

NOTICE OF PROPOSED RULEMAKING
FLORIDA HOUSING FINANCE CORPORATION
CHAPTER 67-58, FLORIDA ADMINISTRATIVE CODE
COMMUNITY WORKFORCE HOUSING INNOVATION PILOT PROGRAM (CWHIP)

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PURPOSE, EFFECT AND SUMMARY: The purpose of this rule chapter is to establish the procedures by which the Corporation shall administer the application process, determine loan amounts and service loans pursuant to 420.5095, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs was prepared. Any person who wishes to provide information regarding this statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 420.5095, F.S.

LAW IMPLEMENTED: 420.5095, F.S.

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

DATE AND TIME: Monday, October 22, 2007; 10:00 a.m. to 11:00 a.m.
Florida Housing Finance Corporation
Seltzer Conference Room, 6th Floor
227 North Bronough Street
Tallahassee, FL 32301

THE PERSON TO CONTACT REGARDING THE PROPOSED RULE AMENDMENTS IS:

Bridget Warring, Homeownership Programs Manager
Florida Housing Finance Corporation
227 North Bronough Street, Tallahassee, Florida 32301
(850) 488-4197

THE FULL TEXT OF THE PROPOSED RULE IS:

PART I ADMINISTRATION

67-58.001 Purpose and Intent.

The purpose of this rule chapter is to establish the procedures by which the Corporation shall administer the Application process, credit underwriting and loan servicing of the Community Workforce Housing Innovation Pilot Program (CWHIP) pursuant to Section 420.5095, F.S. Chapter 2006-69, Section 27, Laws of Florida (LOF).

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-_____.

67-58.002 Definitions.

(1) “Accessory Dwelling Unit” means an ancillary or secondary living unit, that has a separate kitchen, bathroom, and sleeping area, existing either within the same structure, or on the same lot, as the primary dwelling unit.

(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) “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.

(1) renumber as (4)

(5) “AMI” or “Area Median Income” means the median income for an area, with adjustments made for household size, as determined by the United States Department of Housing and Urban Development (HUD).

(6)(2) “Applicant” means an entity any Public-Private Partnership seeking a loan from Florida Housing for the New Construction or Rehabilitation of housing under CWHIP which is a member of the Public-Private Partnership and has been designated by the Public-Private Partnership having financial responsibility which will execute all loan documents and will have the authority at closing to encumber the Project.

(7)(3) “Application” means the forms and exhibits created by the Corporation for the purpose of providing the means to apply for CWHIP funding. A completed Application may include additional supporting documentation, response to the Request for Proposals to Provide Affordable Rental and Homeownership Community Workforce Housing for Essential Services Personnel (RFP 2006-05) and the documents submitted by the Applicant to Florida Housing requesting CWHIP funds.

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

(9) “Application Period” means a period during which Applications shall be accepted and with a deadline no less than thirty days from the beginning of the Application Deadline.

(4) “Area Median Income” or “AMI” means the median income for an area, with adjustments made for household size, as determined by the United States Department of Housing and Urban Development (HUD).

(10)(5) “Area(s) of Critical State Concern” means the Florida Keys area of critical state concern, pursuant to Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF.

(6) and (7) renumber as (11) and (12)

(13) “Calendar Days” means the seven (7) days of the week. means calendar days, unless otherwise specified.

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

(15) “Contributions” means land, cash or other valuable consideration contributed to the Project.

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

(10) renumber as (16)

~~(17)(44)~~ “CWHIP” or “CWHIP Program” means the Community Workforce Housing Innovation Pilot Program as defined in Section 420.5095, F.S. Ch. 2006-69, s. 27, L.O.F.

(12) through (14) renumber as (18) through (20)

~~(21)(45)~~ “Eligible Persons” mean persons or families qualified under this ~~Rule~~ Chapter to live in Workforce Housing whose total annual household income does not exceed 140 percent AMI, adjusted for household size, or 150 percent AMI, adjusted for household size, in Areas of Critical State Concern.

(16) renumber as (22)

(23) “FHFC” or “Florida Housing” or “Corporation” means the Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Fla. Stat.

