

NOTICE OF PROPOSED RULEMAKING

FLORIDA HOUSING FINANCE CORPORATION

CHAPTER 67-21

NON-COMPETITIVE AFFORDABLE MULTIFAMILY RENTAL HOUSING PROGRAMS (MMRB/HC)

RULE NOS.	RULE TITLES
PART I ADMINISTRATION	
67-21.001	Purpose and Intent
67-21.002	Definitions
67-21.0025	Miscellaneous Criteria
67-21.003	Application and Selection Process for Developments
PART II MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM	
67-21.004	Federal Set-Aside Requirements for MMRB Loans
67-21.0045	Determination of Method of Bond Sale
67-21.006	MMRB Development Requirements
67-21.007	MMRB Fees
67-21.008	Terms and Conditions of MMRB Loans
67-21.009	Interest Rate on Mortgage Loans
67-21.010	Issuance of Revenue Bonds
67-21.013	Non-Credit Enhanced Multifamily Mortgage Revenue Bonds

67-21.014	MMRB Credit Underwriting Procedures
67-21.015	Use of Bonds with Other Affordable Housing Finance Programs
67-21.017	Transfer of Ownership of a MMRB Development
67-21.018	Refundings and Troubled Development Review
67-21.019	Issuance of Bonds for Section 501(c)(3) Entities

**PART III HOUSING CREDIT PROGRAM**

67-21.025	HC Fees
67-21.026	HC Credit Underwriting Procedures
67-21.027	HC General Program Procedures and Requirements
67-21.028	HC with Tax-Exempt Bond-Financed Developments
67-21.029	HC Extended Use Agreement
67-21.030	Sale or Transfer of a Housing Credit Development
67-21.031	Qualified Contracts

**PURPOSE AND EFFECT:** The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine bond allocation amounts and implement the provisions of the Multifamily Mortgage Revenue Bond (MMRB) Program authorized by Section 142 of the Code and Section 420.509, F.S.; and

(2) Administer the Application process, determine Non-Competitive Housing Credit amounts, and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, F.S.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the

construction and related industries; and to increase and improve the supply of affordable housing in the State of Florida.

**SUMMARY:** Prior to the opening of an Application process, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Applications to determine what changes or additions should be added to the Rule and/or Application. The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply for MMRB, Non-Competitive Housing Credits, or a combination of both.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE**

**RATIFICATION:** The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The rule is not likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The rule is not likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. In addition, the rule is not likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**RULEMAKING AUTHORITY:** 420.507, 420.508, FS.

**LAW IMPLEMENTED:** 420.507, 420.508, 420.509, 420.5099 FS.

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

**DATE AND TIME:** May 31, 2018 at 2:00 p.m. Eastern Time

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6<sup>th</sup> Floor Seltzer Room, Tallahassee, Florida 32301. The hearing will also be accessible by telephone and the call-in information will be posted on the Corporation's website: <http://www.floridahousing.org/programs/developers-multifamily-programs/competitive/2018-rule-development-process/>.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Marisa Button, Director of Multifamily Allocations, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850) 488-4197.

THE FULL TEXT OF THE PROPOSED RULE IS:

## **PART I ADMINISTRATION**

### **67-21.001 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 amount and make and service mortgage loans for new construction or rehabilitation of affordable rental units under the Multifamily Mortgage Revenue Bonds (MMRB) Program authorized by Section 420.509, F.S.; and,

(2) Administer the Application process, determine Non-Competitive Housing Credit amounts, and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, F.S.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.509, 420.5099 FS. History--New 7-16-13, Repromulgated 2-2-15, 9-15-16, 5-24-17,\_\_\_\_\_.*

### **67-21.002 Definitions.**

(1) "ACC" or "Annual Contribution Contract" means a contract between HUD and a Public Housing Authority containing the terms and conditions under which HUD assists in providing for development of housing units, modernization of housing units, operation of housing units, or a combination of the foregoing.

(2) "Acknowledgment Resolution" means the official action taken by the Corporation to reflect its intent to finance a Development provided that the requirements of the Corporation, the terms of the MMRB Loan Commitment, and the terms of the Credit Underwriting Report are met.

(3) "Act" means the Florida Housing Finance Corporation Act, Chapter 420, Part V, F.S.

(4) “Address” means the address number, street name and city or, at a minimum, street name, closest designated intersection, and whether or not the Development is located within a city or in the unincorporated area of the county. If located within a city, include the name of the city.

(5) “Affiliate” means any person that:

(a) Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer;

(b) Serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer;

(c) Directly or indirectly receives or will receive a financial benefit from a Development except as further described in Rule 67-21.0025, F.A.C., or

(d) Is the spouse, parent, child, sibling, or relative by marriage of a person described in paragraph (a), (b) or (c), above.

(6) “Allocation Authority” means the total dollar volume of the state of Florida’s Housing Credit ceiling available for distribution by the Corporation and authorized pursuant to Section 42 of the IRC.

(7) “Annual Household Income” means the gross income of a person, together with the gross income of all persons who intend to permanently reside with such person in the Development to be financed by the Corporation, as of the date of occupancy shown on the income certification promulgated by the Corporation.

(8) “Applicable Fraction” means Applicable Fraction as defined in Section 42(c)(1)(B) of the IRC.

(9) “Applicant” means any person or legal entity of the type and with the management and ownership structure described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to Rule Chapter 67-60, F.A.C., for one or more of the Corporation’s programs. For purposes of Rule 67-21.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. Unless otherwise stated in a competitive solicitation, as used herein, a ‘legal entity’ means a legally formed corporation, limited partnership or limited liability company with a management and ownership structure that consists exclusively of all natural persons by the third principal disclosure level. For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required. The terms ‘first principal disclosure level’ and ‘third principal disclosure level’ have the meanings attributed to them in the definition of “Principal.”

(10) “Application” means the forms and exhibits created by the Corporation for the purpose of providing the

means to apply for MMRB only, Non-Competitive Housing Credits only, or both MMRB and Non-Competitive Housing Credits, as outlined in subsection 67-21.003(1), F.A.C. A completed Application may include additional supporting documentation provided by an Applicant.

(11) “Board” or “Board of Directors” means the Board of Directors of the Corporation.

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

(13) “Bond” or “Bonds” means Bond as defined in Section 420.503, F.S.

(14) “Bond Trustee” or “Trustee” means a financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bond holders, and in some instances the Corporation, in enforcing the terms of the Program Documents.

(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 the seven (7) days of the week.

(17) “Commercial Fishing Worker” means Commercial fishing worker as defined in Section 420.503, F.S.

(18) “Competitive Housing Credits” or “Competitive HC” means those Housing Credits which come from the Corporation’s annual Allocation Authority.

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

(20) “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.

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

(22) “Cost of Issuance Fee” means the fee charged by the Corporation to the Applicant for the payment of the costs and expenses associated with the sale of Bonds and the loaning of the proceeds, including a fee for the Corporation.

(23) “Credit Enhancement” means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to the Corporation or its Trustee for a minimum of ten years by a third party Credit Enhancer or financial institution securing, insuring or guaranteeing the repayment of the Mortgage Loan or Bonds under the

MMRB Program.

(24) “Credit Enhancer” means a financial institution, insurer or other third party which provides a Credit Enhancement or guarantee instrument acceptable to the Corporation securing repayment of the Mortgage Loan or Bonds issued pursuant to the MMRB Program.

(25) “Credit Underwriter” means the independent contractor under contract with the Corporation having the responsibility for providing Credit Underwriting services.

(26) “Credit Underwriting” means an in-depth analysis by the Credit Underwriter of all documents submitted in connection with an Application.

(27) “Credit Underwriting Report” means the report that is a product of Credit Underwriting.

(28) “Cross-collateralization” means the pledging of the security of one Development to the obligations of another Development.

(29) “DDA” or “Difficult Development Area” means areas designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with section 42(d)(5)(B) of the IRC.

(30) “Developer” means the individual, association, corporation, joint venturer or partnership, which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable housing as required in the Application.

(31) “Developer Fee” means the fee earned by the Developer.

(32) “Development” means Project as defined in Section 420.503, F.S.

(33) “Development Cost” means the total of all costs incurred in the completion of a Development excluding Developer Fee, operating deficit reserves, and total land cost as typically shown in the Development Cost line item on the development cost pro forma.

(34) “Development Location Point” means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on the site with the most units that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

(35) “Disclosure Counsel” means the Special Counsel designated by the Corporation to be responsible for the

drafting and delivery of the Corporation's disclosure documents such as preliminary official statements, official statements, re-offering memorandums or private placement memorandums and continuing disclosure agreements.

(36) "Document" means electronic media, written or graphic matter, of any kind whatsoever, however produced or reproduced, including 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.

(37) "Elderly" means Elderly as defined in Section 420.503, F.S.

(38) "Elderly Housing" means housing or a unit being occupied or reserved for qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), F.S.

(39) "Eligible Persons" means one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the Corporation to be of Low Income.

(40) "EUA" or "Extended Use Agreement" means, with respect to the HC Program, an agreement which sets forth the set-aside requirements and other Development requirements under the HC Program.

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

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

(43) "Farmworker" means Farmworker as defined in Section 420.503, F.S.

(44) "Farmworker Development" means a Development:

(a) Of not greater than 80 units, at least 40 percent of the total residential units of which are occupied or reserved for Farmworker Households; and,

(b) For which independent market analysis demonstrates a local need for such housing.

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

(46) "Final Housing Credit Allocation" means, with respect to a Housing Credit Development, the issuance of Housing Credits to an Applicant upon completion of construction or Rehabilitation of a Development and submission to the Corporation by the Applicant of a completed and executed Final Cost Certification Application Package pursuant to Rule 67-21.027, F.A.C.

(47) "Financial Beneficiary" means any Principal of the Developer or Applicant entity who receives or will receive any direct or indirect financial benefit from a Development, except as further described in Rule 67-21.0025,



F.A.C.

(48) “Freddie Mac Multifamily Targeted Affordable Housing Lender” means any entity that (a) has been approved and designated by the Federal Home Loan Mortgage Corporation (“Freddie Mac”) to act as a lender and seller-servicer for Freddie Mac multifamily targeted affordable housing transactions (including those under Freddie Mac’s Tax-Exempt Loan Program) and (b) has accepted a written commitment from Freddie Mac to purchase Bonds under Freddie Mac’s Tax-Exempt Loan Program pursuant to the terms and conditions of said commitment.

(49) “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 the units required in the Application, and which meets the criteria described in Rules 67-21.014 and 67-21.026, F.A.C.

(50) “HC” or “Housing Credit Program” means the rental housing program administered by the Corporation in accordance with section 42 of the Internal Revenue 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 the following:

- (a) Section 42(h)(7)(A) of the Internal Revenue Code;
- (b) This rule chapter regarding Non-Competitive Housing Credits; and,
- (c) Rule Chapter 67-48, F.A.C., regarding Competitive Housing Credits.

(51) “Homeless” means Homeless as defined in Section 420.621, F.S.

(52) “Housing Credit” means the tax credit issued in exchange for the development of rental housing pursuant to the following:

- (a) Section 42 of the IRC;
- (b) The provisions of this rule chapter regarding Non-Competitive Housing Credits; and,
- (c) The provisions of Rule Chapter 67-48, F.A.C., regarding Competitive Housing Credits.

(53) “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 Compliance Period pursuant to Section 42(m)(2)(A) of the IRC.

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

(55) “Housing Credit 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:

(a) The date specified by the Corporation in the Extended Use Agreement, or

(b) The date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.

(56) “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.

(57) “Housing Credit Rent-Restricted Unit” means, with respect to a Housing Credit Development, a unit for which the gross monthly rent shall not exceed 30 percent of the imputed income limitation applicable to such unit as committed to by the Applicant in its Application and shall be determined in a manner consistent with Section 42(g)(2) of the IRC.

(58) “Housing Credit Set-Aside” means the number of units in a Housing Credit Development necessary to satisfy Section 42(g) of the IRC and the percentage of units set-aside at 60 percent of the Area Median Income (AMI) or less as chosen by the Applicant in the Application or in response to a competitive solicitation, if applicable.

(59) “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 IRC.

(60) “HUD” means the United States Department of Housing and Urban Development.

(61) “HUD Risk Sharing Program” means the program authorized by section 542(c) of the Housing and Community Development Act of 1992.

(62) “Identity of Interest” means, for the purpose of the HUD Risk Sharing Program, any person or entity that has a one percent or more financial interest in the Development and in any entity providing services for a fee to the Development.

(63) “Investment Banker” means, with respect to an issue of Bonds, an underwriter, placement agent or structuring agent who is under contract with the Corporation and whose primary purpose is to either:

(a) In the case of an underwriter, acquire the Bonds in a commercial arm’s length transaction for resale to investors, or

(b) In the case of a placement agent or structuring agent, arrange for the sale of Bonds.

In either case, the underwriter, placement agent or structuring agent assists on matters pertinent to the Bond issue, such as structure, timing, marketing, terms, Bond ratings and cash flows.

(64) “IRC” or “Internal Revenue Code” means 26 CFR Sections 42, 142, 147, 151, and 501 of the Internal Revenue Code of 1986, 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.

(65) “IRMA” or “Independent Registered Municipal Advisor” means a professional who is under contract with the Corporation to provide advice with respect to the issuance of municipal securities, which advice may include, among other things, the determination of the method of sale for one or more series of Bonds. The IRMA owes the Corporation a fiduciary duty and is obligated to place the interest of the Corporation ahead of its own and may not engage in self-dealing.

(66) “Local Government” means Local government as defined in Section 420.503, F.S.

(67) “Local Public Fact Finding Hearing” means a public hearing requested by any person residing in the county or municipality in which the proposed Development is located and which is conducted by the Corporation for the purpose of receiving public comment or input regarding the financing of a proposed Development with Bonds by the Corporation.

(68) “Low Income” means the adjusted income for a Family which does not exceed 80 percent of the area median income.

(69) “Lower Income Residents” means Families whose annual income does not exceed either 50 percent or 60 percent depending on the minimum set-aside elected of the area median income as determined by HUD with adjustments for household size. In no event shall occupants of a Development unit be considered to be Lower Income Residents if all the occupants of a unit are students as defined in section 151(c)(4) of the Internal Revenue Code or if the residents do not comply with the provisions of the Internal Revenue Code defining Lower Income Residents. (See section 142 of the Internal Revenue Code.)

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

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

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

(73) “MMRB Loan Agreement” means the Program Documents or Loan Documents wherein the Corporation and the Applicant agree to the terms and conditions of the MMRB Loan, including the repayment of the MMRB Loan.

(74) “MMRB Loan Commitment” means the loan commitment executed by the Corporation and the Applicant after the issuance of a favorable Credit Underwriting Report that defines the conditions under which the Corporation agrees to make the MMRB Loan to the Applicant for the purpose of financing a Development.

