUSING CREDIT PROGRAM

67-48.023 Housing Credits General Program Procedures and Requirements. In order for a Development to qualify for Housing Credits it shall, at a minimum, meet or comply with the following:

(1) Each Applicant shall comply with this rule chapter and with Section 42 of the Code and federal regulations issued pursuant thereto and in effect at the time of the Funding Cycle. Noncompliance by an Applicant, or any Principal, Affiliate or Financial Beneficiary of an Applicant or Developer shall result in disqualification from participation in the current HC Funding Cycle and for a period of not less than one year. The Applicant and its Principals, Affiliates and Financial Beneficiaries will continue to be ineligible to participate in future HC Funding Cycles until such time as all noncompliance issues are cured.

(2) Each Housing Credit Development shall comply with the minimum Housing Credit Set-Aside provisions, as specified in Section 42(g)(1) of the Code, with respect to the reservation of 20% of the units for occupancy by persons or families whose income does not exceed 50% of the area median income, or the reservation of 40% of the units for occupancy by persons or families whose income does not exceed 60% of the area median income. Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.

(3) The gross monthly rents for the Housing Credit Set-Aside units shall not exceed 30% of the imputed income limitation applicable to such unit. The monthly rents used must correspond to the Housing Credit Set-Aside chosen by the Applicant in the Application as shown on the rent charts provided by FHFC.

(4) The Development shall provide safe, sanitary and decent residential rental housing and shall be developed, constructed and operated in accordance with the commitments made and the facilities and services described in the Application at the time of submission to the Corporation. Applications will not be considered approved to receive an allocation of Housing Credits until Florida Housing issues a Preliminary Allocation/Preliminary Determination to the Applicant and all contingencies of such documents are satisfied. Allocations are further contingent on the Applicant complying with its Application commitments, Chapter 67-48, F.A.C., and Section 42 of the 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 100, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35, which is adopted and incorporated herein by reference.

(6) Each Housing Credit Development shall complete the Final Cost Certification Application, which is incorporated by reference, by the earlier of the following two dates. A copy of such form is available on FHFC's web site

www.floridahousing.org.

(a) The date that is 60 Calendar Days after all the buildings in the Development have been placed in service, or

(b) The date that is 30 Calendar Days before the end of the calendar year for which the Final Housing Credit Allocation is requested.

The Corporation may grant extensions for good cause upon written request.

(7) The completed Final Cost Certification Application shall include an unqualified audit report prepared by an independent certified public accountant. The Corporation will issue only one complete set of Forms 8609 per Development which will be no earlier than total Development completion and the Corporation's acceptance and approval of the Development's Final Cost Certification.

(8) After the final evaluation and determination of the Housing Credit Allocation amount has been made by the Executive Director and the recorded Extended Use Agreement has been received in accordance with Rule 67-48.029, F.A.C., the Forms 8609 are issued to the Applicant of the Housing Credit Development.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.023, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03.

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 91-48.025, Amended 11-9-98, 2-24-00, 2-22-01, Repromulgated 3-17-02, 4-6-03.

67-48.026 Housing Credit Underwriting Procedures.

(1) After the final rankings are approved by the Board, the Corporation shall offer all Applicants within the funding range the opportunity to enter credit underwriting.

(2) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter not later than 7 Calendar Days after the date of the letter of invitation.

(3) If the credit underwriting invitation is accepted:

(a) The Applicant shall submit the credit underwriting fee in accordance with Rule 67-48.007, F.A.C., to the Credit Underwriter within 7 Calendar Days of the date of the letter of invitation, and

(b) All information required by the Credit Underwriter must be provided to the Credit Underwriter within 35 Calendar Days of the date of the invitation to enter credit underwriting. The Credit Underwriter shall complete its report within 56 Calendar Days from the date of the credit underwriting invitation. The appraisal, survey and final plans are acceptable contingency items to the credit underwriting report.

(4) Unless an extension is obtained from Florida Housing, failure to submit the required credit underwriting information

or fees by the specified deadline shall result in withdrawal of the invitation and issuance of an invitation to the next eligible Applicant.

(5) The Corporation shall select the Credit Underwriter for each Development.

(6) 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, as well as other members of the Development team.

(7) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(8) The Credit Underwriter shall use the following procedures during the underwriting evaluation:

(a) The Credit Underwriter, in determining the amount of housing credits a Development is eligible for when using the qualified basis calculation, shall use a housing credit percentage of:

1. Thirty (30) basis points over the percentage as of the date of invitation to credit underwriting up to nine percent (9%) for nine percent (9%) credits for new construction and rehabilitation Developments;

2. Fifteen (15) basis points over the percentage as of the date of invitation to credit underwriting up to four percent (4%) for four percent (4%) credits for acquisition and federally subsidized Developments. A percentage of fifteen (15) basis points over the percentage as of the date of invitation to final credit underwriting up to four percent (4%) will be used for Developments receiving tax-exempt bonds.

(b) Review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of the proposed Corporation-funded Development.

(c) Developer fee shall be limited to 16% of Development Cost. 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.

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

(e) Costs such as syndication fees and brokerage fees cannot be included in eligible basis. All consulting fees must be paid out of the Developer fee. Consulting fees cannot cause the Developer fee to exceed the maximum allowable fee as set forth in paragraph (c) above.

(f) All contracts for hard or soft Development Costs must

be itemized for each cost component.

(g) 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 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 Florida Housing.

(h) The Credit Underwriter shall review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(i) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(j) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum amount of \$200 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment.

(k) The Corporation's assigned Credit Underwriter shall order, at the Applicant's sole expense, a pre-construction analysis for all new construction or a physical needs assessment for Rehabilitation and shall conduct a review of all of the Development's costs.

