

NOTICE OF PROPOSED RULEMAKING

FLORIDA HOUSING FINANCE CORPORATION

CHAPTER 67-48

COMPETITIVE AFFORDABLE MULTIFAMILY RENTAL HOUSING

SAIL/HOME/HC/EHCL

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

(1) Address loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) and Elderly Housing Community Loan (EHCL) Programs authorized by Section 420.5087, F.S., and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, F.S.; and

(2) Address 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 a funding process, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior competitive funding processes to determine what changes or additions should be added to the Rule, competitive solicitations, and the Qualified Allocation Plan (QAP). The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply under these funding programs.

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 FS.

LAW IMPLEMENTED: 420.5087, 420.5089, 420.5099 FS.

A HEARING WILL BE HELD AT THE DATE, TIME 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 32031-1329, (850) 488-4197.

THE FULL TEXT OF THE PROPOSED RULE IS:

## **PART I ADMINISTRATION**

### **67-48.001 Purpose and Intent.**

The purpose of this rule chapter is to establish the procedures by which the Corporation shall:

(1) Address loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program and the Elderly Housing Community Loan (EHCL) Program authorized by Section 420.5087, F.S., and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, F.S.; and,

(2) Address 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 420.5087, 420.5089(2), 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.001, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, Amended 3-30-08, Repromulgated 8-6-09, Amended 11-22-11, 10-9-13, 10-8-14, Repromulgated 9-15-16, 5-24-17,\_\_\_\_\_.*

### **67-48.002 Definitions.**

(1) "ACC" or "Annual Contributions 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) "Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, F.S.

(3) "Address" means the address number, street name and city or, at a minimum, the 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.

(4) “Adjusted Income” means, with respect to a HOME Development, the gross income from wages, income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by HUD, adjusted for family size, minus the deductions allowable under 24 CFR §5.611.

(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 67-48.0075, 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) “ALF” or “Assisted Living Facility” means a Florida licensed living facility that complies with Sections 429.01 through 429.54, F.S., and Chapter 58A-5, F.A.C.

(7) “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.

(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 Rules 67-48.0105, 67-48.0205 and 67-48.031, 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 sealed response submitted to participate in a competitive solicitation for funding pursuant to Rule Chapter 67-60, F.A.C.

(11) “Binding Commitment” means, with respect to a Housing Credit Development, an agreement between the Corporation and an Applicant by which the Corporation allocates and the Applicant accepts Housing Credits from a later year’s Allocation Authority in accordance with Section 42(h)(1)(C) of the IRC.

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

(13) “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.

(14) “Calendar Days” means, the seven (7) days of the week.

(15) “Carryover” means the provision under Section 42 of the IRC and Rule 67-48.028, F.A.C., which allows a Development to receive a Housing Credit Allocation in a given calendar year and be placed in service by the close of the second calendar year following the calendar year in which the allocation is made.

(16) “Catchment Area” means the geographical area covered under a Local Homeless Assistance Continuum of Care Plan, as designated and revised as necessary by the State Office on Homelessness, in accordance with Section 420.624, F.S.

(17) “CHDOs” or “Community Housing Development Organizations” means Community housing development organizations as defined in Section 420.503, F.S., and 24 CFR Part 92.

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

(19) “Commercial Fishing Worker Household” means a household of one or more persons wherein at least one member of the household is a Commercial Fishing Worker at the time of initial occupancy.

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

(21) “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.

(22) “Consolidated Plan” means the plan prepared in accordance with 24 CFR Part 91, which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs, including the HOME Program.

(23) “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.

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

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

(26) “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.

(27) “Department” means the Department of Economic Opportunity as defined in Section 420.503, F.S.

(28) “Developer” means any 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.

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

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

(31)~~(30)~~ “Development Cash Flow” means, with respect to SAIL Developments as well as HOME Developments when the HOME Development is also at least partially financed with a Multifamily Mortgage Revenue Bond (MMRB) Loan (as defined in Rule Chapter 67-21, F.A.C.), cash transactions of the Development as calculated in the statement of cash flows prepared in accordance with generally accepted accounting principles (“GAAP”), as adjusted for any cash transactions that are subordinate to the SAIL loan interest payment including any distribution or payment to the Applicant or Developer, Principal(s) of the Applicant or Developer or any Affiliate of the Principal(s) of the Applicant or Developer, or to the Developer or any Affiliate of the Developer, whether paid directly or indirectly, which was not expressly disclosed in determining the annual debt service coverage in the Board approved final credit underwriting report.