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

(76) “Mortgage Loan” means Mortgage loan as defined in Section 420.503, F.S.

(77) “Non-Competitive Housing Credits” or “Non-Competitive HC” means those Housing Credits which qualify to be used with Tax-Exempt Bond-Financed Developments and do not come from the Corporation’s annual Allocation Authority.

(78) “Non-Profit” means a qualified non-profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the IRC 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 percent of the ownership interest in the Development held by the general partner or managing member entity, which shall receive at least 25 percent of the Developer Fee and which entity is acceptable to federal and state agencies and financial institutions as a sponsor for affordable housing, as further described in Rule 67-21.0025, F.A.C.

(79) “Note” means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money on a specified date, which provides the interest rate and is secured by a Mortgage.

(80) “PBRA” or “Project-Based Rental Assistance” means a rental subsidy through a contract with HUD or RD for a property.

(81) “Persons with Special Needs” means Person with special needs as defined in Section 420.0004(13), F.S.

(82) “PHA” or “Public Housing Authority” means a housing authority under Chapter 421, F.S.

(83) “Preliminary Determination” means an initial determination by the Corporation of the amount of Housing Credits outside the Allocation Authority needed from the Treasury to make a Tax-Exempt Bond-Financed Development financially feasible and viable.

(84) “Preservation” means rehabilitation of an existing development that was originally built in 1996 or earlier and has an active contract through one or more of the following HUD or RD programs: Sections 202 of the Housing Act of 1959 (12 U.S.C. §1701q), 236 of the National Housing Act (12 U.S.C. §1701), 514, 515, or 516 of the U.S. Housing Act of 1949 (42 U.S.C. §1484), or 811 of the U.S. Housing Act of 1937 (42 USC §1437), or either has PBRA or is public housing assisted through ACC. If funded through the Corporation, the Development must maintain at least the same number of PBRA or ACC units. Such developments must not have closed on funding from HUD or RD after 1996 where the budget was at least \$10,000 per unit for rehabilitation in any year.

(85) “Principal” means:

(a) With respect to an Applicant that is:

1. A corporation, at the first principal disclosure level, any officer, director, executive director, or shareholder of the Applicant corporation and, with respect to any shareholder of the Applicant corporation, at the second principal disclosure level, that is:

a. A corporation, any officer, director, executive director, or shareholder of the corporation,

b. A limited partnership, any general partner or limited partner of the limited partnership,

c. A limited liability company, any manager or member of the limited liability company, or

d. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and,

with respect to any shareholder entity identified at the second principal disclosure level that is:

e. A corporation, by the third disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,

f. A limited partnership, by the third principal disclosure level, any general partner or limited partner of the limited partnership, each of whom must be a natural person,

g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, each of whom must be a natural person, or

h. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons.

2. A limited partnership, at the first principal disclosure level, any general partner or limited partner of the Applicant limited partnership, and, unless otherwise excluded at subsection 67-21.002(9), F.A.C., with respect to any general partner or limited partner of the Applicant limited partnership, at the second principal disclosure level, that is:

- a. A corporation, any officer, director, executive director, or shareholder of the corporation,
- b. A limited partnership, any general partner or limited partner of the limited partnership,
- c. A limited liability company, any manager or member of the limited liability company, or

d. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and,

with respect to any entity identified at the second principal disclosure level that is:

e. A corporation, by the third principal disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,

f. A limited partnership, by the third principal disclosure level, any general partner or limited partner of the limited partnership, each of whom must be a natural person,

g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, each of whom must be a natural person, or

h. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and,

3. A limited liability company, at the first principal disclosure level, any manager or member of the Applicant limited liability company, and, unless otherwise excluded at subsection 67-21.002(9), F.A.C., with respect to any manager or member of the Applicant limited liability company, at the second principal disclosure level, that is:

- a. A corporation, any officer, director, executive director, or shareholder of the corporation,
- b. A limited partnership, any general partner or limited partner of the limited partnership,
- c. A limited liability company, any manager or member of the limited liability company, or

d. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and,

with respect to any entity identified at the second principal disclosure level that is:

e. A corporation, by the third principal disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,

f. A limited partnership, by the third principal disclosure level, any general partner or limited partner of the limited partnership, each of whom must be a natural person,

g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, each of whom must be a natural person, or

h. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons.

(b) With respect to a Developer that is:

1. A corporation, at the first principal disclosure level, any officer, director or shareholder of the Developer corporation and, with respect to any shareholder of the Developer corporation that is:

a. A corporation, at the second principal disclosure level, any officer, director or shareholder of the corporation,

b. A limited partnership, at the second principal disclosure level, any general partner or limited partner of the limited partnership, or

c. A limited liability company, at the second principal disclosure level, any manager or member of the limited liability company.

2. A limited partnership, at the first principal disclosure level, any general partner or limited partner of the Developer limited partnership, and, with respect to any general partner or limited partner of the Developer limited partnership that is:

a. A corporation, at the second principal disclosure level, any officer, director or shareholder of the corporation,

b. A limited partnership, at the second principal disclosure level, any general partner or limited partner of the limited partnership, or

c. A limited liability company, at the second principal disclosure level, any manager or member of the limited liability company; and,

3. A limited liability company, at the first principal disclosure level, any manager or member of the Developer limited liability company, and, with respect to any manager or member of the Developer limited liability company

that is:

- a. A corporation, at the second principal disclosure level, any officer, director or shareholder of the corporation,
- b. A limited partnership, at the second principal disclosure level, any general partner or limited partner of the limited partnership, or
- c. A limited liability company, at the second principal disclosure level, any manager or member of the limited liability company.

(86) “Private Placement” means the sale of the Corporation Bonds directly or through an Investment Banker to 35 or fewer initial purchasers who are not purchasing the Bonds with the intent to offer the Bonds for retail sale and who are Qualified Institutional Buyers.

(87) “Program Documents” or “Loan Documents” means the MMRB Loan Commitment, MMRB Loan Agreement, Note, Mortgage, Credit Enhancement, MMRB Land Use Restriction Agreement, trust indenture, preliminary and final official statements, intercreditor agreement, assignments, bond purchase agreement, compliance monitoring agreement, mortgage servicing agreement and such other ordinary and customary documents necessary to issue and secure repayment of the Bonds and the MMRB Loan sufficient to protect the interests of the Bond owners and the Corporation.

(88) “QCT” or “Qualified Census Tract” means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50 percent or more of the households at an income which is less than 60 percent 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 Internal Revenue Code.

(89) “Qualified Institutional Buyer” is sometimes called a “sophisticated investor” and specifically includes the following:

(a) Any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers that, in the aggregate, own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:

1. Any insurance company as defined in section 2(13) of the Securities Act of 1933,
2. Any investment company registered under the Investment Company Act of 1940 or any business development company as defined in section 80a-2(a)(48) of that Act,
3. Any Small Business Investment Company licensed by the U.S. Small Business Administration under section



301(c) or (d) of the Small Business Investment Act of 1958,

4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees,

5. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974,

6. Trust funds of various types, except for trust funds that include participants' individual retirement accounts or H.R. 10 plans,

7. Any business development company as defined in section 80b-2(a)(22) of the Investment Advisors Act of 1940,

8. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (except a bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Act of 1933, or a foreign bank or savings and loan or similar institution), partnership, Massachusetts or similar business trust, or any investment adviser registered under the Investment Advisors Act.

(b) Any dealer registered under section 15 of the Securities Exchange Act of 1934, acting on its own behalf or on the behalf of other Qualified Institutional Buyers who in the aggregate own and invest at least \$10 million of securities of issuers not affiliated with the dealer (not including securities held pending public offering).

(c) Any dealer registered under section 15 of the Securities Exchange Act of 1934 acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

(d) Any investment company registered under the Investment Company Act that is part of a family of investment companies that together own at least \$100 million in securities of issuers, other than companies with which the investment company or family of investment companies is affiliated.

(e) Any entity, all of whose equity owners are Qualified Institutional Buyers.

(f) Any bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Act of 1933 or foreign bank or savings and loan or similar institution that, in aggregate with the other Qualified Institutional Buyers, owns and invests in at least \$100 million in securities of affiliates that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated during the 16 to 18 months prior to the sale.

(90) "Qualified Lending Institution" means any lending institution designated by the Corporation.

(91) "Qualified Project Period" means Qualified Project Period as defined in Section 142(d) of the Internal

Revenue Code.

(92) “RD” or “Rural Development” means Rural Development Services (formerly the “Farmer’s Home Administration” or “FmHA”) of the United States Department of Agriculture.

(93) “Redevelopment” means:

(a) With regard to a proposed Development that involves demolition of multifamily rental residential structures currently or previously existing that were originally built in 1986 or earlier and either originally received financing or are currently financed through one or more of the following HUD or RD programs: Sections 202 of the Housing Act of 1959 (12 U.S.C. §1701q), 236 of the National Housing Act (12 U.S.C. §1701), 514, 515 or 516 of the U.S. Housing Act of 1949 (42 U.S.C. §1484), 811 of the U.S. Housing Act of 1937 (42 USC §1437), or have PBRA; and new construction of replacement structures on the same site maintaining at least the same number of PBRA units, or

(b) With regard to proposed Developments that involve demolition of public housing structures currently or previously existing on a site with a Declaration of Trust that were originally built in 1986 or earlier and that are assisted through ACC; and new construction of replacement structures on the same site, providing at least 25 percent of the total new units with PBRA, ACC, or both, after Redevelopment.

(94) “Rehabilitation” means, with respect to the Housing Credit Program, the alteration, improvement or modification of an existing structure where less than 50 percent of the proposed construction work consists of new construction, as further described in Rule 67-21.0025, F.A.C.

(95) “Rehabilitation Expenditures,” with respect to the MMRB Program, has the meaning set forth in section 147(d)(3) of the Internal Revenue Code.

(96) “Scattered Sites,” as applied to a single Development, means a Development site that, when taken as a whole, is comprised of real property that is not contiguous (each such non-contiguous site within a Scattered Site Development, is considered to be a “Scattered Site.”) For purposes of this definition “contiguous” means touching at a point or along a boundary. Real property is contiguous if the only intervening real property interest is an easement provided the easement is not a roadway or street. All of the Scattered Sites must be located in the same county.

(97) “Special Counsel” means any attorney or law firm retained by the Corporation, pursuant to a Request for Qualifications (RFQ), to serve as counsel to the Corporation, including Disclosure Counsel.

(98) “State Bond Allocation” means the allocation of the state private activity bond volume limitation pursuant to Chapter 159, Part VI, F.S., administered by the Division of Bond Finance and allocated to the Corporation for the

issuance of Tax-exempt Bonds by either the Single Family Mortgage Revenue Bonds or MMRB Programs.

(99) “Taxable Bonds” means those Bonds on which the interest earned is included in gross income of the owner for federal income tax purposes pursuant to the Internal Revenue Code.

(100) “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 Internal Revenue Code.

(101) “Tax-exempt Bonds” means those Bonds on which all or part of the interest earned is excluded from gross income of the owner for federal income tax purposes pursuant to the Internal Revenue Code.

(102) “TEFRA Hearing” means a public hearing held pursuant to the requirements of the Internal Revenue Code and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), section 147(f) of the Internal Revenue Code, at which members of the public or interested persons are provided an opportunity to present evidence or written statements or make comments regarding a requested application for Tax-exempt Bond financing of a Development by the Corporation.

(103) “Total Development Cost” means the total of all costs incurred in the ~~completion~~ construction of a Development all of which shall be subject to the review and approval by the Credit Underwriter and the Corporation pursuant to this rule chapter, and as further described in Rule 67-21.0025, F.A.C.

(104) “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.

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

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.502, 420.503, 420.503(4), 420.507, 420.508, 420.509, 420.5099 FS. History—New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 2-6-97, 1-7-98, Formerly 91-21.002, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 10-5-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, 2-2-15, 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-21.0025 Miscellaneous Criteria.**

(1) In addition to the alteration, improvement or modification of an existing structure, Rehabilitation or Preservation with respect to the Housing Credit Program also includes what is stated in Section 42(e) of the IRC, except that for the purposes of Non-Competitive HC, the following is substituted for Section 42(e)(3)(A)(ii)(II): “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 \$15,000 or more.”

(2) For purposes of this rule chapter, in accordance with Section 42 of the IRC, a for-profit entity wholly owned by one or more qualified non-profit organizations will constitute a Non-Profit entity. The purpose of the Non-Profit must be, in part, to foster low-income housing and such purpose must be reflected in the Articles of Incorporation of the Non-Profit entity. 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 MMRB Land Use Restriction Agreement and the Extended Use Agreement, as applicable. If an Applicant applies to the Corporation as a Non-Profit entity but does not qualify as such, the Application will fail threshold.

(3) Total Development Cost includes the following:

(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties, of which the total cost cannot exceed the appraised value of the real property as determined in the Credit Underwriting process.

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

(c) Any expenses relating to the issuance of Tax-exempt Bonds or Taxable Bonds 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. However, fees of the Applicant’s or Developer’s attorney(s) awarded in conjunction with litigation against the Corporation with respect to a Development shall not be included in Total Development Cost.

(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.

(h) Expenses in connection with initial occupancy of the Development.

(i) Allowances for contingency reserves and any anticipated operating reserves as recommended by the Credit Underwriter and approved by the Corporation.

(j) The cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the Corporation's bonds, for the construction or Rehabilitation of the Development.

(4) In determining the income standards of Eligible Persons for its various programs, the Corporation shall take into account the following factors:

(a) Requirements mandated by federal law.

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

(c) Whether the determination is for rental housing.

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

With respect to the HC Program, an Eligible Person shall mean a Family having a combined income which meets the income eligibility requirements of the HC Program and Section 42 of the IRC.

(5) Financial Beneficiary and Affiliate, as defined in Rule 67-21.002, F.A.C., do not include third party lenders, third party management agents or companies, third party service providers, Housing Credit Syndicators, credit enhancers regulated by a state or federal agency, or contractors whose total fees are within the limit described in this rule chapter.

(6) For computing any period of time allowed by this rule chapter, 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.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.509, 420.5099 FS. History--New 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

### **67-21.003 Application and Selection Process for Developments.**

(1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

(a) If the NC Award will be in conjunction with other Corporation funding made available through the competitive

solicitation funding process outlined in Rule Chapter 67-60, F.A.C., the Applicant shall apply for the NC Award using the forms and procedures specified in the applicable competitive solicitation for such other funding. Unless otherwise specifically provided in the solicitation, all of the substantive provisions of this chapter will continue to apply to the NC Award. Any references in this chapter to “Application” shall mean the application or response submitted for such other funding.