(24) “Financial Beneficiary” means any Developer and its principals or Principals of the Applicant entity who receives or will receive a financial benefit as outlined in paragraphs (a) and (b) below and as further described in Rule 67-58.003(3), F.A.C.:

(a) 3 percent or more of Total Project Cost if Total Project Cost is \$5 million or less; or

(b) 3 percent of the first \$5 million and 1 percent of any costs over \$5 million if Total Project Cost is greater than \$5 million.

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

(26) “High Cost” means counties where the disparity between AMI and median sales prices for a single family home are more than the disparity between the state of Florida’s AMI and median sales price for a single family home.

(27) “High Growth” means counties where population growth as a percentage rate of increase is more than the state of Florida's population growth as a percentage rate increase.

(28) “Innovation” means utilization of construction, design, financing, development, land use, or regulatory practices which have not previously been in common use, using existing practices in innovative ways, such as green building, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

(29) “Lease Purchase Unit” means where the primary purpose is the eventual purchase of the housing unit by an Eligible Person within 36 months from the initial execution of a lease agreement or within 36 months of the applicable fiscal year, whichever occurs first.

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

(31) “New Construction” means units that are yet to be built or that are in the early stages of building where at the most the foundation for the unit has been completed but there has been no vertical construction started as of the issuance of the CWHIP loan commitment and otherwise meet the requirements of CWHIP.

~~(32)(47)~~ “Principal” means ~~any member of the Private-Public Partnership an Applicant~~, any general partner of ~~any member of the Private-Public Partnership an Applicant~~, and any officer, director, or any shareholder of any ~~member of the Private-Public Partnership Applicant~~ or shareholder of any general partner of a member of the Private-Public Partnership an Applicant.

~~(33)(48)~~ “Project” or ~~“Property”~~ consistent with Section 420.503(32), F.S., means any work or improvement located or to be located in any one county 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 or the acquisition and the remodeling, improvement, or Rehabilitation, or reconstruction of existing structures, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

(34) “Project Cost” means the total of all costs incurred in the completion of a Project excluding developer fee and total land cost as shown in the Project Cost line item on the Project Cost pro forma within the Application.

~~(35)(49)~~ “Public-Private Partnership” means any form of business relationship entity that includes substantial involvement of at least one county, one municipality, or one public sector entity, such as a school district or other unit of local government in which the Project is to be located, and at least one private sector for-profit or not-for-

profit business or charitable entity, and may be any form of business relationship entity, including a joint venture or contractual agreement.

(36) “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.

(37)(20) “Rehabilitation” means the alteration, improvement or modification of an existing structure, bringing the units up to state building code with a minimum expenditure of: restricted as follows:

(a) For rental units, a minimum of \$20,000 per unit and must be brought up to the state building code;

(b) For homeownership units, a minimum of 25 percent of the before rehabilitation current appraised value and must be brought up to the state building code.

(21) renumber as (38)

(22) “Request for Proposal” or “RFP” means, for the purposes of this rule, RFP 2006-05.

(23) “Response” means the written submission by an Applicant for RFP 2006-05.

(39) “Scattered Sites” for a single rental Project means a Project consisting of real property in the same county (i) any part of which is not contiguous (“non-contiguous parts”) or (ii) any part of which is divided by a street or easement (“divided parts”) and (iii) it is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, chain of title, or other information available to the Corporation that the non-contiguous parts or the divided parts of the real property are part of a common or related scheme of the Project. For a homeownership Project, “Scattered Sites” means a Project of five (5) or more housing units developed on sites that are more than 2,000 feet apart and there are not more than four (4) housing units on any one site.

(40)(24) “Total Project Development Cost” means the total of all residential costs incurred in the completion of a Project, all of which shall be subject to the review and approval by the Credit Underwriter and the Corporation, as further detailed in 67-58.010, F.A.C.