(32)~~(31)~~ “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.

(33)~~(32)~~ “Development Expenses” means, with respect to SAIL Developments as well as HOME Developments when the HOME Development is also at least partially financed with a MMRB Loan (as defined in Rule Chapter 67-21, F.A.C.), usual and customary operating and financial costs, such as the compliance monitoring fee, the financial monitoring fee, replacement reserves, the servicing fee and the debt service reserves. As it relates to SAIL

Developments as well as HOME Developments when the HOME Development is also at least partially financed with a MMRB Loan (as defined in Rule Chapter 67-21, F.A.C.) and to the application of Development Cash Flow described in subsections 67-48.010(5) and (6), F.A.C., as it relates to SAIL Developments or in paragraph 67-48.020(3)(b), F.A.C., as it relates to HOME Developments, the term includes only those expenses disclosed in the operating pro forma on an annual basis included in the final credit underwriting report, as approved by the Board, and maximum of 20 percent Developer Fee per year.

~~(34)~~<sup>(33)</sup> “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)~~<sup>(34)</sup> “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.

~~(36)~~<sup>(35)</sup> “Domestic Violence” means Domestic violence as defined in Section 741.28, F.S.

~~(37)~~<sup>(36)</sup> “Draw” means the disbursement of funds to a Development.

~~(38)~~<sup>(37)</sup> “EHCL” or “EHCL Program” means the Elderly Housing Community Loan Program created pursuant to Section 420.5087(3), F.S.

~~(39)~~<sup>(38)</sup> “Elderly” means Elderly as defined in Section 420.503, F.S.

~~(40)~~<sup>(39)</sup> “ELI Household” or “Extremely Low Income Household” means a household of one or more persons wherein the annual adjusted gross income for the Family is equal to or below the percentage of area median income for ELI Persons.

~~(41)~~<sup>(40)</sup> “ELI Loan” means the loan made by the Corporation for the Applicant’s ELI Set-Aside commitment, based on terms and conditions outlined in a competitive solicitation.

~~(42)~~<sup>(41)</sup> “ELI Persons” or “Extremely Low Income Persons” means Extremely low income persons as defined in Section 420.0004(9), F.S., or in a competitive solicitation.

~~(43)~~<sup>(42)</sup> “ELI Set-Aside” or “Extremely Low Income Set-Aside” means the number of units designated to serve



ELI Households.

~~(44)~~(43) “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 or Very Low Income, as further described in Rule 67-48.0075, F.A.C.

~~(45)~~(44) “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.

~~(46)~~(45) “Executive Director” means the Executive Director of the Corporation.

~~(47)~~(46) “Family” describes a household composed of one or more persons.

~~(48)~~(47) “Farmworker” means Farmworker as defined in Section 420.503, F.S.

~~(49)~~(48) “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.

~~(50)~~(49) “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 process as required by Section 42, IRC.

~~(51)~~(50) “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 67-48.0075, F.A.C.

~~(52)~~(51) “Financial Institution” means Lending institution as defined in Section 420.503, F.S.

~~(53)~~(52) “Florida Keys Area” means all lands in Monroe County, except:

(a) That portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;

(b) All lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; and,

(c) Federal properties.

~~(54)~~(53) “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 Rule 67-48.0072, F.A.C.

~~(55)~~(54) “Geographic Set-Aside” means the amount of Allocation Authority or funding which has been designated by the Corporation to be allocated for Developments located in specific geographical regions within the state of Florida.

~~(56)~~(55) “HC” or “Housing Credit Program” means the rental housing program administered by the Corporation pursuant to Section 42 of the IRC 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 IRC;
- (b) This rule chapter regarding Competitive Housing Credits; and,
- (c) Rule Chapter 67-21, F.A.C., regarding Non-Competitive Housing Credits.

~~(57)~~(56) “HOME” or “HOME Program” means the HOME Investment Partnerships Program administered by the Corporation pursuant to 24 CFR Part 92 and Section 420.5089, F.S.

~~(58)~~(57) “HOME-Assisted Unit” means the specific units that are funded with HOME funds. HOME units shall adhere to rent controls and income targeting requirements pursuant to 24 CFR §92.252.

~~(59)~~(58) “HOME Development” means any Development which receives financial assistance from the Corporation under the HOME Program.