(b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in Rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 05-2018) (~~Rev. 08-2016~~) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation’s website under the Multifamily Programs link labeled Non-Competitive Programs or from [http://www.flrules.org/Gateway/reference.asp?No=Ref\\_07356](http://www.flrules.org/Gateway/reference.asp?No=Ref_07356), which shall be completed and submitted to the Corporation in accordance with this rule chapter.

(c) 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) For purposes of the Non-Competitive Application Package, failure to submit an Application completed in accordance with the Application instructions and these rules will result in the failure to meet threshold in accordance with the instructions in the Application and this rule chapter.

(3) For purposes of the Non-Competitive Application Package, each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Non-Competitive Application Package and these rules. The Contact Person shall be notified by e-mail of items identified by the Corporation to be addressed by the Applicant, which may include financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation. For the Corporation to deem an Application complete, all arrearages must be satisfied.

(4) For purposes of the Non-Competitive Application Package, each Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems

appropriate (“cures”) to address the issues raised pursuant to subsection (3), above, that could result in failure to meet threshold. A new form, page or exhibit provided to the Corporation prior to the time the Application is deemed complete 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. 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 to make such other changes as necessary to keep the Application consistent as revised. In the event an invitation to Credit Underwriting is not extended within 12 months of the date on which the Application was initially received due to an uncured failure to meet threshold, then the Application will be deemed to have expired. Following expiration of an Application, the Applicant may submit a new Non-Competitive Application Package for the same Development, which shall include payment of the Application fee for the new Application.

(5) For purposes of the Non-Competitive Application Package, for Applications requesting MMRB only or MMRB and Non-Competitive HC, based on the availability of State Bond Allocation designated by the Board of Directors for multifamily housing, the Corporation will ~~recommend that the Board of Directors designate Applications for funding and~~ offer Applicants the opportunity to enter Credit Underwriting.

(6) An Applicant shall be ineligible for funding or allocation in any program administered by the Corporation for a period of time as determined in paragraph (c), below, if:

(a) The Board determines that the Applicant or any Principal, Financial Beneficiary, or Affiliate of the Applicant has made a material misrepresentation or engaged in fraudulent actions in connection with any Application for a Corporation program. For purposes of this subsection, there is a rebuttable presumption that an Applicant has engaged in fraudulent actions if the Applicant or any Principal, Financial Beneficiary or Affiliate of the Applicant:

1. Has been convicted of fraud, theft or misappropriation of funds,
2. Has been excluded from federal or Florida procurement programs for any reason, or
3. Has been convicted of a felony in connection with any Corporation program.

(b) Before any such determination can be final or effective, the Corporation must serve an administrative complaint that affords reasonable notice to the Applicant of the facts or conduct that warrant the intended action, specifies the proposed duration of ineligibility, and advises the Applicant of the opportunity to request a proceeding

pursuant to Sections 120.569 and 120.57, F.S. Upon service of such complaint, all pending transactions under any program administered by the Corporation involving the Applicant, or any Principal, Financial Beneficiary or Affiliate of the Applicant shall be suspended until a final order is issued or the administrative complaint is dismissed.

(c) The administrative complaint will include a proposed duration of ineligibility, which may be either a specific period of time or permanent in nature. With regard to establishing the duration, the Board shall consider the facts and circumstances, inclusive of each Applicant's compliance history, the type of misrepresentation or fraud committed, and the degree of harm to the Corporation's programs that has been or may be done.

(7) For purposes of the Non-Competitive Application Package, 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 (4), above:

(a) The Development is inconsistent with the purpose of the MMRB Program, the Housing Credit Program, or both, 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 that are provided by the Corporation and adopted under this rule chapter;

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

(8) 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 is deemed complete. Those items are as follows:

(a) Name of Applicant entity; notwithstanding the foregoing, the name of the Applicant entity may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation;

(b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the Principals of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application



documentation;

(c) Program(s) applied for;

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

(e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter Credit Underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased, provided the Development Location Point is on the site. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation;

(f) Development Category;

(g) Development Type;

(h) Demographic Commitment;

(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter Credit Underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

(j) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application; notwithstanding the foregoing, the Total Set-Aside Percentage may be increased after the Applicant has been invited to enter Credit Underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

(k) Submission of one original hard copy with the required number of photocopies of the Application by the applicable Application submission deadline, as outlined in the Non-Competitive Application instructions;

(l) Payment of the required Application fee and, if applicable, the TEFRA fee at submission of the Application;

(m) The Application labeled "Original Hard Copy" must include a properly completed Applicant Certification reflecting an original signature.

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

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

(10) If an Applicant or Developer 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 Internal Revenue Code, Title 67, F.A.C., or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the Application or at the time of issuance of a Credit Underwriting Report, the requested allocation will, upon a determination by the Board of Directors that such non-compliance substantially increases the likelihood that such Applicant or Developer will not be able to produce quality affordable housing, be denied and the Applicant or Developer and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Corporation's programs until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(11) The withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs.

(12) 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 requested in writing and approved in writing by the Corporation. The Corporation shall consider the facts and circumstances of each Applicant's request and any Credit Underwriting Report, if available, prior to determining whether to grant such request.

(13) For Applications requesting MMRB:

(a) The Corporation shall initiate TEFRA Hearings on the proposed Developments after Applications are submitted. Neither the TEFRA Hearing, the invitation into Credit Underwriting, nor the Acknowledgment Resolution obligate the Corporation to finance the proposed Development in any way.

(b) Upon receipt of the Credit Underwriting Report, the Corporation shall submit the Credit Underwriting Report Application to its IRMA for a preliminary recommendation of the method of bond sale for each Development pursuant to Rule 67-21.0045, F.A.C.

(c) The Corporation shall notify the Applicant, in writing, of the Board of Directors determination related to

approval of the Credit Underwriting Report and require the Applicant to submit the good faith deposit within 14 Calendar Days from the receipt of such notice.

(d) Upon Board of Directors approval of a Credit Underwriting Report and a preliminary recommendation for the method of bond sale from the Corporation's IRMA, staff shall proceed with activities necessary to facilitate issuance of the bonds. This shall include assigning an Investment Banker, Bond Counsel, Special Counsel, Disclosure Counsel, Trustee and any other professional necessary to complete the transaction. Requests for Taxable Bonds shall be considered by the Board of Directors in an amount recommended by the Credit Underwriter.

(e) Following receipt of the good faith deposit, the Corporation's assigned Special Counsel shall begin preparation of the loan commitment.

(f) Upon execution of a loan commitment, the Corporation shall authorize Bond Counsel, Special Counsel and Disclosure Counsel to prepare the Program Documents.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.502, 420.507(4), (13), (14), (18), (19), (20), (21), (24), (35), 420.508, 420.509, 420.5099 FS. History--New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 91-21.003, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, 2-2-15, 10-6-15, 9-15-16, 5-24-17, \_\_\_\_\_.*

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

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 120.569(2)(b), 120.57, 420.502, 420.507, 420.508 FS. History--New 11-14-99, Amended 2-11-01, 3-17-02, 10-8-02, 12-4-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, Repromulgated 3-30-08, 8-6-09, 11-7-11, Repealed 7-16-13.*

## **PART II MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**

#### **67-21.004 Federal Set-Aside Requirements for MMRB Loans.**

Each Application shall designate one of the following minimum federal set-aside requirements that the Development shall meet commencing with the first day on which at least 10 percent of the units in the property are occupied:

(1) Twenty percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 50 percent of the area median income limits adjusted for Family size (the 20/50 set-aside), or

(2) Forty percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 60 percent of the area median income limits adjusted for Family size (the 40/60 set-aside).

(3) For Developments financed solely through the issuance of Taxable Bonds or refundings of Tax-exempt Bonds originally issued under section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended, 20 percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 80 percent of the area median income limits adjusted for Family size (the 20/80 set-aside).

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.502, 420.507, 420.508, 420.509 FS. History—New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 9-25-96, 2-6-97, 1-7-98, Formerly 91-21.004, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, 1-29-06, Repromulgated 4-1-07, 3-30-08, 8-6-09, Amended 11-7-11, 7-16-13, 2-2-15, Repromulgated 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-21.0045 Determination of Method of Bond Sale.**

(1) The Corporation may sell Bonds for the purpose of financing a proposed Development through a negotiated sale, competitively bid sale or Private Placement. Prior to a competitively bid sale, the Board of Directors shall authorize a resolution specifying the method of sale.

(2) Following receipt of the Credit Underwriting Report, staff shall provide the Corporation's IRMA copies of such report for review and preparation of a written recommendation for the method of Bond sale.

(3) In preparing a recommendation for the method of sale to the Board of Directors, the IRMA shall consider the following:

- (a) The anticipated credit and security structure of the transaction;
- (b) The proposed financing structure of the transaction;
- (c) The Corporation's programmatic objectives; and,
- (d) Other factors identified by staff, counsel, or the Applicant.

(4) The written recommendation shall include an identification of the Development, the recommended method of sale, and a summary statement as to why the particular method of sale is being recommended.

(5) For those transactions that the Corporation's IRMA recommends as candidates for a competitive sale, the Corporation shall engage a structuring agent. The Applicant may, at its sole expense, engage a financial advisor ~~an~~

~~Investment Banker~~ for the transaction. Any cost to the Applicant for the financial advisor engaged by the Applicant ~~Investment Banker~~ in excess of \$18,000 must be paid out of the Developer Fee.

(6) For those transactions that the Corporation's IRMA recommends for a negotiated sale, the Corporation shall appoint an underwriter or placement agent.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507(4), (13), (19), (20), 420.508, 420.509(12) FS. History--New 1-7-98, Formerly 9I-21.0045, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01, Amended 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

#### **67-21.006 MMRB Development Requirements.**

A Development shall at a minimum meet the following requirements or an Applicant shall be able to certify that the following requirements shall be met with respect to a Development:

(1) Must provide safe, sanitary and decent multifamily residential housing for lower, middle and moderate income persons or families.

(2) Must be owned, managed and operated as a Development to provide multifamily residential rental property comprised of a building or structure or several proximate buildings or structures, each containing two (2) or more dwelling units and functionally related facilities, in accordance with section 142(d) of the Internal Revenue Code.

(3) The Development shall consist of similar units, containing complete facilities for living, sleeping, eating, cooking and sanitation for a Family.

(4) None of the units in the Development shall be used on a transient basis, nor shall they be knowingly leased for a period of less than 180 days unless a determination is made by the Corporation that there is a specific need in that particular area for leasing arrangements of less than 180 days, but in no event shall a lease be for a period less than 30 days, nor shall a Development be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home or trailer court or park.

(5) All of the dwelling units shall be rented or shall be available for rent on a continuous basis to members of the general public, and the Applicant shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be occupied in compliance with the Internal Revenue Code or are being held for the Elderly, Commercial Fishing Workers, the Homeless, Persons with Special Needs, or Farmworkers.

(6) The Applicant shall have no present plan to convert the Development to any use other than the use as affordable residential rental property.

(7) None of the units shall at any time be occupied by the owner of the Development or an individual related to the owner as such terms are defined by the IRC; provided, however, that in Developments containing more than 50 residential units, such owner or related person may occupy up to one unit per each 100 units in a Development and such owner or related person must reside in a unit that is in a building or structure which contains at least five (5) residential units.

(8) Commencing with the date on which at least 10 percent of the units in the Development are occupied:

(a) At least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal set-aside, of the occupied and completed residential units in the Development shall be occupied by Lower Income Residents, prior to the satisfaction of which no additional units shall be rented or leased, except to a Family that is also a Lower Income Resident;

(b) After initial rental occupancy of such residential units by Lower Income Residents, at least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal set-aside, of the completed residential units in the Development at all times shall be rented to and occupied by Lower Income Residents as required by section 142(d) of the Internal Revenue Code if the Development is financed with the proceeds of Tax-exempt Bonds, or as required by the Act, if the Development is financed with the proceeds of Taxable Bonds, or held available for rental if previously rented to and occupied by a Lower Income Resident.

(9) The Applicant shall obtain and maintain on file income certifications from each Lower Income Resident immediately prior to initial occupancy and at least annually thereafter.

(10) The Applicant shall not take, permit, or cause to be taken any action which would adversely affect the exemption from federal income taxation of the interest on Tax-exempt Bonds, nor shall the Applicant fail to take any action which is necessary to preserve the exemption from federal income taxation of the interest on Tax-exempt Bonds.

(11) The Applicant shall take such action or actions as shall be necessary to comply fully with the Internal Revenue Code, Florida Statutes, and the Corporation's rules.

(12) The Applicant may limit the leasing of units in a Development to the Elderly, Commercial Fishing Workers, the Homeless, Persons with Special Needs, or Farmworkers as permitted hereby.

(13) In the event that the Applicant has determined that the market no longer supports the Development as Elderly

Housing and desires to rent to younger persons or families, the following criteria must be met:

(a) A viable marketing plan is submitted to and is acceptable to the Corporation showing a good faith effort to market the unit as Elderly Housing.

(b) The Applicant demonstrates that a good faith effort was made to lease the unit as Elderly Housing and that such effort was made for at least six (6) months after the certificate of occupancy for the relevant unit was issued.

(c) The Applicant has requested and received Board of Directors' approval that the Development no longer qualifies as Elderly Housing, with said approval being based upon the criteria outlined in paragraphs (a) and (b), above.

(14) The Applicant and Developer of a proposed Rehabilitation Development shall make every effort to rehabilitate existing housing without displacing existing tenants or by temporarily moving existing tenants to unaffected units within the Development until the renovation of affected units is completed.

(15) ~~The owner of a Development must notify the Corporation of an intended change in the management company.~~ The Corporation must approve, pursuant to Rule Chapter 67-53, F.A.C., the Applicant's selection of a management company prior to such company assuming responsibility for the Development. The owner of a Development must notify the Corporation of an intended change in the management company prior to such company assuming responsibility for the Development. A key management company representative must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(16) The Applicant shall use cost certifications with respect to each Development as required by the United States Department of Housing and Urban Development ("HUD") in connection with Developments financed by HUD, including the HUD Risk Sharing Program.

(17) The Applicant shall provide annually to the Trustee not later than 151 days after the end of the Applicant's fiscal year, audited financial statements prepared by an independent certified public accounting firm, consolidated or consolidating, on the Development and any other information required by the Corporation to comply with continuing disclosure requirements imposed by law.