(41)(25) “Website” means the Florida Housing Finance Corporation’s website for the CWHIP program, the Universal Resource Locator (URL) of which is <http://www.floridahousing.org/> <http://www.floridahousing.org/home/developers/WorkforceHousing->

(42)(26) “Workforce Housing” means housing affordable to Eligible natural Ppersons or families whose total annual household income does not exceed 140 percent AMI, adjusted for household size, or 150 percent AMI, adjusted for household size, in Areas of Critical State Concern designated under Section 380.05, Florida Statutes (FS), for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as Areas of Critical State Concern for at least 20 consecutive years prior to removal of the designation. For purposes of this rule, Workforce Housing includes affordable housing as defined in Section 420.0004 420.004, F.S.

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-

67-58.003 Application and Selection Procedures for Projects.

(1) When submitting an Application, Applicants must utilize the Community Workforce Innovation Pilot Program (CWHIP) Application in effect at the Application Deadline.

(a) The CWHIP Application package (“CWHIP-816 (11/26/07)”) is adopted and incorporated by reference herein, and consists of the forms and instructions obtained from the Corporation, for a fee, at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 or available, without charge, on the Corporation’s Website under the Workforce Housing link labeled 2007 CWHIP, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the CWHIP Program.

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

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

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Application Package and these rules. Preliminary scores shall be transmitted to all Applicants. This will include all

threshold items identified by the Corporation to be addressed by the Applicant, which may include financial obligations for which the Applicant or party to the Public-Private Partnership, or Principal, Affiliate or Financial Beneficiary of an Applicant or party to the Public-Private Partnership, or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation as of the Application Deadline.

(4) Within 14 Calendar Days of the date the notice set forth in subsection (3) above is sent by overnight delivery by the Corporation, each Applicant shall be allowed to cure its Application by submitting additional Documents, revised pages and such other information as the Applicant deems appropriate to address the issues raised pursuant to subsection (3) above that could result in failure of threshold of the Application or a score less than the maximum available. A new form, page or exhibit provided to the Corporation during this period shall be considered a replacement of that form, page or exhibit if such form, page or exhibit was previously submitted in the Applicant's Application. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that Documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein, even if only a portion of the original Document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. The Applicant shall submit an original and three copies of all additional Documents 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).

(5) Following the receipt and review by the Corporation of the Documents described in subsection (4) above, the Corporation shall then prepare final scores. In determining such final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the notice described in subsection (3) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsection (4) 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 (9) 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.

(6) Applications shall be limited to one submission per subject property. Two or more Applications that have one or more of the same Financial Beneficiaries, will be considered submissions for the same Project if any of the following is true: (i) any part of any of the property sites is contiguous with any part of any of the other property sites, or (ii) any of the property sites are divided by a street or easement, or (iii) it is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of Project. If two or more Applications are considered to be submissions for the same Project, the Corporation will reject all such Applications except the Application with the highest (worst) lottery number. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number.

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

(a) Has engaged in fraudulent actions;

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

(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.

(8) The Corporation shall reject an Application if, following the submission of the additional Documents, revised pages and other information as the Applicant deems appropriate as described in subsection (4) above:

(a) The Project is inconsistent with the purposes of the CWHIP Program or does not conform to the Application requirements specified in this rule chapter;

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the Application, and Application instructions;

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

(d) The Applicant fails to satisfy any arrearages as described in subsection (3) above.

(9) 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) Parties of the Public-Private Partnership; notwithstanding the foregoing, the parties of the Public-Private Partnership may be changed only by approval of the Board after the Applicant has been invited to enter credit underwriting;

(b) Identity of each Developer, including all co-Developers; notwithstanding the foregoing, the identity of the Developer(s) may be changed only by approval of the Board after the Applicant has been invited to enter credit underwriting;

(c) Site for the Project;

(d) Project Category;

(e) Total number of units; notwithstanding the foregoing, the total number of units may be changed only by approval of the Board after the Applicant has been invited to enter credit underwriting;

(f) Funding Request amount; notwithstanding the foregoing, requested amounts can be changed only if reduced by the Applicant to reflect the maximum request amount allowed in those instances where an Applicant requested more than its request limit;

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

(h) Payment of the required Application fee by the Application Deadline;

(i) The Application labeled "Original Hard Copy" must include a properly completed Certification Statement reflecting an original signature; and

(j) Attempts at improving the Applicant's Innovation score by providing additional Innovation strategies as explained in Part III. C. 1., Part III. C. 2., and Part III. C. 4. of the Application instructions. Documents that illustrate or explain, but do not modify or add to the Innovation strategies provided as described in Part III. C. 1., Part III. C. 2., and Part III. C. 4. of the Application instructions can be cured.