~~(60)~~(59) “HOME Rental Development” means a Development proposed to be constructed or rehabilitated with HOME funds.

~~(61)~~(60) “HOME Rent-Restricted Unit” means the maximum allowable rents designed to ensure affordability on the HOME-Assisted Units.

~~(62)~~(61) “Homeless” means Homeless as defined in Section 420.621, F.S.

~~(63)~~(62) “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 Competitive Housing Credits; and,
- (c) The provisions of Rule Chapter 67-21, F.A.C., regarding Non-Competitive Housing Credits.

~~(64)~~(63) “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.

~~(65)~~(64) “Housing Credit Development” means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.

~~(66)~~(65) “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.

~~(67)~~(66) “Housing Credit Period” means with respect to any building that is included in a Housing Credit Development, the period of 10 years beginning with:

(a) The taxable year in which such building is placed in service, or

(b) At the election of the Developer, the succeeding taxable year.

~~(68)~~(67) “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.

~~(69)~~(68) “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.

~~(70)~~(69) “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].

~~(71)~~(70) “Housing for the Elderly” or “Housing Community for the Elderly” means any housing community as defined in Section 420.503, F.S.

~~(72)~~(71) “Housing Provider” means, with respect to a HOME Development, Local Government, consortia approved by HUD under 24 CFR Part 92, for-profit and Non-Profit Developers, and qualified CHDOs, with demonstrated capacity to construct or rehabilitate affordable housing.

~~(73)~~(72) “HUD” means the United States Department of Housing and Urban Development.

~~(74)~~(73) “IRC” means 26 CFR Section 42 and subsections 501(c)(3) and 501(c)(4) 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.

~~(75)~~(74) “Lead Agency” means a Local Government or non-profit serving as the point of contact and accountability to the State Office on Homelessness with respect to the Local Homeless Assistance of Continuum of Care Plan, in accordance with Section 420.624, F.S.

~~(76)~~(75) “Local Government” means Local government as defined in Section 420.503, F.S.

~~(77)~~(76) “Local Homeless Assistance Continuum of Care Plan” means a plan for developing and implementing a framework for a comprehensive and seamless array of housing and services to address the needs of homeless persons and persons at risk for homelessness, in accordance with Section 420.624, F.S.

~~(78)~~(77) “Low Income” means the Adjusted Income for a Family which does not exceed 80 percent of the area median income.

~~(79)~~(78) “LURA” or “Land Use Restriction Agreement” means an agreement which sets forth the set-aside requirements and other Development requirements under a Corporation program.

~~(80)~~(79) “Match” means non-federal contributions to a HOME Development eligible pursuant to 24 CFR Part 92.

~~(81)~~(80) “Moderate Rehabilitation” means, with respect to the SAIL Program, Moderate rehabilitation as defined in Section 420.503, F.S.

~~(82)~~(81) “Mortgage” means Mortgage as defined in Section 420.503, F.S.

~~(83)~~(82) “Non-Competitive Housing Credits” means the Housing Credits which qualify to be used with Tax-Exempt Bond-Financed Developments and do not come from the Corporation’s annual Allocation Authority.

~~(84)~~(83) “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 67-48.0075, F.A.C.

~~(85)~~(84) “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.

~~(86)(85)~~ “PBRA” or “Project-Based Rental Assistance” means a rental subsidy through a contract with HUD or RD for a property.

~~(87)(86)~~ “Person with a Disability” means, pursuant to Section 3 of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, an individual to which both of the following applies:

(a) The individual has a physical or mental impairment that substantially limits one or more of the major life activities of such individual; and,

(b) The individual is currently or was formerly regarded as having an existing record of such an impairment.

~~(88)(87)~~ “Person with a Disabling Condition” means a person with a Disabling condition as defined in Section 420.0004(7), F.S.

~~(89)(88)~~ “Persons with Special Needs” means Person with special needs as defined in Section 420.0004(13), F.S.

~~(90)(89)~~ “PHA” or “Public Housing Authority” means a housing authority under Chapter 421, F.S.

~~(91)(90)~~ “Portfolio Diversification” means a distribution of SAIL and HOME Program loans to Developments in varying geographic locations with varying design structures and sizes and with different types and identity of Sponsors.

~~(92)(91)~~ “Preliminary Allocation” means a non-binding reservation of Housing Credits issued to a Housing Credit Development which has demonstrated a need for Housing Credits and received a positive recommendation from the Credit Underwriter.