(18) Unless otherwise approved by the Board of Directors, Cross-collateralization shall not be allowed. With regard to said approval, the Board shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made will have a negative impact to the Development or whether Cross-

collateralization with some or all of the Applicant's other assets would strengthen the security of the Corporation's mortgage.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.502, 420.507(9), (11), (14), (18), (19), (20), (21), 420.508, 420.509 FS. History—New 12-3-86, Amended 2-22-89, 12-4-90, 9-25-96, 1-7-98, Formerly 9I-21.006, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, Amended 11-7-11, 7-16-13, 2-2-15, Repromulgated 9-15-16, 5-24-17, Amended.*

#### **67-21.007 MMRB Fees.**

In addition to the fees specified in the Non-Competitive Application Package, or competitive solicitation, as applicable, the Corporation shall collect the following fees and charges in conjunction with the MMRB Program:

(1) Refundable Fees and Charges:

(a) Good faith deposit means a total deposit equal to one percent of the loan amount reflected in the loan commitment paid by the Applicant to the Corporation. The Applicant shall pay a total deposit equal to one percent of the aggregate principal amount of proposed Taxable and Tax-exempt Bonds, or \$75,000, whichever is greater, to the Corporation, which deposit may be applied toward the Cost of Issuance Fee. The maximum good faith deposit required is \$175,000. The good faith deposit is payable in one (1) installment and is due within 14 Calendar Days of the date the Board of Directors approves the Credit Underwriting Report. If the good faith deposit is exhausted, the Applicant shall be required to pay, within three (3) business days of notice, an additional deposit to ensure payment of the expenses associated with the processing of the Application, the sale of the Bonds, including document production and the securitization of the loan. The good faith deposit shall be remitted by certified check or wire transfer. In the event the MMRB Loan does not close, the unused portion of the good faith deposit shall be refunded to the Applicant. Notwithstanding the foregoing, the Applicant is responsible for all expenses incurred in preparation for loan closing. Any and all costs of the Corporation will be deducted from the good faith deposit prior to refunding any unused funds to the Applicant. In the event that additional invoices are received by the Corporation subsequent to a determination that the MMRB Loan will not close and refunding any unused funds to the Applicant, which invoices related to costs incurred prior to such determination and refunding, Applicant shall be responsible for payment of the balance due as invoiced.

(b) Cost of Issuance Fee: the Corporation shall require Applicants or participating Qualified Lending Institutions selected for participation in the program, to deliver to the Corporation, or, at the request of the Corporation, directly



to the Trustee, before the date of delivery of the Bonds, a Cost of Issuance Fee in an amount determined by the Corporation to be sufficient to pay the costs and expenses relating to issuance of the Bonds, which amount shall be deposited into an account to be held by the Trustee. The Corporation shall provide the Applicant with a good faith estimate of the Cost of Issuance Fee prior to closing. The Applicant shall pay all costs and expenses incurred by the Corporation in connection with the issuance of the Bonds, the expenditure of the MMRB Loan proceeds, and provision of Credit Enhancement, if any, even if such costs and expenses exceed the Cost of Issuance Fee. Any amounts remaining in this account at the time the balance is transferred and the account closed pursuant to the trust indenture shall be returned to the Applicant.

(2) Non-refundable Fees and Charges:

(a) TEFRA fee: Applicants shall submit a non-refundable TEFRA fee to the Corporation in the amount of \$1,000 upon submission of the Application or request for refunding. This fee shall be applied to the actual cost of publishing required newspaper advertisements and Florida Administrative Register notices of TEFRA Hearings. If the actual cost of the required publishing exceeds \$1,000, Applicant shall be invoiced for the difference. If a Local Public Fact Finding Hearing is requested, the Applicant shall be responsible for payment of any fees incurred by the Corporation. If the first TEFRA approval period has expired and a second TEFRA notice and hearing are required, Applicant is responsible for all costs associated with the additional TEFRA process.

(b) Credit Underwriting and appraisal fee: Applicants shall submit the required non-refundable Credit Underwriting fee to the Credit Underwriter designated by the Corporation within seven (7) Calendar Days of the date of the invitation to enter Credit Underwriting. The Credit Underwriting fee shall be determined pursuant to a contract between the Corporation and the Credit Underwriter. Applicants shall submit the required appraisal fee within seven (7) Calendar Days of being invoiced by the Credit Underwriter.

(c) HUD Risk Sharing fees: Applicants also using the HUD Risk Sharing Program for the Development shall be responsible for associated fees, as follows:

1. Format II environmental review fee – The fee the Applicant shall pay will be determined by contract between the Corporation and the environmental professional.

2. Subsidy layering review fee – The fee the Applicant shall pay will be determined by the contract between the Corporation and the Credit Underwriter.

(d) Compliance monitoring fees: The annual monitoring fee the Applicant shall pay will be determined by contract

between the Corporation and the monitoring agent.

(e) Permanent loan servicing fees: The annual servicing fee the Applicant shall pay will be determined by contract between the Corporation and the servicer.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507(4), (19), 420.509 FS. History—New 12-3-86, Amended 1-7-98, Formerly 91-21.007, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, Repromulgated 4-1-07, Amended 3-30-08, Repromulgated 8-6-09, Amended 11-7-11, 7-16-13, 2-2-15, 9-15-16, Repromulgated 5-24-17,\_\_\_\_\_.*

**67-21.008 Terms and Conditions of MMRB Loans.**

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

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

(b) Provide for a fully amortized payment of the Mortgage Loan in full beginning no later than the 37th month after closing and ending no later than the expiration of the useful life of the property, and in any event, no later than 45 years from the date of the Mortgage Loan;

(c) Not exceed 95 percent of the Total Development Cost;

(d) If the Mortgage Loan is to provide financing for the construction of a Development, have each advance thereof secured, insured, or guaranteed in such manner as the Corporation determines shall protect its interest and those of the Bond holders;

(e) Have the initial review, approval, and origination process accomplished by a Qualified Lending Institution;

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

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

(h) Unless and until a guarantor's obligations for a MMRB Loan are terminated as approved in writing by the Corporation or its servicer, each guarantor shall furnish to the Corporation or its servicer financial statements as provided in subparagraphs (i)1. through 5., below, as the Corporation or its servicer may reasonably request.

(i) The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended 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 to the financial statements.

The financial statements referenced above should also be accompanied by a certification of the guarantor(s) as to the accuracy of such financial statements, or

a. If an audited financial statement has not been prepared, a federal income tax return filed for the most recently completed year, or

b. For individual guarantors, if an audited financial statement is not available a financial statement certified as true and complete without qualification by such guarantor and a copy of the most recently filed individual federal income tax return.

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

(2) Upon approval, execution, and satisfaction of the terms of the Program Documents by the Applicant and the Corporation, the Bond sale and the MMRB Loan shall be scheduled for closing.

(3) The Applicant may obtain construction financing from an alternative source with the Bond proceeds being invested in accordance with an investment agreement subject to the requirements of the Internal Revenue Code for Tax-exempt Bonds.

(4) The Applicant shall also establish and maintain escrow deposits sufficient to pay any insurance premiums and applicable taxes, as determined by the MMRB Loan Agreement.

(5) The Corporation shall charge such program administration fees as are required to pay the cost of administering the program during the life of the Bonds and MMRB Loan.

(6) The interest rate on the MMRB Loan shall be determined by the Corporation at the time of sale of the Bonds based on the financing structure and the interest rate on the Bonds.

(7) Prepayments shall be permitted only in accordance with the terms and conditions of the Program Documents.

(8) The Corporation shall appoint a Trustee and servicing agent when necessary to administer the program and service the MMRB Loan.

(9) All MMRB Loans are contingent upon:

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

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

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

(d) The Applicant providing to the Corporation, Bond Counsel and Special Counsel the Note, Mortgage, financing statements, survey, insurance policies, escrow agreement, investment agreements, opinions of counsel including preference opinions, if required, and such other documents as are necessary to ensure that the Corporation has a secured Mortgage Loan.

(e) If required by Bond Counsel in order to deliver their opinion in connection with the issuance of the Bonds or at the request of the Corporation, the Bonds being validated pursuant to Chapter 75, F.S., and a certificate of no appeal issuing.

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

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

(11) The Applicant shall agree to execute or cause to be executed all of the MMRB Program Loan Documents required by the Corporation to secure the unconditional payment of the MMRB Loan and to retain the tax-exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

(12) The Applicant shall, prior to the requested date for funding, or as requested during Credit Underwriting, supply in draft form to the Corporation the following documents with respect to the Development being financed, together with any other documents required by the MMRB Loan Agreement:

(a) A survey, as described in the Application, dated within 90 days of the date submitted showing the location of all improvements, encroachments, easements and rights-of-way, and a site plan which has been approved by the appropriate governmental authorities.

(b) A fully completed, executed and sealed surveyors' certification to the Corporation.

(c) Written evidence of appropriate zoning and governmental approvals.

(d) Plans and specifications bearing the seal of a licensed engineer.

(e) Written evidence of required insurance and payment of premiums.

(f) Required opinions of counsel necessary for the issuance of the Bonds.

(g) A commitment for mortgagee title insurance in favor of the Corporation or its Trustee or designated servicer, with only standard exceptions and such other exceptions as are usually permitted in Mortgage Loans of this nature and that are acceptable to the Corporation. Such policy shall be in an amount not less than the MMRB Loan amount plus an amount sufficient to cover any debt service reserve required by the Corporation.

(h) A copy of the deed or form of deed conveying the land for the Development to the Applicant or a copy of the lease creating a long-term leasehold in favor of the Applicant acceptable to the Corporation and the Credit Underwriter.

(i) Evidence as to the status of liens, including mechanic's liens, recorded against the property and the permission of the Corporation to allow any liens to remain recorded against the land or the Development.

(j) Such other documents as shall be reasonably required by the Corporation, by the MMRB Loan Commitment, or by the Corporation's respective counsel to protect the interest of the Corporation in the financing.

(13) The Borrower shall not sell, transfer, or otherwise assign any of its interest in the Development without the prior written consent of the Corporation.

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

(15) Adequate insurance shall be maintained on the Development, as required by the MMRB Loan Agreement.

(16) Any MMRB Loan financed with proceeds of Tax-exempt Bonds, except for 501(c)(3) Bonds, shall provide that the portion of any debt service reserve fund associated therewith to be financed with the Tax-exempt Bonds shall not exceed six (6) months of debt service on the Bonds.

(17) Annually, within 151 Calendar Days following the Applicant's fiscal year end, the Applicant shall provide the Corporation with an audited financial statement and an executed Financial Reporting Form SR-1, (Rev. 05-14), which is incorporated by reference and available on the Corporation's website under the Property Owners & Managers link labeled Forms or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-04907>. The audited financial statement and a copy of the signed Form SR-1, with Parts 1, 2 and 5 completed, shall be submitted in both PDF format

and in electronic form as a Microsoft Excel spreadsheet to the Corporation at the following web address: financial.reporting@floridahousing.org. The initial submission will be due following the fiscal year within which the first unit is occupied. In the case where the Development contained occupied units at the time of acquisition, the initial submission will be due following the fiscal year within which the 12 month anniversary of the MMRB Loan closing is observed. The audited financial statement is to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- (a) Comparative Balance Sheet with prior year and current year balances;
- (b) Statement of revenue and expenses;
- (c) Statement of changes in fund balances or equity;
- (d) Statement of cash flows; and,
- (e) Notes to the financial statements.

The financial statements referenced above should also be accompanied by a certification of the Applicant as to the accuracy of such financial statements. A late fee of \$250 will be assessed by the Corporation for failure to submit the above documents by the stated deadline.

(18) All of the dwelling units within a Development shall be rented or available for rent on a continuous basis to members of the general public. The owner of the Development shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be rented to Eligible Persons. All Developments must comply with the Fair Housing Act as implemented by 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 as implemented by 24 CFR Part 8 (“Section 504 and its related regulations”), and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35. To the extent that a Development is not otherwise subject to Section 504 and its related regulations, the Development shall nevertheless comply with Section 504 and its related regulations as requirements of the MMRB Program to the same extent as if the Development were subject to Section 504 and its related regulations in all respects. To that end, for purposes of the MMRB Program, an MMRB Loan shall be deemed “Federal financial assistance” within the meaning of that term as used in Section 504 and its related regulations for all Developments.

12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.008, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, Amended 3-30-08, Repromulgated 8-6-09, Amended 11-7-11, 7-16-13, 2-2-15, 9-15-16, 5-24-17,\_\_\_\_\_.

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

The Corporation shall establish the interest rate on Mortgage Loans at the time of sale of the Bonds. The interest rate shall in no event exceed the arbitrage limit which is legally allowed without jeopardizing the tax exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented Chapter 75, 420.507, 420.508, 420.509 FS. History—New 12-3-86, Amended 1-7-98, Formerly 9I-21.009, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, 2-2-15, 9-15-16, 5-24-17,\_\_\_\_\_.*

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

The Corporation shall fund Mortgage Loans with the proceeds from the sale of Bonds. The issuance and sale of the Bonds shall be governed by resolutions adopted by the Corporation and by Section 420.509, F.S., and this rule chapter. If Bonds cannot be sold or cannot be sold in an amount or at an interest rate or under conditions which satisfy the Credit Underwriting Report, as the same may be amended, the Corporation shall terminate its MMRB Loan Commitment and such other agreements as were executed in conjunction with the proposed MMRB Loan.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507(6), 420.508, 420.509 FS. History—New 12-3-86, Amended 1-7-98, Formerly 9I-21.010, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, Amended 2-2-15, Repromulgated 9-15-16, 5-24-17,\_\_\_\_\_.*

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

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

~~both prior to the review of the method of Bond sale conducted by the Corporation's IRMA, and again prior to the pricing of the Bonds, showing any changes affecting the original estimated substantial benefit.~~ The Corporation shall engage the Investment Banker with respect to such Bonds. The Corporation, in its discretion, will allow only one of either an underwriting discount or a placement agent fee, but not both. Unless such Bonds are rated in one of the four highest rating categories by a nationally recognized rating service and are the subject of a Credit Enhancement instrument, such Bonds ~~shall not be held in a full book entry system (but may be Depository Trust Company (DTC)-Eligible)~~ and shall comply with at least one of the following criteria:

(1) The Bonds shall be issued in minimum denominations of \$100,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds such Bond (including the underwriter and any purchaser purchasing the Bonds in an immediate resale from an underwriter), and all including subsequent purchasers of the Bonds unless the requirements of subsection (2) or (3), below, are met, shall certify to the Corporation prior to any purchase or transfer of any Bond that such purchaser is a Qualified Institutional Buyer, or

(2) The Bonds shall be issued in minimum denominations of \$250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds (including the underwriter and any purchaser purchasing the such Bonds in an immediate resale from an underwriter), but an investment letter shall not be required of subsequent purchasers of the Bonds. Any investment letter shall state, to the effect that, among other things, that such purchaser is a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender, is purchasing such Bonds for its own account and not for immediate resale to a purchaser other than a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender, and has made an independent investment decision as a sophisticated or institutional investor, ~~or~~

~~(3) The Bonds shall be issued in minimum denominations of \$250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds and from each subsequent transferee of the Bonds prior to any transfer thereof, to the effect that such purchaser is a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender.~~

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507(4), (5), (6), (9), (11), (14), (16), (18), (19), (20), (21),*



420.509 FS. History—New 11-23-94, Amended 1-7-98, Formerly 9I-21.013, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, Amended 2-2-15, 9-15-16, 5-24-17, \_\_\_\_\_.