All other items may be submitted as cures pursuant to subsection (4) above.

With regard to paragraphs (a), (b) and (e) above, the Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested change.

(10) A Project will be withdrawn from funding and any outstanding commitments for funds will be rescinded if, at any time, the Board determines that the Applicant's Project or Project team is no longer the Project or Project team described in the Application, and the changes made are prejudicial to the Project or to the market to be served by the Project.

(11) If an Applicant or any party to the Public-Private Partnership or any Principal, Affiliate or Financial Beneficiary of an Applicant, any party to the Public-Private Partnership, or a Developer has any existing Projects participating in any Corporation programs that remain in non-compliance with Section 42 of the IRC 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, the party to the Public-Private Partnership and the Affiliates of the Applicant, the party to the Public-Private Partnership or Developer will be prohibited from new participation in any of the Corporation's programs for the subsequent cycle and continuing until such time as all of their existing Projects participating in any Corporation programs are in compliance.

(12) When two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the Application instructions.

(13) At no time during the Application, scoring and appeal process may Applicants, parties to the Public-Private Partnership or their representatives contact Board members concerning their own Project or any other Applicant's Project. At no time from the Application Deadline until the issuance of the final scores as set forth in subsection (9) above, may Applicants, parties to the Public-Private Partnership or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Application. If an Applicant, party to the Public-Private Partnership or their representatives 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.

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

(15) The name of the Project provided in the Application may not be changed or altered after submission of the Application during the history of the Project with the Corporation unless the change is requested in writing and approved in writing by the Corporation.

Specific Authority Section 420.5095, F.S. Law Implemented Section 420.5095, F.S. History–New _____.

67-58.004 Applicant Administrative Appeal Procedures.

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

(2) Each Applicant that wishes to contest the final scores must file a petition with the Corporation within 21 Calendar Days after the date the Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3), F.A.C., and specify in detail each issue and score sought to be challenged. If the petition does not raise a disputed issue of material fact, the challenge will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered by the designated hearing officer or administrative law judge 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 in which it is a party 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 (5) pages, not including caption and certificate of service. 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, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will be permitted to make oral presentations to the Board regarding recommended orders only in response to questions from the Board.

(4) Any person whose substantial interest will be affected by the proceedings may petition for leave to intervene in a proceeding conducted under s.120.57(2). Except for good cause shown, petitions for leave to intervene must be filed at least 15 Calendar Days before the final hearing unless otherwise provided by law. The petition shall conform to Rule 28-106.205, F.A.C. The parties may, within seven (7) Calendar Days of service of the petition, file a response in opposition. The hearing officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(5) Projects will be funded in the order ranked, except that funding sufficient to fund Projects which file scoring challenges under this rule will be withheld until the conclusion of all litigation and appeal proceedings conducted pursuant to Sections 120.569, 120.57, and 120.68, F.S.

Specific Authority Section 420.5095, F.S. Law Implemented Section 420.5095, F.S. History–New _____.

67-58.005 Fees.

(1) The Applicant shall be responsible for the payment of any required credit underwriting, legal, and loan servicing fees for the term of the loan and compliance monitoring fees for the term of the Affordability Period.

(2) The Applicant shall be responsible for the payment of any necessary extension fees, as further described in subsections 67-58.020(6) and 67-58.020(26) ~~67-58.020(25)~~ and 67-58.070(6) and 67-58.070(23) ~~67-58.070(22)~~, F.A.C.

Specific Authority ~~Section 420.5095, F.S., Ch. 2006-69, s. 27, LOF.~~ Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, ~~LOF.~~ History-New 12-17-06, Amended-_____.

67-58.006 General Program Procedures and Restrictions

(1) Loans shall be in an amount not to exceed 50 percent of the Total Project Cost attributable to the units set aside for Workforce Housing, or the minimum amount required to make the Project economically feasible, whichever is less, as determined by the Credit Underwriter.