~~(93)(92)~~ “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), 811 of the U.S. Housing Act of 1937 (42 U.S.C. §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.

~~(94)(93)~~ “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 67-48.002(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 67-48.002(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.

~~(95)~~(94) "Project" or "Property" means Project as defined in Section 420.503, F.S.



~~(96)~~~~(95)~~ “QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the ~~2018~~ ~~2016~~ Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation’s website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from [http://www.flrules.org/Gateway/reference.asp?No=Ref\\_07355](http://www.flrules.org/Gateway/reference.asp?No=Ref_07355).

~~(97)~~~~(96)~~ “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)(B) of the IRC.

~~(98)~~~~(97)~~ “RD” or “Rural Development” means Rural Development Services (formerly the “Farmer’s Home Administration” or “FmHA”) of the United States Department of Agriculture.

~~(99)~~~~(98)~~ “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 U.S.C. §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.

~~(100)~~~~(99)~~ “Rehabilitation” means, with respect to the HOME and Housing Credit Program(s), 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 67-48.0075, F.A.C.

~~(101)~~~~(100)~~ “Review Committee” or “Committee” means a committee established pursuant to Rule Chapter 67-

60, F.A.C.

~~(102)(401)~~ “SAIL” or “SAIL Program” means the State Apartment Incentive Loan Program created pursuant to Sections 420.507(22) and 420.5087, F.S.

~~(103)(402)~~ “SAIL Development” means a residential Development comprised of one (1) or more residential buildings proposed to be constructed or rehabilitated with SAIL funds for Eligible Persons.

~~(104)(403)~~ “SAIL Minimum Set-Aside Requirement” means the least number of set-aside units in a SAIL Development which must be held for Very Low-Income persons or households pursuant to the category (i.e., Family, Elderly, Homeless, Persons with Special Needs, or Farmworker and Commercial Fishing Worker) under which the Application has been made, as further described in Rule 67-48.009, F.A.C.

~~(105)(404)~~ “SAIL Rent-Restricted Unit” means with respect to a SAIL 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.

~~(106)(405)~~ “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.

~~(107)(406)~~ “Section 8 Eligible” means a Family with an income which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937.

~~(108)(407)~~ “Special Needs Household” means a household consisting of a Family that is considered to be Homeless, a survivor of Domestic Violence, a Person with a Disability, or Youth Aging Out of Foster Care. These households require initial, intermittent or on-going supportive services from one or more community based service providers to obtain and retain stable, adequate and safe housing in their communities.

~~(109)(408)~~ “Special Needs Household Referral Agency” means an organization that is designated and authorized by legislative mandate or the responsible federal or state agency to plan, coordinate and administer the provision of federal or state supportive services or long-term care programs for at least one Special Needs Household population.

~~(110)(409)~~ “Sponsor” means Sponsor as defined in Section 420.503, F.S.

~~(111)(410)~~ “State Office on Homelessness” means the office created within the Department of Children and

Family Services under Section 420.622, F.S.

~~(112)~~(414) “Substantial Rehabilitation” means, with respect to the SAIL Program, to bring a Development back to its original state with added improvements, where the value of such repairs or improvements (excluding the costs of acquiring or moving a structure) exceeds 40 percent of the appraised as is value (excluding land) of such Development before repair and less than 50 percent of the proposed construction work consists of new construction. For purposes of this definition, the value of the repairs or improvements means the Development Cost. To be considered “Substantial Rehabilitation,” there must be at least the foundations remaining from the previous structures, suitable to support the proposed construction.

~~(113)~~(412) “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 IRC.

~~(114)~~(413) “Total Development Cost” means the total of all costs incurred in the completion 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 67-48.0075, F.A.C.

~~(115)~~(414) “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.

~~(116)~~(415) “Very Low-Income” means:

(a) With respect to the SAIL and EHCL Programs,

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

2. If using taxable financing for the first mortgage, total annual gross household income which does not exceed 50 percent of the median income adjusted for family size, or 50 percent of the median income adjusted for family size for households within the metropolitan statistical area (MSA), within the county in which the Family resides, or within the state of Florida, whichever is greater, or

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

(b) With respect to the HOME Program, income which does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on a basis of HUD findings that such variations are necessary

because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

~~(117)(446)~~ “Website” means the Florida Housing Finance Corporation’s website, the Universal Resource Locator (URL) for which is [www.floridahousing.org](http://www.floridahousing.org).