**67-21.014 MMRB Credit Underwriting Procedures.**

Credit Underwriting is a de novo review of all information supplied, received or discovered during or after any application scoring process, prior to the closing on funding. The success of an Applicant in being selected for funding is not an indication that the Applicant will receive a positive recommendation from the Credit Underwriter or that the Development team's experience, past performance or financial capacity is satisfactory.

(1) An invitation into Credit Underwriting shall require that the Applicant submit the Credit Underwriting and appraisal fee and information required to complete the Credit Underwriting, to the Credit Underwriter in accordance with the schedule established by the Corporation upon the recommendation of the Credit Underwriter. Failure to submit the Credit Underwriting and appraisal fee or meet the deadlines as set forth in the schedule shall result in the immediate termination of Credit Underwriting activities.

(2) The Credit Underwriter shall in Credit Underwriting analyze and review all information in the Application, or any proposed changes made subsequent thereto, in order to make a recommendation to the Board of Directors on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement. Credit Underwriting services shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, and the evidence of need for affordable housing in order to determine that the Development meets the MMRB Program requirements. The Credit Underwriter shall determine a recommended Bond amount that should be made to a Development, whether an initial loan or a refunding.

(a) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of normal underwriting procedures, the cost of such expertise shall be borne by the Applicant.

(b) The Credit Underwriter shall review the proposed financing structure to determine whether the MMRB Loan is feasible. The Credit Underwriter shall also request and review such other information as it deems appropriate to determine whether or not to provide a positive recommendation in connection with a proposed Development. In making that determination, the Credit Underwriter will consider the prior and recent performance history of the

Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other affordable housing development. The performance history shall consider instances involving a foreclosure, deed in lieu of foreclosure, financial arrearage, or other event of material default in connection with any affordable housing development or the documents governing financing or operation of any such development.

(c) Unless the Credit Underwriter determines that mitigating factors exist, or that underwriting conditions can be imposed, sufficient to mitigate or offset the risk, the existence of the following shall result in a negative recommendation of the proposed Development by the Credit Underwriter:

1. Considering all affordable housing developments in which any party named above has been involved, if:

a. During the period prior to August 1, 2010, 5 percent or more of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default remained uncured for a period of 60 days or more, or

b. During the period beginning on or after August 1, 2010, any of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default is uncured at the present or, if cured, remained uncured for a period of 60 days or more.

2. Mitigating factors to be considered by the Credit Underwriter, to the extent such information is reasonably available and verifiable, shall include the extent to which the party funded the operations of the development from that party's own funds in an attempt to keep the development afloat, the election by a party to forego financial participation in a development in an attempt to keep the development afloat, the party's satisfactory performance history over the last ten (10) years in connection with that party's affordable housing developments, and any other extenuating circumstances deemed relevant by the Credit Underwriter in connection with the party's involvement in a development.

3. A negative recommendation may also result from the review of:

a. An Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other affordable housing development,

b. Financial capacity of an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor, and for MMRB Applicants that have Housing Credits, the Housing Credit Syndicator, or

c. Any other relevant matters relating to an Applicant, Developer, any Financial Beneficiary of the Applicant or

Developer, and the General Contractor if, in the Credit Underwriter's opinion, one or more members of the Development team do not possess the ability to proceed.

(d) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of \$300 per unit per annum must be deposited annually in the replacement reserve account for all Developments. In the case of rehabilitation, with or without acquisition, the greater of \$300 per unit per annum or the amount identified in the capital needs assessment will be used.

1. The initial replacement reserve will have limitations on the ability to be drawn upon during the following time periods:

a. New construction or Redevelopment Developments shall not be allowed to draw during the first five (5) years or until the establishment of a minimum balance equal to the accumulation of five (5) years of replacement reserves per unit, or

b. Preservation or Rehabilitation Developments (with or without acquisition) shall not be allowed to draw until the start of the scheduled replacement activities as outlined in the pre-construction capital needs assessment report ('CNA') subject to the activities completed in the scope of rehabilitation, but not sooner than the 3rd year.

2. The amount established as a replacement reserve shall be adjusted based on a CNA, prepared by an independent third party, ordered by a first mortgage lender, third party Credit Enhancer or a Housing Credit Syndicator, received by the Corporation or its servicers, and acceptable to the Corporation and its servicers at the time the CNA, is required, beginning no later than the 10th year after the first residential building in the development receives a certificate of occupancy, a temporary certificate of occupancy, or is placed in service, whichever is earlier ('Initial Replacement Reserve Date'). A subsequent CNA, meeting the parameters of this section, is required no later than the 15th year after the Initial Replacement Reserve Date and subsequently every five (5) years thereafter. If the Applicant does not provide a copy of a CNA to the Corporation or its servicers, prepared by an independent third party and acceptable to the Corporation and its servicers within the stated time frames, then one shall be ordered by the Corporation or its servicers at the Applicant's expense. The only events allowed to drop the balance below the minimum are items related to life safety, structural and systems as approved by the Corporation and its servicers. In the event the first mortgage lender or a Housing Credit Syndicator requires replacement reserves with replacement reserve deposit requirements that include the same or higher deposits, the Corporation's rights to hold replacement reserves and to disburse such

funds shall be subject to the first mortgage lender or the Housing Credit Syndicator, as applicable. The replacement reserve funds are not to be used by the Applicant for normal maintenance and repairs but shall be used for structural building repairs, major building systems replacements and other items included on the Eligible Reserve for Replacement Items list, effective October 15, 2010, which is incorporated by reference and available on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-02850>, and/or such items that can be capitalized and depreciated over multiple years. An Applicant may choose to fund a portion of the replacement reserves at closing from moneys other than the proceeds of the Bonds. Unless approved by the Corporation and the Credit Underwriter, this partial funding cannot exceed 50 percent of the required replacement reserves for two (2) years and must be placed in escrow with the Bond Trustee at closing. Applicants with Credit Enhancement may employ a different replacement reserve structure with the Corporation's approval.

(e) At a minimum, ~~each~~ each the general ~~partner~~ partner(s) (~~whether~~ whether individual ~~or~~ or ~~and~~ and entity) or ~~each~~ each ~~manager/managing member~~ manager(s)/managing member(s) (~~whether~~ whether individual ~~or~~ or ~~and~~ and entity), as applicable, of the Applicant shall provide a guarantee for completion of construction. In addition, one or more entities or individuals (other than a general partner or manager/managing member) having an ownership interest, either directly or indirectly, in the Applicant or in the general partner or managing member of the Applicant shall be required to provide guarantees or personal guarantees, as applicable, for completion of construction as recommended by the Credit Underwriter or as otherwise required by the Corporation. The Corporation shall consider the following when determining the need for additional construction completion guarantees based on the recommendations of the Credit Underwriter:

1. Liquidity of any guarantee provider.
2. Applicant's, Developer's and General Contractor's history in successfully completing Developments of similar nature.
3. The past performance of the Applicant, Developer, General Contractor, or any other guarantee provider, in developing or constructing Developments financed by the Corporation or its predecessor.
4. Percentage of the Corporation's funds utilized compared to Total Development Costs. If, after evaluation of subparagraphs 1. through 4. above, by the Corporation and the Credit Underwriter, it is determined that additional surety is needed, the Applicant will be required to provide a letter of credit or payment and performance bond.

(f) The Credit Underwriter shall review and make a recommendation to the Corporation whether the number of

existing loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation Development.

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

(h) For a Development that has rehabilitation with or without acquisition, a capital needs assessment, prepared in accordance with generally accepted industry investment grade standards, shall be ordered by the Credit Underwriter. Its findings shall be used to determine the amount of rehabilitation that will be carried out and to set replacement reserves.

(i) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process to complete the Credit Underwriting Report, the Credit Underwriter shall request the information from the Applicant. Such requested information shall be submitted within the timeframe established by the Credit Underwriter. Failure for any reason to submit required information on or before the specified deadline shall result in immediate termination of Credit Underwriting activities.

(j) At a minimum, the Credit Underwriter shall require the following information during Credit Underwriting:

1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or Credit Underwriting is complete. The audited statements may be waived if the credit enhancer's senior long term debt rating is at least "A3" by Moody's, or "A-" by Standard and Poor's or Fitch.

2. For 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 financial statements that are either audited, 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 and the two (2) most recent years tax returns. If any of the applicable 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. The financial statements and information provided for

review should be in satisfactory form and shall be reviewed in accordance with Part IIIA, Sections 401 through 408 and 410, of the Fannie Mae Multifamily Selling and Servicing Guide, in effect as of June 10, 2015, which is incorporated by reference and available on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-07357>. A certification meeting the criteria of the Multifamily Underwriting Certificate outlined in Section 407 may be used in lieu of the Multifamily Underwriting Certificate.

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 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.

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.

(k) The Credit Underwriter shall require an operating deficit guarantee. Upon written request of the guarantor(s) to the Corporation, the Credit Underwriter, or the servicers, the operating deficit guarantee will be released upon achievement of a 1.15x debt service coverage ratio for the MMRB Loan, as determined by the Corporation or its agent, and 90 percent occupancy, and 90 percent of the gross potential rental income, net of utility allowances, if applicable, all for a period equal to 12 consecutive months, all as certified by an independent Certified Public Accountant. The calculation of the debt service coverage ratio shall be made by the Corporation or its agent. The Credit Underwriter or servicer will determine whether all of the requirements described above have been met, including receipt, acceptance and verification of the documentation provided by the Certified Public Accountant, and will then submit a letter to the Corporation containing a positive or negative recommendation concerning the release of the operating deficit guarantee. If the Corporation's decision is to deny the release of the operating deficit guarantee, the Board shall consider the facts and circumstances of the Applicant's request and the Corporation's denial, and make a determination of whether to grant the requested release. Notwithstanding the above, the operating deficit guarantee shall not be

released prior to the earlier of the date which is three (3) years following the issuance of a final certificate of occupancy (or, in the event a final certificate of occupancy is not routinely provided by the applicable jurisdiction, such other information evidencing completion of the Development which is deemed acceptable to the Corporation), or the date on which the MMRB Loan is repaid.

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

(m) Required appraisals, market studies, pre-construction analyses, physical needs assessments, capital needs assessments and environmental studies (other than Phase I Environmental Site Assessments) shall be completed by professionals approved by the Credit Underwriter. Approval of appraisers and contractors to complete market and environmental studies shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(n) ~~An A full or self-contained~~ appraisal report conforming to as defined by the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, and a separate market study shall be ordered by the Credit Underwriter from an appraiser qualified for the geographic area and development type not later than when an Application enters Credit Underwriting. The Credit Underwriter shall review the appraisals to properly evaluate the MMRB Loan request in relation to the property value.

(o) Appraisals and separate market studies which have been ordered and submitted by third party Credit Enhancers or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal or market study referenced above.

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

1. An average physical occupancy rate of 92 percent or greater; and,
2. For Developments with new construction units, an average market rental rate, based on unit mix and annualized rent concessions, of 110 percent or greater of the applicable maximum Housing Credit rental rate.

(q) Developer Fee shall be limited to 18 percent of Development Cost excluding land and operating deficit reserves. Consulting fees, if any, and any financial or other guarantees required for the financing must be paid out of

the Developer Fee. Consulting fees include payments for Application consultants, construction management or supervision, ~~or~~ Local Government consultants and property acquisition brokerage fees when in excess of the appropriate limit. The maximum brokerage fees shall be limited to the lesser of \$300,000 or a percent of the acquisition price, which shall be set at 4 percent when the acquisition price is \$5 million or less, 3 percent when the acquisition price is \$10 million or less, and 2 percent when the acquisition price is in excess of \$10 million. Fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against the Corporation with respect to a Development shall also not be included in Total Development Costs. Fees for services provided by architects, accountants, appraisers, engineers or financial advisors engaged by the Applicant ~~Investment Bankers~~ as outlined in subsection 67-21.0045(5), F.A.C., may be included as part of the Total Development Costs, except that those fees for a financial advisor engaged by the Applicant ~~an Investment Banker~~ that are in excess of \$18,000 must be paid out of the Developer Fee. In the event of extraordinary circumstances, Applicant may petition the Board for relief from the cap on Investment Banker fees. The Corporation shall not authorize fees to be paid for duplicative services or duplicative overhead.

(r) General Contractor's fees are inclusive of general requirements, profit and overhead and shall be limited to 14 percent of actual construction costs. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements. Additionally, fees shall be allowed to be paid only to the person or entity that actually meets the definitional requirements to be considered a General Contractor. The Corporation shall not allow fees for duplicative services or duplicative overhead. The General Contractor must meet the following conditions:

1. Employ a Development superintendent and charge the costs of such employment to the general requirements line item of the General Contractor's budget inclusive of the general requirement items related to construction costs identified in The Final Cost Certification Application Package,

2. Charge the costs of the Development construction trailer, if needed, and other overhead to the general requirements line item of the General Contractor's budget,

3. Secure building permits, issued in the name of the General Contractor,

4. If deemed necessary by the Corporation and the Credit Underwriter in their evaluation of construction completion guarantees in (2)(e) above, ~~s~~Secure a payment and performance bond whose terms do not adversely affect



the Corporation's interest ~~(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., or a Corporation-approved alternate security for the General Contractor's performance such as a letter of credit issued by a financial institution with a senior long term (or equivalent) credit rating of at least "Baa3" by Moody's, or at least "BBB-" by Standard & Poor's or Fitch, or a financial rating of at least 175 by IDC Financial Publishing.

5. Ensure that none of the General Contractor duties to manage and control the construction of the Development are subcontracted,

6. Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor,

7. Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor, with the exception of a subcontractor (or any group of entities that have common ownership or are Affiliates of any other subcontractor) contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Corporation for a specific Development. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant's request, inclusive of construction costs and the General Contractor's fee. For purposes of this paragraph, "Affiliate" has the meaning given in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "subcontractor"; and,

8. Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

(3) The Applicant shall review and provide written comments on the draft Credit Underwriting Report to the Corporation and the Credit Underwriter within the time frame established by the Corporation. The Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. The Credit Underwriter shall then review and incorporate the Corporation's and, if deemed appropriate, the 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 the established time frame. Then, the Credit Underwriter shall provide a final report, which shall address comments made by the Applicant to the

Corporation.

(4) After approval by the Board of Directors following presentation of the Credit Underwriting Report and payment of the good faith deposit, Corporation staff and Special Counsel shall begin negotiations of the MMRB Loan Commitment with the Applicant.