(2) An Applicant is not eligible to apply for or receive CWHIP Program funding if any of the following pertain to the proposed Project:

(a) The proposed Project is utilizing State Apartment Incentive Loan (SAIL) or HOME Rental funding from the Corporation.

(b) The Applicant has accepted a preliminary commitment of CWHIP funding from a prior cycle for the proposed Project unless the Applicant has provided written notice to the Corporation prior to the Application Deadline for the current cycle that it is withdrawing its acceptance and returning its funding.

(3) A Project is only eligible to receive CWHIP funds if it is New Construction or Rehabilitation.

Specific Authority Section 420.5095, F.S. Law Implemented Section 420.5095, F.S. History–New _____.

67-58.010 Total Project Cost-Miscellaneous Criteria-

The Total ~~Project-Development~~ Cost includes the following:

(1) through (4) No change

(5) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during New Construction; or Rehabilitation; ~~or reconstruction~~ of the Project.

(6) The cost of the New Construction, Rehabilitation, and equipping of the Project.

(7) and (8) No change

(9) Allowances for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first two (2) years after completion of the Project.

(10) The cost of such other items, including relocation costs, indemnity and surety bonds, insurance premiums, trustees fees and expenses, depositories, and agent's fees for the Corporation's bonds, for the New Construction or Rehabilitation of the Project.

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-_____.

67-58.015 Supplemental Loans for Green Building.

A supplemental loan is available to Applicants who commit to the requirements contained in Part III. C.3. of the Application instructions. The supplemental loan is forgiven on a per set-aside unit basis as the certification is received for each set-aside unit. If certification is not obtained, the pro-rata supplemental loan amount attributed to that set-aside unit that did not receive certification becomes due and payable immediately with a penalty of 18 percent of the pro-rata amount.

Specific Authority Section 420.5095, F.S. Law Implemented Section 420.5095, F.S. History–New _____.

PART II MULTIFAMILY RENTAL PROJECTS

67-58.020 Credit Underwriting and Loan Procedures.

The credit underwriting review shall include a comprehensive analysis of the Applicant; the real estate; the economic viability of the Project; the ability of the Applicant and the Project development team to proceed; the evidence of need for Workforce Housing in order to determine that the Project meets the CWHIP Program requirements; and the determination of a recommended CWHIP loan amount.

(1) and (2) No change

(3) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter no later than seven (7) Calendar Days after the date of the letter of invitation.

(4) If the invitation to enter credit underwriting is accepted:

(a) The Applicant shall submit the credit underwriting fee to the Credit Underwriter within ~~30~~ 45 ~~Calendar~~ Days of the date of the letter of invitation.

(b) No change

(5 and (6) No change

(7) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, General Contractor, and other members of the Project development team.

(8) through (10) No change

(11) A full or self-contained appraisal per 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 Project's financial feasibility. Appraisals which have been ordered and submitted by a third party lender which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. ~~The market study must be completed by a disinterested party who is approved by the Credit Underwriter.~~ The Credit Underwriter shall review and consider the market study, the Project's financial impact on development in the area previously funded by the Corporation, and other documentation when making its recommendation. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(12) The debt service coverage for the CWHIP loan and all superior mortgages is as follows:

(a) A minimum of 1.00 when the CWHIP loan meets the criteria of paragraph 67-58.030(3)(a), F.A.C.;

(b) and (c) No change

(13) No change

(14) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum replacement reserve amount of ~~\$250~~ \$200 per unit per year must be used for all rental Projects; 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 percent of the required replacement reserves for two (2) years and must be placed in escrow at closing.

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

(a) For the Applicant, general partner(s), and guarantors, audited financial statements or financial statements for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications compiled or reviewed by a licensed Certified Public Accountant in accordance with the Statement on Standards for Accounting and Review Services (SSARS). 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 the two (2) most recent years tax returns reviewed by the Credit Underwriter in accordance with Part III, Sections 604 through 607, of the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 6, 2003, which is adopted and incorporated by reference and available on the Corporation's Website. 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.