~~(118)(447)~~ “Youth Aging Out of Foster Care” means youth or young adults who are eligible for services under Section 409.1451(2), F.S.

~~(119)(448)~~ “Zero Bedroom Unit” means a single person occupancy unit of at least 350 square feet that includes a private full bathroom and a vertical closet for clothing. The unit shall include a kitchen with a refrigerator, stove and sink.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087, 420.5089(2) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.002, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, 5-24-17, \_\_\_\_.*

**67-48.004 Selection Procedures for Developments.**

(1) SAIL, HOME and Housing Credit Applications shall be limited to one submission per subject property. Two or more Applications, submitted in the same competitive solicitation process, that have the same demographic commitment and one or more of the same Financial Beneficiaries, will be considered submissions for the same Development site if any of the following is true:

- (a) Any part of any of the property sites is contiguous with any part of any of the other property sites, or
- (b) Any of the property sites are divided by a street or easement, or
- (c) It is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.

If two or more Applications are considered to be submissions for the same Development site, the Corporation will reject all such Applications ~~except the Application with the highest (worst) lottery number. The Application(s) with the lowest lottery number(s) will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number.~~

(2) 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,
3. Has been convicted of a felony in connection with any Corporation program, or
4. Has offered or given consideration with respect to a local contribution as set forth in subsection (7), below.

(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 a 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.

(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(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, unless provided otherwise in a competitive solicitation;

(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 and, if applicable, the total proximity points awarded during scoring are not reduced. In addition, if the increase of the site is such that the proposed Development now meets the definition of a Scattered Site, then the Applicant shall be required to provide such Scattered Sites information and meet all Scattered Sites requirements as required by Corporation staff. 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, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

(j) For the SAIL and HC Programs, 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. For the HOME Program, the total number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage, or total number of HOME-Assisted Units, as applicable, 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, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

(k) CHDO election for the HOME Program;

(l) Funding Request Amount, exclusive of adjustments by the Corporation as outlined in any applicable competitive solicitation.

(4) For all funding programs outlined in this rule chapter, a Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if, at any time, the Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application or to the Credit Underwriter, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(5) For all funding programs outlined in this rule chapter, 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 Section 42 of the IRC, 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 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.

(6) For all funding programs outlined in this rule chapter, 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.

(7) For all funding programs outlined in this rule chapter, if the Applicant or any Principal, Financial Beneficiary or Affiliate of the Applicant has offered or given consideration, other than the consideration to provide affordable housing, with respect to a local contribution and this is discovered prior to Board approval of the Review Committee's

recommendations, the Corporation shall reject the Application and any other Application submitted by the same Applicant and any Principal, Financial Beneficiary or Affiliate of the Applicant. If discovered after the Board approves the Review Committee's recommendations, any tentative funding or allocation for the Application and any other Application submitted by the same Applicant and any Principal, Financial Beneficiary or Affiliate of the Applicant will be withdrawn. Such Applicant and any of such Applicant's Principals, Financial Beneficiaries or Affiliates will be ineligible for funding or allocation in any program administered by the Corporation in accordance with the procedure set forth in subsection (2), above.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087, 420.5087(6)(c), 420.5089, 420.5089(6), 420.5099, 420.5099(2) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.004, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

#### **67-48.005 Applicant Administrative Appeal Procedures.**

*Rulemaking Authority 420.507 FS. Law Implemented 120.569, 120.57, 420.5087, 420.5089, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.005, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 10-8-02, 12-4-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, Repromulgated 11-22-11, Repealed 10-9-13.*

#### **67-48.007 Fees.**

The Corporation, the Credit Underwriter or the environmental provider shall collect via check, money order, or as otherwise provided in a competitive solicitation the following non-refundable fees and charges in conjunction with the SAIL, HOME, HC, and EHCL Programs, as outlined in the competitive solicitation, the invitation to enter credit underwriting, the Preliminary Allocation, the preliminary commitment, the firm commitment, the Binding Commitment, the Carryover Allocation Agreement, or this rule chapter, as applicable:

- (1) Application fee.
- (2) Credit Underwriting fees.
- (3) Administrative fees.
- (4) Commitment fees.
- (5) Compliance monitoring fees.
- (6) Loan servicing fees.