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

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507, 420.508, 420.508(3)(b)3., 420.509 FS. History—New 1-7-98, Formerly 9I-21.014, Amended 1-26-99, 11-14-99, 1-26-00, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, 2-2-15, 9-15-16, 5-24-17, \_\_\_\_\_.*

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

(1) Applicants may submit one Application for the MMRB Program and Non-Competitive Housing Credits, subject to the restrictions set forth in the Non-Competitive Application Package.

(2) Applicants that receive funding from other programs and the Multifamily Mortgage Revenue Bond Program shall comply with the requirements of the applicable program rule, a competitive solicitation, and this rule.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507, 420.508, 420.509 FS. History—New 1-7-98, Formerly 9I-21.015, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, Amended 7-16-13, 2-2-15, Repromulgated 9-15-16, 5-24-17, \_\_\_\_\_.*

**67-21.017 Transfer of Ownership of a MMRB Development.**

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of this section, provided that transfers of the limited partnership interest or limited liability company interest in the owner to a Housing Credit Syndicator, or the transfer of ownership to a creditor by means of foreclosure or deed in lieu of foreclosure, need not comply with this provision. The determination of whether a transfer of ownership of a Development shall be deemed to take place for purposes of this rule shall be made in accordance with the provisions of the MMRB Land Use Restriction Agreement and other Program Documents for such Development. Owners shall advise the Corporation in writing of any change of ownership of the owner aggregating 50 percent or more of

ownership interests in the owner within any six-month period.

(2) A request for transfer of ownership shall be submitted to the Corporation in writing and include evidence that the current owner has agreed to the proposed sale. A detailed opinion letter from the legal counsel for the current owner or prospective purchaser describing the scope of the proposed transaction must also be provided. The Corporation shall review the letter and, if acceptable, assign a Credit Underwriter. The Credit Underwriter will notify the current owner and prospective purchaser of any additional information necessary to complete its Credit Underwriting Report.

(3) Upon demonstration of compliance with the provisions of this section, and favorable consideration by the Board of Directors of the Credit Underwriting Report, the Corporation shall assign a Bond Counsel, Special Counsel, and other professionals as needed to effect the transfer.

(4) Prior to the transfer of ownership:

(a) The Credit Underwriter shall conduct a Credit Underwriting of the prospective purchaser upon any transfer of ownership. Additionally, the prospective purchaser shall be notified that any refunding of Bonds associated with such Development shall require a full Credit Underwriting of the Development. The prospective purchaser and the conditions of the assumption of the Program Documents must be approved by the Credit Underwriter as meeting the terms of its Credit Underwriting Report, Bond Counsel and Special Counsel as complying with all applicable legal requirements, and the Corporation as meeting the stated purposes of the Corporation;

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

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

(d) If the set-aside requirements in the MMRB Land Use Restriction Agreement are expired or have less than 12 months remaining, such agreement shall be extended for a minimum of two years from the date of closing. All transfer of ownership transactions shall be subject to all conditions of the Credit Underwriting Report including the requirements for a guarantee of recourse obligations and an environmental indemnity from the assuming owner.

(5) The prospective purchaser or current owner shall be responsible for payment of all fees for professional services rendered in association with the transfer of ownership.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507, 420.508, 420.508(3)(a), 420.509 FS. History—New 1-7-98, Formerly 9I-21.017, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05,*

**67-21.018 Refundings and Troubled Development Review.**

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

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

(3) Approval by the Corporation for a refunding of an issue of Bonds for reasons related to pending default shall be subject to the following:

(a) Determination of the likelihood of the impending default;

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

(c) Submission of sworn certificate from the owner or Credit Enhancer that conditions causing default are likely to continue;

(d) Submission of certified information from a certified public accountant concerning cash contributions to the Development, financial condition of the Development, including analysis of tax benefits derived from Development losses, and the financial condition of the owner or Credit Enhancer;

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

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

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

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

(i) New Credit Underwriting by the Corporation, with new Bond amount determined by the Corporation based upon real estate underwriting criteria and equal to the lesser of the amount determined by the Corporation or the Credit Enhancer, to provide assurance that a similar default condition will not present itself in the future;

(j) The full risk of refunding is taken by the Credit Enhancer through full indemnification of the Corporation; with consideration given to personal indemnification from the owner if sufficient financial strength can be demonstrated;

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

(l) Retention of annual fees by the Corporation;

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

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

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

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

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

(b) The set-asides required by the original MMRB Land Use Restriction Agreement shall be increased by an amount and extended for a period determined by the Corporation. With regard to said determination, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

(c) A Credit Underwriting Report shall be required, which may incorporate any Credit Underwriting undertaken within the past twelve months in connection with a transfer of ownership of the same Development;

(d) A guarantee of recourse obligations and an environmental indemnity shall be required;

(e) Additional operating deficit or other guarantees and establishment of replacement reserves or increase in existing reserves may be required as specified in the Credit Underwriting Report;

(f) The MMRB Loan shall, on the earlier of 24 months after closing or stabilized occupancy in the case of major rehabilitation, begin full amortization over the remaining life of the Bonds; and in no event shall it exceed the economic remaining life of the property, provided that, in the case of a refunding relating to a pending financial default, such amortization may be delayed to the extent recommended in the Credit Underwriting Report;

(g) Any material changes to the underlying documents shall be deemed to constitute a refunding for purposes hereof;

(h) Any extension or extensions of maturity cumulatively exceeding 60 months shall be deemed to constitute a refunding for purposes hereof; and,

(i) The owner of the Development must provide a written request for the refunding and a detailed opinion from Applicant's counsel describing the scope of the transaction. It shall not be necessary to complete an Application in connection with a refunding request.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507, 420.508, 420.509 FS. History—New 1-7-98, Formerly 9I-*

21.018, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, Amended 7-16-13, Repromulgated 2-2-15, 9-15-16, 5-24-17, \_\_\_\_\_.

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

(1) The Corporation shall entertain requests, on a non-competitive basis, for it to serve as the issuer of Tax-exempt 501(c)(3) Bonds for the acquisition or construction of multifamily housing to be owned by a not-for-profit entity organized under section 501(c)(3) of the Internal Revenue Code.

(2) In connection with all Bonds issued pursuant to this section, Applicants shall be required to comply with the applicable provisions of Rules 67-21.0045 through 67-21.018, F.A.C.; Florida Statutes; and the Internal Revenue Code, including all safe harbor provisions.

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

(a) An initial Bond Counsel fee of \$1,000 along with IRS Form 1023, and all attachments and correspondence to and from the IRS relative to section 501(c)(3) status of the Applicant; and,

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

(c) If a Development to be acquired is intended to be exempt from ad valorem taxes, evidence that it has notified all local ad valorem taxing authorities of the acquisition of the proposed Development by a section 501(c)(3) entity.

(d) The completed Non-Competitive Application in effect at the time the Applicant submits the Application. Applicants must meet all threshold requirements of the Application.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.502, 420.507(14), (24), 420.508, 420.509 FS. History—New 11-14-99, Amended 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, 8-6-09, Amended 11-7-11, 7-16-13, 2-2-15, Repromulgated 9-15-16, 5-24-17, \_\_\_\_\_.*

### **PART III HOUSING CREDIT PROGRAM**

#### **67-21.025 HC Fees**

The Corporation and the Credit Underwriter shall collect via check or money order the following non-refundable fees and charges in conjunction with the HC Program, as outlined in the Non-Competitive Application instructions, a competitive solicitation, the invitation to enter Credit Underwriting, the Preliminary Determination, or this rule chapter, as applicable:

- (1) Application fee.
- (2) Credit Underwriting fees.
- (3) Administrative fees.
- (4) Compliance monitoring fees.
- (5) Construction inspection fees.
- (6) Qualified Contract Package fees.
- (7) Processing fees.

Failure to pay any fee associated with a Housing Credit Allocation shall cause the Housing Credit Allocation to be rescinded. Where a Development has been awarded funding under the MMRB Program and a Housing Credit Allocation, failure to pay any fee associated with either the MMRB or Housing Credits, or both, shall result in the termination or default, as applicable, of the MMRB and rescission of the Housing Credit Allocation.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17,\_\_\_\_\_.*

#### **67-21.026 HC Credit Underwriting Procedures.**

Credit Underwriting is a de novo review of all information supplied, received or discovered during or after any application scoring process, prior to the closing on funding, including the issuance of IRS Forms 8609 for Housing Credits. The success of an Applicant in being selected for funding is not an indication that the Applicant will receive a positive recommendation from the Credit Underwriter or that the Development team's experience, past performance or financial capacity is satisfactory. The Credit Underwriting review shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, the evidence of need for affordable housing in order to determine that the Development meets the program requirements and determine a recommended Housing Credit Allocation amount, if any; and for any Development that has rehabilitation with or without acquisition, a capital needs assessment prepared in accordance with generally accepted industry investment grade standards shall be ordered by the Credit Underwriter, and its findings shall be used to determine rehabilitation that will be carried out and to set replacement reserves. Corporation funding will be based on appraisals of comparable developments, cost benefit analysis, and other documents evidencing justification of costs. As part of the Credit Underwriting review, the Credit Underwriter will consider the applicable provisions of this rule chapter.

(1) Within 10 business days after the Non-Competitive Application is deemed complete, the Corporation shall offer Applicants that pass threshold an invitation to enter Credit Underwriting. If the Non-Competitive Housing Credits are awarded as a result of a competitive solicitation, the invitation to enter Credit Underwriting for the Non-Competitive Housing Credits will be in conjunction with the invitation for the other Corporation funding. The Corporation shall select the Credit Underwriter for each Development.

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

(3) If the invitation to enter Credit Underwriting is accepted, all Applicants shall submit the Credit Underwriting fee to the Credit Underwriter within seven (7) Calendar Days of the date of the invitation to enter Credit Underwriting. Failure to submit the Credit Underwriting fee within this time frame shall result in withdrawal of the invitation.

(4) The Credit Underwriter shall review all information in the Application, including information relative to the Applicant, Developer, Housing Credit Syndicator, General Contractor, and, if an assisted living facility, the service provider(s), as well as other members of the Development team based on information provided to the Credit Underwriter. The Credit Underwriter shall also request and review such other information as it deems appropriate to determine whether or not to provide a positive recommendation in connection with a proposed Development.

(5) In determining whether or not to provide a positive recommendation in connection with a proposed Development, the Credit Underwriter will consider the prior and recent performance history of the Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer in connection with any other affordable housing development. The performance history shall consider instances involving a foreclosure, deed in lieu of foreclosure, financial arrearage, or other event of material default in connection with any affordable housing development or the documents governing financing or operation of any such development.

(a) Unless the Credit Underwriter determines that mitigating factors exist, or that underwriting conditions can be imposed, sufficient to mitigate or offset the risk, the existence of the following shall result in a negative recommendation of the proposed Development by the Credit Underwriter:

1. Considering all affordable housing developments in which any party named above has been involved, if:

a. During the period prior to August 1, 2010, 5 percent or more of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default remained uncured for a period of 60 days or more, or



b. During the period beginning on or after August 1, 2010, any of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default is uncured at the present or, if cured, remained uncured for a period of 60 days or more.

2. Mitigating factors to be considered by the Credit Underwriter, to the extent such information is reasonably available and verifiable, shall include the extent to which the party funded the operations of the development from that party's own funds in an attempt to keep the development afloat, the election by a party to forego financial participation in a development in an attempt to keep the development afloat, the party's satisfactory performance history over the last 10 years in connection with that party's affordable housing developments, and any other extenuating circumstances deemed relevant by the Credit Underwriter in connection with the party's involvement in a development.

(b) A negative recommendation may also result from the review of:

1. An Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer in connection with any other affordable housing development,

2. Financial capacity of an Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer, or

3. Any other relevant matters relating to an Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer if, in the Credit Underwriter's opinion, one or more members of the Development team do not possess the ability to proceed.

(6) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during Credit Underwriting.

(7) The Applicant will be responsible for all fees in connection with the documentation submitted to the Credit Underwriter.

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

(9) ~~An A full or self contained appraisal report conforming to as defined by~~ the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, 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 Development's financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit 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 who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a Housing Credit Allocation. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have:

(a) An average physical occupancy rate of 92 percent or greater; and,

(b) For Developments with new construction units, an average market rental rate, based on unit mix and annualized rent concessions, of 110 percent or greater of the applicable maximum Housing Credit rental rate.

(10) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a ~~capital physical~~ needs assessment for rehabilitation units and review the Development's costs.

(11) 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 \$300 per unit per annum must be used for all Developments. In the case of rehabilitation, with or without acquisition, the greater of \$300 per unit per annum or the amount identified in the capital needs assessment will be used.

(a) The initial replacement reserve will have limitations on the ability to be drawn upon during the following time periods:

1. New construction or Redevelopment Developments shall not be allowed to draw during the first five (5) years or until the establishment of a minimum balance equal to the accumulation of five (5) years of replacement reserves

per unit, or

2. Preservation or Rehabilitation Developments (with or without acquisition) shall not be allowed to draw until the start of the scheduled replacement activities as outlined in the pre-construction capital needs assessment report ('CNA') subject to the activities completed in the scope of rehabilitation, but not sooner than the 3rd year.

(b) The amount established as a replacement reserve shall be adjusted based on a CNA prepared by an independent third party, ordered by a first mortgage lender, third party credit enhancer or a Housing Credit Syndicator, received by the Corporation or its servicers, and acceptable to the Corporation and its servicers at the time the CNA is required, beginning no later than the 10th year after the first residential building in the development receives a certificate of occupancy, a temporary certificate of occupancy, or is placed in service, whichever is earlier ('Initial Replacement Reserve Date'). A subsequent CNA, meeting the parameters of this section, is required no later than the 15th year after the Initial Replacement Reserve Date and subsequently every five (5) years thereafter. If the Applicant does not provide a copy of a CNA to the Corporation or its servicers, prepared by an independent third party and acceptable to the Corporation and its servicers within the stated time frames, then one shall be ordered by the Corporation or its servicers at the Applicant's expense. The only events allowed to drop the balance below the minimum are items related to life safety, structural and systems as approved by the Corporation and its servicers. In the event the first mortgage lender or a Housing Credit Syndicator requires replacement reserves with replacement reserve deposit requirements that include the same or higher deposits, the Corporation's rights to hold replacement reserves and to disburse such funds shall be subject to the first mortgage lender or the Housing Credit Syndicator, as applicable. The replacement reserve funds are not to be used by the Applicant for normal maintenance and repairs, but shall be used for structural building repairs, major building systems replacements and other items included on the Eligible Reserve for Replacement Items list, effective October 15, 2010, which is incorporated by reference and available on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-02851>, and/or such items that can be capitalized and depreciated over multiple years. An Applicant may choose to fund a portion of the replacement reserves at closing. Unless approved by the Corporation and the Credit Underwriter, the amount cannot exceed 50 percent of the required replacement reserves for two (2) years and must be placed in escrow at closing.