(b) For the General Contractor:

1. Verification that the General Contractor has the requisite knowledge and experience to complete the proposed Project;

2. Narrative regarding experience with residential construction; and

3. 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 percent of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

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

(a) No change

(a) Liquidity of the guarantor;

(b) Developer and General Contractor's history in successfully completing Projects of comparable in size and scope;

(c) Problems encountered previously with Developer or General Contractor; and

(d) Exposure of Corporation funds compared to Total Project Development Cost;

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity. In addition, a letter of credit or payment and performance bond will be required if the Credit Underwriter determines after evaluation of paragraphs (a)-(d) in this subsection that additional surety is needed.

(17) The Developer fee shall be limited to 16 percent of the ~~Total Project Development Cost~~ exclusive of the land cost. A Developer fee on the building acquisition cost shall be limited to 12 percent of the cost of the building exclusive of the land cost.

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

(19) The General Contractor must meet the following conditions:

(a) Employ a Project superintendent and charge the costs of such employment to the general requirements line item of the General Contractor's budget;

(b) Charge the costs of the Project construction trailer, if needed, and other overhead to the general requirements line item of the General Contractor's budget;

(c) Secure building permits, issued in the name of the General Contractor;

(d) Secure a payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit), issued in the name of the General Contractor, from a company rated at least "A-" by AMBest & Co.;

(e) Ensure that none of the General Contractor duties to manage and control the construction of the Project are subcontracted; and

(f) No change

(20) The Credit Underwriter shall require an operating deficit guarantee to be released upon the following:

(a) For CWHIP loans which meet the criteria of paragraph 67-58.030(3)(a), F.A.C., achievement of a minimum debt service coverage ratio of 1.00 for a minimum of six (6) consecutive months; and

(b) For CWHIP loans not eligible for forgiveness, achievement of a minimum debt service coverage ratio of 1.10 for a minimum of six (6) consecutive months.

(21) through (25) No change

(26) The CWHIP loan and other mortgage loans related to the Project must close within 90 days of the date of the CWHIP 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 detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of 1 one percent of the CWHIP loan amount if the Board approves the extension.

(27) No change

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-_____.

67-58.030 Terms and Conditions of Loans.

(1) The proceeds of all loans shall be used for New Construction or Rehabilitation of affordable, decent, safe and sanitary housing units.

(2) No change

(3) The loans to Applicants ~~Public Private Partnerships~~ shall have interest rates as follows:

(a) and (b) No change

(c) renumber as (4)

(4) renumber as (5)

~~(6)(5)~~ The Corporation shall require adequate insurance to be maintained on the Project 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 August 10, 2006 ~~November 3, 2003~~, which is adopted and incorporated by reference and available on the Corporation's Website.

(6) through (12) renumber as (7) through (13)

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-_____.

67-58.040 Sale or Transfer of a Project.

The CWHIP loan shall be assumable upon sale or transfer of the Project if the following conditions are met:

(1) No change

(2) The proposed transferee and release of transferor receives a favorable recommendation from the Credit Underwriter as satisfying the criteria stated in the Credit Underwriter's report; meeting the stated purposes of the Corporation; complying with all legal requirements of the Corporation; and subject to ~~the~~ approval by the Board.

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-_____.

67-58.050 Construction Disbursements.

(1) CWHIP loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the CWHIP loan to the Total Project Development Cost unless approved by the Credit Underwriter.

(2) through (4) No change

(5) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Borrower 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; ~~or~~

(c) If 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.

(6) through (8) No change

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-_____.

67-58.060 Loan Servicing.

(1) through (3) No change

(4) 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 CWHIP loan, the Borrower shall pay the Corporation a late charge of 5 percent of any required payment that is not received by the Corporation within 15 Calendar Days of the due date.

(5) through (7) No change

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-

PART III HOMEOWNERSHIP PROJECTS

67-58.070 Credit Underwriting.

The credit underwriting review shall include a comprehensive analysis of the Applicant; the real estate; the economic viability of the Project; the ability of the Applicant and the Project development team to proceed; the evidence of need for Workforce Housing, in order to determine that the Project meets the Program requirements; and the determination of a recommended CWHIP loan amount.