- (7) Construction inspection fees.
- (8) Financial monitoring fees.
- (9) Tax-exempt mortgage financing fees.
- (10) HUD environmental fees.
- (11) Qualified Contract Package fees.
- (12) Assumption/Renegotiation fees.
- (13) Loan closing extension fees.
- (14) Processing fees.
- (15) Preliminary Recommendation Letter (PRL) fee.

All of the fees set forth above with respect to the SAIL and EHCL Programs are part of Development Cost and can be included in the Development Cost pro forma and paid with SAIL and EHCL loan proceeds. Failure to pay any fee associated with any applicable loan program shall cause the firm loan commitment under any such loan program(s) to be terminated or shall constitute a default on the respective loan documents. 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 a loan program(s) and a Housing Credit Allocation, failure to pay any fee associated with either the loan(s) or Housing Credits, or both, shall result in both the termination or default, as applicable, of the loan(s) and rescission of the Housing Credit Allocation.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.007, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, 1-29-06, 4-1-07, Repromulgated 3-30-08, Amended 8-6-09, 11-22-11, 10-9-13, 10-8-14, Repromulgated 9-15-16, 5-24-17,\_\_\_\_\_.*

#### **67-48.0072 Credit Underwriting and Loan Procedures.**

Credit underwriting is a de novo review of all information supplied, received or discovered during or after any competitive solicitation scoring and funding preference 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 SAIL, EHCL, or HOME loan amount, Housing Credit allocation amount or a combined SAIL or HOME loan amount and 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, including applicable energy, green, universal design and visitability features, 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 Rule Chapter 67-48, F.A.C.

(1) After the Board's decision to select Applicants for funding as a result of a competitive solicitation process has become final action, the Corporation shall offer such Applicants an invitation to enter credit underwriting. The Corporation shall select the Credit Underwriter for each Development. For purposes of this section, a decision regarding an Applicant will become final action:

(a) If none of the Board's selections of Applicants for funding are challenged pursuant to Section 120.57(3), F.S.;

(b) If some of the Board's selections of other Applicants for funding are challenged pursuant to Section 120.57(3), F.S., but none of the challenges could impact the decision to select the Applicant for funding, or

(c) When the Board issues a final order as a result of a challenge pursuant to Section 120.57(3), F.S.

(2) For SAIL, EHCL, and HOME Applicants, the invitation to enter credit underwriting constitutes a preliminary commitment.

(3) 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. For any invitation to enter credit underwriting that is offered to an Applicant after Board approval of the list of eligible Applications that is sorted from highest funding preference to lowest, where the Applicant's response is to decline to enter credit underwriting, the result shall be the removal of the Application from the list of eligible Applications for the applicable competitive solicitation and any other funding where that list of eligible Applications will be used.

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

(a) 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. In addition:

1. Within seven (7) Calendar Days of the date of the invitation, Competitive HC Applicants shall submit the Preliminary Recommendation Letter (PRL) fee to the Credit Underwriter; and,

2. Within 14 Calendar Days of the date of the invitation, Competitive HC, SAIL, EHCL, and HOME Applicants shall submit IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries to the Corporation.

(b) For Competitive HC, SAIL, EHCL, and HOME Applicants, failure to submit the required credit underwriting fee or the HC PRL fee, as applicable, by the specified deadline shall result in withdrawal of the invitation. For HOME Applicants that apply and qualify as a Non-Profit entity, the Corporation shall bear the cost of the credit underwriting review, environmental review, and legal counsel. However, if the HOME commitment is canceled for failure to adhere to rule deadlines or for reasons within the Applicant's control, the Development will be responsible for reimbursing the Corporation for fees incurred for credit underwriting, environmental review processing, and legal counsel.

(c) For SAIL, EHCL, and HOME ~~that is not in conjunction with Competitive HC~~, the credit underwriting process must be completed within the time frame outlined in subsection 67-48.0072(21), F.A.C., below and the loan must close within the time frame outlined in subsection 67-48.0072(26), F.A.C., below. ~~For SAIL and HOME that is in conjunction with Competitive HC, the credit underwriting process and loan closing must be accomplished within the time frames outlined in the competitive solicitation.~~

(5) The Credit Underwriter shall review all information in the Application and subsequently provided during the credit underwriting process, including information relative to the Applicant, Developer, Housing Credit Syndicator, General Contractor, and, if an ALF, the service provider(s), as well as other members of the Development team. 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.

(6) 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, 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.

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

2. 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.

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

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

(9) 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.