(l) Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes.

(m) The proposed Development must demonstrate, based on current rates, that it can meet 1.10 debt service coverage (DSC) requirements with all first and second 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.

(n) If the Credit Underwriter is to recommend an allocation out of the annual Allocation Authority, the recommendation will be the lesser of (1) the qualified basis calculation result, (2) the gap calculation result, or (3) the Applicant's request amount. In the event the Credit

Underwriter is making a recommendation for 4% Housing Credits in reference to a Development funded with tax-exempt bonds, the recommendation will be the lesser of the qualified basis calculation result or the gap calculation result.

(o) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same.

(9) After the completion of its analysis, the Credit Underwriter shall submit its draft recommendation including a detailed report of the Development's credit worthiness, feasibility, ability to proceed and viability to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours. After the 48 hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(10) If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the Executive Director shall determine the credit amount, if any, necessary to make the Development financially feasible and viable throughout the Housing Credit Extended Use Period and shall issue a Preliminary Allocation Certificate or a Preliminary Determination of Housing Credits in the case of Tax-Exempt Bond-Financed Developments. If the Credit Underwriter recommends that no credits be allocated to the Development and the Executive Director accepts the recommendation, the Applicant shall be notified that no Housing Credits will be allocated to the Development. 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) 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(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.026, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03.

67-48.027 Tax-Exempt Bond-Financed Developments.

(1) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the Code, which applied for 4%

Housing Credits when applying for tax exempt bonds from 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 Florida Housing;

(d) Receive a Preliminary Determination from the Corporation upon 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 requirements of Rule 67-48.023, F.A.C.;

(g) Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation; and

(h) Pay the assigned Credit Underwriter for a comprehensive market study of the housing needs of Low Income individuals in the area to be served by the Development. The market study must be completed by a disinterested third party and a copy of the completed market study must be on file with Florida Housing prior to the Final Housing Credit Allocation.

(2) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the Code, seeking to obtain Housing Credits from the Treasury receiving the bonds from Florida Housing prior to calendar year 2000 or receiving bonds from another source other than Florida Housing, and not competing for Housing Credits under the State of Florida Allocation Authority shall:

(a) Have 50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

(b) Be subject to the Application fee specified in this rule chapter;

(c) Meet the HC Program threshold requirements pursuant to the Qualified Allocation Plan and shall have completed loan closings on all required financing;

(d) Participate in the credit underwriting process pursuant to this rule chapter, unless such Development has received its tax-exempt bond financing through the Corporation, in which case the Development must be underwritten to the extent necessary to determine Development feasibility and 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 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.

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.

67-48.029 Extended Use Agreement.

(1) Pursuant to Section 42(h)(6) of the Code, the Applicant and the Corporation shall enter into an Extended Use Agreement. The purpose of the Extended Use Agreement is to set forth the Housing Credit Extended Use Period, the Compliance Period, and to evidence commitments made by the Applicant in the Application. Such commitments, for example, include the Housing Credit Set-Aside commitment, resident programs, and Development amenities.

(2) The following provisions shall be included in the Extended Use Agreement:

(a) The Applicable Fraction for Housing Credit Set-Aside units for each taxable year in the extended use period shall not be less than the Applicable Fraction;

(b) Eligible Persons occupying set-aside units shall have the right to enforce in any State of Florida court the extended use requirement for set-aside units;

(c) The Extended Use Agreement shall be binding on all successors and assigns of the Applicant; and

(d) The Extended Use Agreement shall be executed and recorded pursuant to Florida law as a restrictive covenant prior to the issuance of a Final Housing Credit Allocation to an Applicant.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 91-48.029, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, 3-17-02, 4-6-03.

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 91-48.030, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated 3-17-02, 4-6-03.

67-48.031 Termination of Extended Use Agreement and Disposition of Housing Credit Developments. The Housing Credit Extended Use Period for any building shall terminate upon the date a building is acquired through foreclosure or instrument in lieu of foreclosure or if no buyer can be found who is willing to maintain the Housing Credit Set-Aside of the Development. In the event the Applicant is unable to locate a buyer willing to maintain the set-aside provisions of the Extended Use Agreement, the following steps shall be taken, as set forth in Section 42(h)(6) of the Code, before a building is converted to market-rate use:

(1) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, an Applicant may submit a written request to the Corporation to find a buyer to acquire the Applicant's interest in the Housing Credit Set-Aside portion of the building.

(2) The Corporation shall have one year from the receipt of the request to obtain a qualified buyer for the Development.

(3) The Corporation shall actively seek to obtain a qualified buyer for acquisition of the Housing Credit

Set-Aside portion of the building for an amount not less than the Applicable Fraction as specified in the Extended Use Agreement of:

(a) The sum of the outstanding indebtedness secured by the building;

(b) The adjusted investor equity in the building; and

(c) Other capital contributions not reflected in the amounts above, and reduced by cash distributions from the Development.

(4) In the event no buyer is found to acquire the Housing Credit Set-Aside portion of the building within one year, the Housing Credit Extended Use Period shall be terminated, and the units converted to market-rate.

(5) Pursuant to Section 42(h)(6)(E)(ii) of the Code, the termination of an Extended Use Agreement shall not be construed to permit the termination of a tenancy, the eviction of any existing resident of any set-aside unit, or any increase in the gross rent with respect to any set-aside unit before the close of the three-year period following such termination. In no case shall any portion of a Housing Credit Development be disposed of prior to the expiration of the Extended Use Agreement.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 91-48.031, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, 4-6-03.