(1) and (2) No change

(3) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter no later than seven (7) Calendar Days after the date of the letter of invitation.

(4) If the invitation to enter credit underwriting is accepted:

(a) The Applicant shall submit the credit underwriting fee to the Credit Underwriter within 30 45 Calendar Days of the date of the letter of invitation.

(b) No change

(5) No change

(6) The Applicant has 14 months from the date of the acceptance of the letter of invitation to complete credit underwriting and receive Board approval unless an extension of up to 10 months 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 detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of 1 one percent of the CWHIP loan amount if the Board approves the extension request.

(7) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, General Contractor, and other members of the Project development team.

(8) through (10) No change

(11) A full or self-contained appraisal per the Uniform Standards of Professional Appraisal Practice, which shall include a separate appraisal for each model and typical lot being offered for sale, 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 Project's financial feasibility. Appraisals which have been ordered and submitted by a third party lender which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. ~~The market study must be completed by a disinterested party who is approved by the Credit Underwriter.~~ The Credit Underwriter shall review and consider the market study, the Project's financial impact on development in the area previously funded by the Corporation, and other documentation when making its recommendation. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(12) No change

(13) The Credit Underwriter shall request the following information:

(a) From the Applicant and general partners, audited financial statements or financial statements for the most recent fiscal year ended; credit check, banking and trade references; and deposit verifications compiled or reviewed in accordance with SSARS. If audited financial statements or financial statements compiled or reviewed in accordance with SSARS are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter and the two (2) most recent years tax returns. If the entities are newly formed (less than 18 months in existence as of the date that the credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules; and

(b) From the General Contractor:

(i) Verification that the General Contractor has the requisite knowledge and experience to complete the proposed Project;

(ii) Narrative regarding experience with residential construction; and

(iii) 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 percent of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

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

(a) No change

(b) Developer and General Contractor's history successfully completing projects developments of comparable in size and scope;

(c) No change

(d) Exposure of Corporation funds compared to Total Project Development Cost.

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity. In addition, a letter of credit or payment and performance bond will be required if the Credit Underwriter determines after evaluation of paragraphs (a)-(d) in this subsection that additional surety is needed.

(15) The Developer fee shall be limited to 16 percent of the ~~Total Project Development~~ Cost exclusive of the land cost. A Developer fee on the building acquisition cost shall be limited to 12 percent of the cost of the building exclusive of the land cost.

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

(17) The General Contractor must secure building permits issued in the name of the General Contractor.

(18) through (22) No change

(23) The CWHIP loan and other mortgage loans related to the Project must close within 90 days of the date of the CWHIP 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 detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of ~~1 one~~ percent of the CWHIP loan amount if the Board approves the request to extend the commitment beyond the period outlined in this rule chapter.

(24) No change

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, L.O.F. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, L.O.F. History-New 12-17-06, Amended-

67-58.080 Terms of the Loans to Applicants ~~Public-Private Partnerships.~~

(1) The proceeds of all loans shall be used for New Construction or Rehabilitation of affordable, decent, safe and sanitary housing units.

(2) No change

(3) The loans to ~~Applicants Public-Private Partnerships~~ shall have interest rates as follows:

(a) One percent simple interest per annum, non-amortizing, will accrue during construction on loans to Projects where long term affordability of at least 30 years is provided and when at least 80 percent of the units are set aside for Workforce Housing and at least 50 percent of the units are set aside for Essential Services Personnel. The accrued interest ~~During construction, interest will accrue at 3 percent simple interest per annum and~~ will be forgiven upon sale of the unit to an Eligible Person.

(b) For CWHIP loans not eligible for forgiveness, the interest rate shall be 3 percent fully amortized loans to Projects other than those identified in paragraph (a) above. Applicant shall pay all interest accrued during construction of the Project.

(c) No change

(4) through (8) No change

(9) The Compliance Period for a CWHIP Project shall be the greater of 20 years, the term of the CWHIP loan, or the term of the Affordability Period committed to in the Application Response.