(12) The Developer Fee and General Contractor fee shall be limited to:

(a) The Developer Fee shall be limited to 18 percent of Development Cost, excluding land and operating deficit

reserves, for proposed Developments qualified for Non-Competitive Housing Credits pertaining to Tax-Exempt Bond-Financed Developments. Consulting fees, if any, and any financial or other guarantees required for the financing must be paid out of the Developer Fee. Consulting fees include payments for Application consultants, construction management or supervision, Local Government consultants and property acquisition brokerage fees when in excess of the appropriate limit. The maximum brokerage fees shall be limited to the lesser of \$300,000 or a percent of the acquisition price, which shall be set at 4 percent when the acquisition price is \$5 million or less, 3 percent when the acquisition price is \$10 million or less, and 2 percent when the acquisition price is in excess of \$10 million; and,

(b) The General Contractor's fee shall be limited to a maximum of 14 percent of the actual construction costs. For the purpose of any necessity to prepare a HUD subsidy layering review, if there exists an Identity of Interest as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements.

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

(a) Employ a Development 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 Development construction trailer, if needed, and other overhead to the general requirements line item of the General Contractor's budget inclusive of the general requirement items related to construction costs identified in The Final Cost Certification Application Package as set forth in subsection 67-21.027(7), F.A.C.;

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

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

(e) Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor;

(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor, with the exception of a subcontractor (or any group of entities that have common ownership or are Affiliates of any other subcontractor) contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Corporation for a specific

Development. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant's request, inclusive of construction costs and the General Contractor's fees. For purposes of this paragraph, "Affiliate" has the meaning given in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "subcontractor"; and,

(g) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of with the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

(14) Contingency reserves which total no more than 5 percent of total actual construction costs (hard costs) and total general development costs (soft costs) for Redevelopment and Developments where 50 percent or more of the units are new construction may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves which total no more than 15 percent of total actual construction costs (hard costs) and no more than 5 percent of total general development costs (soft costs) for Rehabilitation and Preservation may be included within the Total Development Cost for Application and underwriting purposes; however, in the event financing is obtained through a federal government rehabilitation program, a contingency reserve up to 20 percent may be utilized if required by the program.

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

(16) 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.

(17) The Credit Underwriter shall complete its analysis and submit a written draft report and recommendation to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the section of the written draft report consisting of supporting information and schedules. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours of receipt. After the 48 hour period, the Corporation shall provide to the Credit Underwriter comments on the draft report and, as applicable, on the Applicant's comments. Then, the Credit Underwriter shall review and incorporate, if deemed appropriate, the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of the revised report. Then, the

Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(18) For Housing Credit Applications, the Credit Underwriter shall use the following procedures during the credit underwriting evaluation:

(a) The Credit Underwriter, in determining the amount of Housing Credits a Development is eligible for when using the qualified basis calculation, shall use a Housing Credit percentage of 15 basis points over the percentage as of the date of invitation to enter Credit Underwriting up to 4 percent will be used for Developments receiving Tax-exempt Bonds, unless the Applicant has previously locked in the percentage at a different rate, in which case the Credit Underwriter shall use the locked-in Housing Credit percentage.

(b) Costs such as syndication fees ~~and brokerage fees~~ cannot be included in eligible basis. All consulting fees and any financial or other guarantees required for the financing 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 subsection (12), above.

(c) All contracts for hard or soft Development Costs must be itemized for each cost component.

(d) The allocation amount for acquisition Housing Credits shall be limited to the lesser of the sale price or the appraised value of the building(s).

(e) If the Credit Underwriter is to recommend a Non-Competitive Housing Credit Allocation, the recommendation will be the lesser of the qualified basis calculation result or the gap calculation result.

(f) As part of the process the Corporation uses to determine financial feasibility as set forth in Section 42(m)(2) of the IRC, the Corporation shall utilize the greater of:

1. The actual percentage of the Applicant's Housing Credit Allocation being sold to the Housing Credit Syndicator/direct investor(s), or

2. 99.99 percent of the Applicant's Housing Credit Allocation.

The actual percentage of the Applicant's Housing Credit Allocation being sold must be equal to or less than the percentage of ownership interest held by the limited partner (inclusive of any special limited partner) or member.

(g) When any Housing Credit Allocation is syndicated or sold directly to an investor, the Corporation will require that the net proceeds received on the sale of the Housing Credits be reflective of market rate pricing as depicted by the price per dollar of Housing Credit Allocation available to the Development. All Non-Competitive Housing Credits not retained by the Applicant (up to an assumed maximum of 0.01 percent of the Housing Credit Allocation) must be

sold directly or indirectly to an investor at market rate pricing. The amount of equity capital contributed by investors to an Applicant shall not be less than the amount generally contributed by investors to similar Developments as determined by using sales of comparable Housing Credit Developments and the Corporation's evaluation of market trends. As part of the Final Cost Certification Application Package set forth in subsection 67-21.027(6), ~~t~~The Applicant shall have documentation provided to the Corporation by the Housing Credit Syndicator (for Housing Credits that are syndicated) or by the Applicant (for any Housing Credits that are not syndicated) that details, for each Housing Credit investor (providing the name of the actual investor is optional), the following information:

1. The gross dollar amount of funding provided to the Housing Credit Syndicator or the Applicant, as applicable, in exchange for the purchase of the Housing Credits,

2. The net dollar amount of funding provided to the Housing Credit Syndicator or the Applicant, as applicable, that will be passed along to the Applicant as Housing Credit equity; and,

3. The annual dollar amount of Housing Credit allocation sold to each ~~the~~ investor in exchange for the funding provided.

The Corporation will base all calculations of the minimum net syndication/investor proceeds available to the Development on the assumption that a minimum of 99.99 percent of the Housing Credit Allocation is being sold to raise equity capital. The Corporation will use the greater of:

a. The actual equity capital contributed to the Development, or

b. The required minimum equity capital contributed to the Development based on the criteria provided herein.

(19) If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the Corporation shall determine the credit amount, if any, necessary to make the Development financially feasible and viable throughout the Housing Credit Extended Use Period and shall issue a Preliminary 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. All contingencies required in the Preliminary Determination 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.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-16-13, Amended 2-2-15, 9-15-16, 5-*

**67-21.027 HC General Program Procedures and Requirements.**

(1) Each Housing Credit Development shall comply with the minimum Housing Credit Set-Aside provisions, as specified in Section 42(g)(1) of the IRC, ~~with respect to the reservation of 20 percent of the units for occupancy by persons or families whose income does not exceed 50 percent of the area median income, or the reservation of 40 percent of the units for occupancy by persons or families whose income does not exceed 60 percent 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.

(2) The Development shall provide safe, sanitary and decent residential rental housing and shall be developed, constructed and operated in accordance with the commitments made and the facilities and services described in the Application at the time of submission to the Corporation. Applications will not be considered approved to receive an allocation of Housing Credits until the Corporation issues a 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, this rule chapter, and Section 42 of the IRC.

(3) All of the dwelling units within a Housing Credit Development shall be rented or available for rent on a continuous basis to members of the general public. The owner of the Housing Credit Development shall not give preference to any particular class or group in renting the dwelling units in the Housing Credit Development, except to the extent that dwelling units are required to be rented to Eligible Persons. All Housing Credit Developments must comply with the Fair Housing Act as implemented by 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 as implemented by 24 CFR Part 8 (“Section 504 and its related regulations”), and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35. To the extent that a Housing Credit Development is not otherwise subject to Section 504 and its related regulations, the Housing Credit Development shall nevertheless comply with Section 504 and its related regulations as requirements of the Housing Credit Program to the same extent as if the Housing Credit Development were subject to Section 504 and its related regulations in all respects. To that end, for purposes of the Housing Credit Program, a Housing Credit Allocation shall be deemed “Federal financial assistance” within the meaning of that term as used in Section 504 and its related regulations for all Housing Credit Developments.

(4) Each Housing Credit Development shall complete the Final Cost Certification Application Package by the



earlier of the following two dates:

(a) The date that is ~~90~~ 75 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.

(5) Prior to execution of the limited partnership agreement or limited liability company operating agreement between the Applicant and the limited partners/members, the Applicant must receive written approval from the Corporation or its Credit Underwriter that the Housing Credit Syndicator is in good standing with the Corporation. Proceeding with execution of a partnership agreement or operating agreement with a Housing Credit Syndicator that is not in good standing shall result in withdrawal of the Housing Credit Allocation.

(6) The Final Cost Certification Application Package (Form FCCAP) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in Rule 67-21.026, F.A.C. Such form package shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files of the Microsoft Excel spreadsheets for the HC Development Final Cost Certification (DFCC) and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter for both the DFCC and GCCC, an unqualified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit Allocation will not be issued until such time as all required items are received and processed by the Corporation. The Final Cost Certification Application Package (Form FCCAP) is adopted and incorporated herein by reference, effective ~~05-2018~~ ~~August 2016~~, and is available on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-07359>, or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1321.

(7) After the final evaluation and determination of the Housing Credit Allocation amount has been made by the

Corporation and the Extended Use Agreement has been executed in accordance with Rule 67-21.029, F.A.C., the IRS Low-Income Housing Credit Allocation and Certification Forms 8609 are issued to the Applicant of the Housing Credit Development, as provided below. The Corporation will issue only one complete set of Forms 8609 per Development which will be no earlier than total Development completion, the Corporation's acceptance and approval of the Development's Final Cost Certification Application Package, and determination by the Corporation that all financial obligations for which an Applicant or Developer, or Principal, Affiliate or Financial Beneficiary of an Applicant or Developer is in arrears to the Corporation or any agent or assignee of the Corporation have been satisfied. At the time the Applicant's first tax return with which Form 8609-A is filed with the Internal Revenue Service, the Applicant must submit to the Corporation a copy of IRS Form 8609 with a completed Part II.

(8) Annually, within 151 Calendar Days following the Applicant's fiscal year end, the Applicant shall provide the Corporation with an audited financial statement and a fully completed and executed Financial Reporting Form (SR-1) (Rev. 05-14), which is incorporated by reference and available on the Corporation's website under the Property Owners & Managers link labeled Forms or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-04908>. The audited financial statement and a copy of the signed Form SR-1, with Parts 1, 2, and 5 completed, shall be submitted in both PDF format and in electronic form as a Microsoft Excel spreadsheet to the Corporation at the following web address: [financial.reporting@floridahousing.org](mailto:financial.reporting@floridahousing.org). The initial submission will be due following the fiscal year within which the first unit is occupied. The initial submission for Housing Credit Developments that contain occupied units at the time of acquisition will be due following the fiscal year within which the 12 month anniversary of the closing is observed of either the Housing Credit equity partnership agreement or the acquisition of the development site, whichever comes first. The audited financial statement is to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- (a) Comparative Balance Sheet with prior year and current year balances;
- (b) Statement of revenue and expenses;
- (c) Statement of changes in fund balances or equity;
- (d) Statement of cash flows; and,
- (e) Notes to financial statements.

The financial statements referenced above should also be accompanied by a certification of the Applicant as to

the accuracy of such financial statements. A late fee of \$250 will be assessed by the Corporation for failure to submit the above documents by the stated deadline.

(9) The Corporation must approve, pursuant to Rule Chapter 67-53, F.A.C., the Applicant's selection of a management company prior to such company assuming responsibility for the Development. The owner of a Development must notify the Corporation of an intended change in the management company prior to such company assuming responsibility for the Development. A key management company representative must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

**67-21.028 HC with Tax-Exempt Bond-Financed Developments.**

(1) Tax-Exempt Bond-Financed Developments which applied for Non-Competitive Housing Credits when also applying for MMRB from the Corporation shall:

(a) Have 50 percent 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 this rule chapter; however, when the regulatory period for the Tax-exempt Bonds terminates prior to the expiration of the Housing Credit Extended Use Period, a separate compliance monitoring fee is required for the remainder of the Housing Credit Extended Use Period;

(c) If applying utilizing the Non-Competitive Application Package, be deemed to have met all HC Program scoring threshold requirements prior to issuance of an invitation to enter Credit Underwriting, or if applying under a competitive solicitation, meet all requirements of the competitive solicitation and be successfully selected for award through final Board action;

(d) Receive a Preliminary Determination upon the Corporation's issuance of a loan commitment in reference to the Tax-exempt Bonds;

(e) Be subject to the provisions of this rule chapter. If the MMRB and Non-Competitive Housing Credits are awarded as a result of a competitive solicitation, the Development shall also be subject to the provisions of such competitive solicitation;

(f) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section

and the Final Cost Certification Application Package requirements of Rule 67-21.027, F.A.C.;

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

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

(2) Tax-Exempt Bond-Financed Developments receiving bonds issued by a County Housing Finance Authority established pursuant to Section 159.604, F.S., shall:

(a) Have 50 percent 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 the Non-Competitive Application Package or a competitive solicitation, as applicable;

(c) Meet the HC Program requirements pursuant to the Non-Competitive Application Package or a competitive solicitation, as applicable, and participate in the required Credit Underwriting review, as outlined in this rule chapter and the Non-Competitive Application Package or competitive solicitation, as applicable, by a Credit Underwriter under contract with the Corporation;

(d) The Credit Underwriting review is a de novo review of all information and 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 complete and stabilize the Development, the evidence of need for affordable housing in order to determine that the Development meets the program requirements and determine a recommended Housing Credit Allocation amount. Corporation funding will be based on appraisals of comparable developments, cost benefit analysis and other documents evidencing justification of costs. As part of the Credit Underwriting review, the Development shall be subject to the following provisions of Rule 67-21.026, F.A.C.: subsections (2), (4) through (8), (10) through (13), and (15) through (19). The Application will be subject to the following provisions of subsection (9): ~~An A-full or self-contained appraisal report conforming to as defined by~~ the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, 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 Development's financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit 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 who is approved by the Credit Underwriter. For proposed Developments subject to location restrictions as designated in the Non-Competitive Application instructions, the Credit Underwriter must address the market and impact issues;

(e) Be subject to the Credit Underwriting fees as set forth in this rule chapter. Failure to submit the required Credit Underwriting fee to the Credit Underwriter within seven (7) Calendar Days of the date of the invitation to enter Credit Underwriting shall result in withdrawal of the invitation;

(f) Be subject to the administrative fee specified in the Non-Competitive Application Package or a competitive solicitation, as applicable;

(g) Receive a Preliminary Determination from the Corporation upon satisfying the requirements of paragraphs (a) through (f), above, as applicable;

(h) Be subject to a Developer Fee limitation as specified in this rule chapter;

(i) Be subject to the additional provisions of this rule chapter, specifically the applicable provisions of Part I and Part III;

(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 the Non-Competitive Application Package or a competitive solicitation, as applicable;

(m) Submit an Application to the Corporation utilizing the Non-Competitive Application Package or a competitive solicitation, as applicable. If utilizing the Non-Competitive Application Package, it must be completed in accordance with the requirements outlined in the Non-Competitive Application Package instructions. The Application Form and all required exhibits may be submitted to the Corporation once the Applicant enters Credit Underwriting for the Tax-exempt Bonds, but in no event may the Non-Competitive Application Package be submitted later than the last Corporation business day of December of the year the Development is placed in service. If utilizing a competitive

solicitation to apply for the Non-Competitive Housing Credits, the requirements of the specific competitive solicitation must be followed; and,

(n) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification Application Package requirements of Rule 67-21.027, F.A.C.