(10) For units set-aside as Workforce Housing, Applicants are responsible for limiting the sales price of any unit to not more than 90 ~~80~~ percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher, and require that all Eligible Persons purchasing the homeownership units occupy the homes as their primary residence, and ensuring that the purchase price of the property after construction does not exceed the appraised value of the property.

(11) and (12) No change

(13) Units set aside for Workforce Housing shall be deed-restricted for resale to Eligible Persons at a sales price of not more than 90 ~~80~~ percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher, at the time of resale.

Specific Authority Section 420.5095, F.S., Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S., Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-

67-58.090 Disbursement of Funds, Draw Requests, and Construction Loan Servicing.

(1) CWHIP loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the CWHIP loan to the Total Project-Development Cost unless approved by the Credit Underwriter.

(2) through (4) No change

(5) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Borrower 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; or

(c) If 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.

(6) through (8) No change

Specific Authority Section 420.5095, F.S., Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S., Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-

67-58.100 Terms of the Loans to Eligible Persons.

(1) No change

(2) The CWHIP loan to an Eligible Person should not be in lower than second lien position; however, it may occupy a lien position lower than second if another source of down payment assistance from a local government is

provided to the Eligible Person in an amount that exceeds the CWHIP loan ~~must be in not lower than second position unless otherwise approved by the Board.~~

(3) In no instance can the CWHIP loan be combined with any other form of Corporation down payment assistance funds provided to the Eligible Person.

~~(4)(3)~~ Units must be sold to Eligible Persons that qualify at the time of purchase contract execution. Eligible Persons must agree to occupy the unit as their principal residence throughout the Affordability Period ~~of affordability~~ or transfer the property in accordance with the resale restrictions throughout the Affordability Period ~~of affordability~~.

(4) through (6) renumber as (5) through (7)

~~(8)(7)~~ The Corporation will consider resubordinating its existing second mortgage loan to an Eligible Person to a first mortgage loan when a refinancing occurs. In making a determination, the Corporation will review the following terms of the new transaction: loan type; term of the loan; interest rate; type of interest rate (variable or fixed); principal balance of the loan; reason for requesting subordination of the loan; and whether or not the terms of the new loan are beneficial to the Eligible Person. Eligible Persons requesting resubordination are subject to the following:

(a) The Eligible Person must have resided in the unit property for at least one (1) year prior to requesting the resubordination;

(b) No additional debt can be refinanced into the new first mortgage with the exception of home repairs or improvements; and

(c) The Eligible Person cannot receive any cash out as a result of the refinancing; and

~~(d) The Eligible Person is limited to one resubordination.~~

(8) renumber as (9)

~~(10)(9)~~ Eligible Persons must comply with all deed restrictions including those regarding resale of the set-aside unit. Before a unit may be resold, the potential purchasers must submit to the Credit Underwriter all documentation necessary for the Credit Underwriter to determine that the potential purchaser qualifies as an Eligible Person. In addition, the Credit Underwriter must determine that the sales price for that set-aside unit is not more than 90 80 percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher. The Credit Underwriter must also verify that the potential purchaser will occupy the set-aside unit as their primary residence.

(10) renumber as (11)

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Amended-.

67-58.110 Permanent Loan Servicing - Annual Review.

The Corporation's servicer shall annually certify permanent residency and insurance certification of the Eligible Person occupying a CWHIP unit.

Specific Authority Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. Law Implemented Section 420.5095, F.S. Ch. 2006-69, s. 27, LOF. History-New 12-17-06, Repromulgated-.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Bridget Warring, Homeownership Programs Manager
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
(850) 488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:

David R. Westcott, Deputy Development Officer, Homeownership
Florida Housing Finance Corporation

227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
(850) 488-4197

DATE PROPOSED RULE DEVELOPMENT APPROVED:

June 22, 2007 Corporation Board Meeting

DATE PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW:

Volume 33, Number 28, July 13, 2007

Any person requiring special accommodation at this hearing because of a disability or physical impairment should contact Bridget Warring at the above address. If you are hearing or speech impaired, please use the Florida Dual Party Relay system, which can be reached at 1-800-955-8770 (Voice) or 1-800-955-9771 (TDD).