(3) Tax-Exempt Bond-Financed Developments receiving bonds from another source other than the Corporation or a County Housing Finance Authority and not competing for Housing Credits under the state of Florida's Allocation Authority shall:

(a) Make Application to the Corporation as required in this rule chapter, utilizing the Non-Competitive Application Package, for receipt by the Corporation once the Applicant has received affirmation that the tax-exempt multifamily bond allocation has been reserved or that the entity issuing the bonds has agreed to award the necessary allocation when available, but in no event may the Application be submitted later than the last Corporation business day of December of the year the Development is placed in service;

(b) Be subject to the Application fee specified in the Non-Competitive Application Package;

(c) Meet the HC Program threshold requirements pursuant to the Non-Competitive Application Package and shall have secured a commitment for the Tax-exempt Bonds;

(d) Be subject to the Credit Underwriting fees as set forth in the Non-Competitive Application Package. Failure to submit the required Credit Underwriting fee to the Credit Underwriter within seven (7) Calendar Days of the date of the invitation to enter Credit Underwriting shall result in withdrawal of the invitation;

(e) Participate in the Credit Underwriting process pursuant to Rule 67-21.026, F.A.C.;

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

(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, after satisfying the requirements of paragraphs (a) through (d), above, if the Corporation receives a Credit Underwriting report prepared by one of the Corporation's contracted Credit Underwriters which meets the criteria required pursuant to this rule chapter and 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 where the amount of the Bonds is at least 50 percent or more of the aggregate basis of any building and the land on which the building is located;

(h) Be subject to the administrative fee specified in the Non-Competitive Application Package. The administrative fee must be paid within seven (7) Calendar Days of the date of the Preliminary Determination;

(i) Be subject to a Developer Fee limitation as specified in this rule chapter;

(j) Be subject to the provisions of this rule chapter, specifically the applicable provisions of Part I and Part III;

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

(l) Be subject to the provisions in this rule chapter pertaining to the required Extended Use Agreement;

(m) Be subject to the monitoring fee specified in the Non-Competitive Application Package;

(n) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification Application Package requirements of Rule 67-21.027, F.A.C.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

**67-21.029 HC Extended Use Agreement.**

(1) Pursuant to Section 42(h)(6) of the IRC, 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 or subsequently agreed to by the Corporation.

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

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

(b) Eligible Persons occupying set-aside units shall have the right to enforce in any 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 prior to the issuance of a Final Housing Credit Allocation to an Applicant. Following execution, the Extended Use Agreement shall be recorded pursuant to Florida law as a restrictive covenant.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-16-13, Repromulgated 2-2-15, 9-15-*

16, 5-24-17, \_\_\_\_\_.

**67-21.030 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 proposed transferee agrees to maintain all set-asides and other requirements of the Extended Use Agreement for the period originally specified; pay any and all unpaid compliance monitoring fees through the end of the Extended Use Agreement; and execute any assignment and assumption documents the Corporation deems necessary to effectuate the ownership change. For those Developments that have not waived the right to submit a qualified contract, any transfer of that Development will require the transferee to agree to a waiver of the right to submit a qualified contract before approval of the transfer will be provided by the Corporation. 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.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-16-13, Repromulgated 2-2-15, 9-15-16, 5-24-17, Amended \_\_\_\_\_.*

**67-21.031 Qualified Contracts.**

(1) An owner's written request to the Corporation for a qualified contract (a "qualified contract request") shall be governed by 26 CFR 1.42-18 (the "qualified contract regulations"), Section 42 of the IRC, as applicable, and this rule section in effect at the time of the qualified contract request.

(2) In submitting a qualified contract request, and in keeping with the intent of this rule and the governing law, the owner of the Development is presumed to do so with good faith intent to sell the Development when presented with a qualified contract. While the qualified contract request may ultimately result in the termination of the Extended Use Agreement should the Corporation fail to present the owner with a qualified contract during the one-year period



(as same may be suspended from time to time), that is the default position and not the intended purpose of a qualified contract request. To that end, for purposes of this rule and processing a qualified contract request, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract by presenting the owner with a contract that meets the requirements of subsection (3) below. It shall be the owner's responsibility to negotiate with the purchaser, in good faith and with the intent to sell the development, the specific terms of the contract, and the owner's rejection of the contract or failure to act on the contract because of terms other than those required in subsection (3) below shall in no way affect the status of the contract as a qualified contract. The Corporation shall have no duty and is not responsible to either the owner or the purchaser for negotiating the details of the contract following its submission to the owner.

(3) Qualified contract means a bona fide contract (as defined herein) to acquire the development (within a reasonable period after the contract is entered into) for the qualified contract amount (also referred to as the qualified contract price). Bona fide contract means a certain and unambiguous offer to purchase the Development for an amount which equals or exceeds the qualified contract amount (the qualified contract purchase price) made by a purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract to purchase. The bona fide contract shall be in the form of a contract for sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Corporation, and must provide for an initial non-refundable earnest money deposit (the initial deposit) from the purchaser in the minimum amount of \$50,000 and obligate the purchaser to make a second non-refundable earnest money deposit (the second deposit) equal to three (3) percent of the qualified contract price as follows: The initial deposit must be deposited with an escrow agent designated by the owner at the time of submission of the qualified contract request, or if no such escrow agent is designated, with a nationally recognized title insurance company offering escrow services, contemporaneously with the submission of the contract to the owner; and, by its terms, the contract must obligate the purchaser to deposit the second deposit with the escrow agent within 15 business days following the end of the due diligence period (subject to any rights reserved by the purchaser to cancel or terminate the contract during such period) which period shall end no later than 90 Calendar Days following execution of the contract by the owner. A contract submitted to the owner which otherwise meets the requirements of this subsection (3), including the deposit of the initial deposit with the escrow agent, which is accepted by owner within 15 business days after its submission, shall be deemed a qualified contract for purposes of this rule and the qualified contract regulations at such time as the second deposit is deposited with the escrow agent in

accordance with the terms of the contract, as same may be amended from time to time, unless waived in writing by the owner. And, in such event, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract. A contract submitted to the owner which otherwise meets the requirements of this subsection (3), including the deposit of the initial deposit with the escrow agent, which is not accepted by owner within 15 business days after its submission, shall be deemed a qualified contract for purposes of this rule and the qualified contract regulations at such time as the 15-day period expires. And, in such event, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract.

~~(4)(2)~~ After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, or a Land Use Restriction Agreement under another Corporation program, and provided the right to request a qualified contract for the Development was not waived in exchange for or in connection with the award of Housing Credits, the owner of a Development may submit a qualified contract request to the Corporation. When submitting a qualified contract request, the owner shall utilize the Qualified Contract Package in effect at the time of the request and shall remit payment of the required Qualified Contract Package fee as provided therein. The Qualified Contract Package consists of the forms and instructions, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from \_\_\_\_\_ <http://www.flrules.org/Gateway/reference.asp?No=Ref 08188>, which shall be completed and submitted to the Corporation in order to request a qualified contract. The Qualified Contract Package, (Rev. 05-2018) ~~(Rev. 03-2017)~~, is adopted and incorporated herein by reference.

~~(5)(3)~~ All information contained in a Qualified Contract Package is subject to independent review, analysis and verification by the Corporation or its agents. The Corporation may request additional information to document the qualified contract amount calculated by the owner. The Corporation may also engage the services of its own certified public accountant (CPA) and real estate appraiser to assist in the review of a Qualified Contract Package. Real estate appraisers involved in the qualified contract process must be licensed by the state of Florida, be an MAI-designated ~~as certified general appraiser, appraisers~~ and be otherwise acceptable to the Corporation.

~~(6)(4)~~ The qualified contract regulations provide that the fair market value of the non-low-income portion of the building includes the fair market value of the underlying land and that the valuation of the underlying land must take into account the existing and continuing requirements contained in the Extended Use Agreement. Pursuant to Section

193.017, F.S., and the statutes cited therein, the Extended Use Agreement recorded in connection with a Housing Credit property is a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement that must be considered by the county property appraiser in assessing the value of the property. Unless the owner elects otherwise as provided below, for purposes of a qualified contract request, the fair market value of the underlying land shall be the value attributed to the underlying land by the county property appraiser in the most recent year's assessed value of the Development provided that the county property appraiser's valuation of the land takes into account the existing and continuing requirements contained in the Extended Use Agreement. The county property appraiser's valuation methodology shall be verified upon submission of a qualified contract request in order to determine if the valuation of the land has taken into account the existing and continuing requirements contained in the Extended Use Agreement. If the owner is of the opinion that the county property appraiser's valuation does not represent the fair market value of the underlying land within the contemplation of the qualified contract regulations at the time of the qualified contract request, the owner may elect to submit with its qualified contract request a value (the "owner's appraised value") for the underlying land at the fair market value determined by a real estate appraiser (the "owner's appraiser") engaged by the owner for that purpose in lieu of the county property appraiser's valuation. A copy of the real estate appraisal (the "owner's appraisal report") upon which the owner's appraised value is based shall be included with the owner's qualified contract request. If the owner elects to rely on the county property appraiser's valuation of the land and the Corporation determines that the county property appraiser's valuation did not take into account the existing and continuing requirements contained in the Extended Use Agreement, the county property appraiser's valuation shall be disregarded, and instead, the owner must obtain and submit to the Corporation an owner's appraisal report together with the owner's appraised value as provided above. The owner's appraiser must certify in the appraisal report that the valuation represents the fair market value of the underlying land taking into account the existing and continuing requirements contained in the Extended Use Agreement for the property. The owner's appraisal report must also include a narrative describing the methodology or manner in which the requirements contained in the Extended Use Agreement were considered by the owner's appraiser in arriving at the owner's appraised value of the underlying land, and, for comparison and evaluation purposes, the opinion of the owner's appraiser as to what the fair market value of the underlying land would be if unencumbered by the requirements of the Extended Use Agreement. The lower of the restricted and unrestricted appraised values should be included in the qualified contract price if the owner's appraised value is submitted. The owner's appraised value of

the underlying land and the owner's appraisal report shall be subject to review and approval by the Corporation. The Corporation may engage the services of one or more real estate appraisers, or other professionals, to assist in the review and evaluation of the owner's appraised value and the owner's appraisal report.

~~(7)(5)~~ In addition to the Qualified Contract Package fee, the owner shall be responsible for all third-party fees in connection with the owner's qualified contract request. Third party fees include, but are not limited to, the costs of the services provided by CPAs and real estate appraisers or other real estate professionals engaged by the Corporation to assist it in the review of a qualified contract request, and the fees and commissions of any real estate broker in connection with the marketing and sale of the development to a buyer under a qualified contract.

~~(8)(6)~~ When offering a development for sale to the general public pursuant to a qualified contract request, the Corporation may, but shall not be required to, utilize the services of a real estate broker under contract with or designated by the Corporation to market and sell the development. The owner of the development shall be responsible for the fees and commissions due any such real estate broker in connection with the marketing and sale of the development, and, upon request of the Corporation or the real estate broker, the owner shall enter into a written agreement with the real estate broker pursuant to which the owner agrees to pay to the real estate broker such fees and commissions in connection with the marketing and sale of the development.

~~(9)(7)~~ The running of the one-year period described in Section 42(h)(6)(I) of the IRC shall be suspended by the Corporation at any time upon written notice to the owner if:

(a) The Corporation concludes that the owner's request lacks information required in the Qualified Contract Package or other essential information;

(b) The owner fails to pay the Qualified Contract Package fee or, thereafter, fails to timely pay any other fees or costs for which the owner is responsible hereunder;

(c) The owner and the Corporation are unable to reach mutual agreement on the qualified contract amount;

(d) The Development that is the subject of the qualified contract request is not in compliance with the applicable program requirements or if any fees related to the Development are delinquent;

(e) The owner fails to allow the Corporation, its agents or prospective buyers access to the Development for purposes of verification, inspection or due diligence;

(f) The Applicant or Developer, or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation;

(g) Following request, the owner fails to enter into the written agreement with the real estate broker designated by the Corporation to market and sell the development, or

(h) The owner otherwise fails to comply with the requirements of this rule section or the qualified contract regulations.

The term of any such suspension shall begin on the date of the written notice provided by the Corporation to the owner, and shall continue unabated until such date as the deficiency, non-payment or disagreement giving rise to the suspension is cured or otherwise resolved. The Corporation shall acknowledge the cure or resolution by written notice to the owner within 10 days thereafter. The owner's election to value the underlying land based on the owner's appraised value as provided in subsection ~~(6)(4)~~, above, shall automatically prevent the owner's purported qualified contract request from beginning the one-year period described in Section 42(h)(6)(I) of the IRC until such time as the Corporation and the owner shall mutually agree on the value of the underlying land for purposes of the owner's qualified contract request.

~~(10)(8)~~ Upon mutual agreement of the owner and the Corporation, the qualified contract amount shall be documented in writing signed by the Corporation and the owner.

~~(11)(9)~~ The owner shall cooperate with the Corporation and its agents, real estate brokers and prospective buyers in connection with the processing of the owner's qualified contract request and the marketing of the Development to prospective buyers. The owner shall exercise good faith in acting upon a qualified contract as may be presented within the one-year period. If the Corporation provides a qualified contract within the one-year period (it being understood that the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract by presenting the owner with a contract that meets the requirements of subsection (3) above) regardless of whether and the owner accepts, rejects or fails to act upon the contract, the Development shall remain subject to the Extended Use Agreement, and the owner shall be deemed to have waived any right or option to submit another qualified contract request for the Development.

~~(12)(10)~~ An owner shall be allowed only one qualified contract request per Development.

(13) Section 42(h)(6)(E)(ii) of the IRC provides that the termination of an extended low-income housing commitment under Section 42(h)(6)(E)(i) will not be construed to permit before the close of the 3-year period following the termination (a) the eviction or termination of tenancy (other than for good cause) of an existing tenant of any Low-Income unit, or (b) any increase in the gross rent with respect to a Low-Income unit not otherwise

permitted under Section 42, IRC.

(14) This rule shall apply to qualified contract requests first submitted to the Corporation on or after the effective date of the rule.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History--New 7-16-13,*

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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULES: Ray Dubuque, Chairman of the Board, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850) 488-4197

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