(10) For Competitive HC, SAIL, and HOME Applicants, ~~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 development type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the development property'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 SAIL or HOME loan, a Housing Credit Allocation, or a combined SAIL loan and Housing Credit Allocation or Housing Credit Allocation and HOME loan. 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.

(11) The proposed Development must demonstrate, based on current rates, that it can meet minimum 1.10x debt service coverage (DSC) requirements with all first and second mortgages for Housing Credits. If during the credit underwriting it is determined that there is no need for a first mortgage or any debt service payments then the proposed Development shall demonstrate the ability to achieve breakeven. In the case where an operating deficit reserve (ODR) is approved during credit underwriting, then the ODR can be used as income for purposes of this test. For SAIL and HOME, the minimum debt service coverage shall be 1.10x for the loan, including all superior mortgages. However, if the Applicant defers at least 35 percent of its Developer Fee for at least six (6) months following construction completion, the minimum debt service coverage shall be 1.00 for the SAIL or HOME loan, including all superior

mortgages. For SAIL, EHCL, and HOME, the maximum debt service coverage shall be 1.50x for the SAIL, EHCL, or HOME loan, including all superior mortgages. In extenuating circumstances, such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50x if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis. Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the first and second mortgages.

(12) For Competitive HC, SAIL, and HOME, the Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, 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 and a ~~capital physical~~ capital physical needs assessment for rehabilitation units and review the Development's costs. If an EHCL Development has a General Contractor, the preceding requirement will also apply to the EHCL Development.

(13) For Competitive HC, SAIL, and HOME, 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 eligible items which can be identified in a competitive solicitation 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.

(14) For SAIL, EHCL, HOME, and Competitive HC, the Credit Underwriter may request additional information, but at a minimum for SAIL, EHCL, and HOME, the following will be required during the underwriting process:

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

(b) For the Applicant, general partner(s), and guarantors, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If 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 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 the terms and conditions of this rule chapter and any applicable competitive solicitation.

(c) For the General Contractor, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100 percent of the total construction cost whose terms do not adversely affect the Corporation's interest, and is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

(15) For SAIL and HOME, ~~each the general partner partner(s) (whether individual or and entity) or each manager/managing member manager(s)/managing member(s) (whether individual or 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:

(a) Liquidity of any guarantee provider.

(b) Applicant's, Developer's and General Contractor's history in successfully completing Developments of similar nature.

(c) 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.

(d) Percentage of the Corporation's funds utilized compared to Total Development Costs.

If, aAfter evaluation of paragraphs (a)-(d), 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.



(16) For all Developments, the Developer Ffee and General Contractor's fee shall be limited to:

(a) Unless otherwise provided in a competitive solicitation process, the Developer Ffee shall be limited to 16 percent of Development Cost, excluding land and operating deficit reserves, except that, based upon criteria outlined in a competitive solicitation, a Developer Ffee of up to 21 percent of Development Cost, excluding land and operating deficit reserves, shall be allowed if the proposed Development is qualified for Competitive Housing Credits with a demographic commitment of Homeless or Persons with Special Needs. When the Developer Ffee is limited to 21 percent of the Development Cost, an amount equal to up to 5 percent of Development Cost, inclusive of any amount in excess of 16 percent, must be placed in an operating subsidy reserve account to be held by the Corporation or its servicer. Any disbursements from said operating subsidy reserve account shall be reviewed and approved by the Corporation or its servicer. Upon the expiration of the Compliance Period, any remaining balance in any operating deficit reserve (or similarly purposed) account may be drawn to pay down any outstanding Corporation loan debt, including loan fees, on the Development administered by the Corporation or its servicer. If there is no Corporation loan debt on the Development at the end of the Compliance Period, then any remaining balance in said operating subsidy reserve account shall be placed into either an operating subsidy reserve account or a replacement reserve account for the Development, which will have similar distribution restrictions as stated herein or in paragraph (b), below. In no event shall the remaining balance in said operating subsidy reserve account be paid to the Developer or General Contractor in an amount that would cause the Developer Ffee or General Contractor fee to exceed the applicable percentage limitations provided herein and in paragraph (b), below. Amounts withdrawn from the reserve account will not be considered Development Cash Flow. In the event amounts withdrawn are to pay any deferred Development Costs, it can be done prior to the end of the Compliance Period, but no sooner than the end of the 13th year of the Compliance Period and only after the Corporation's Credit Underwriter confirms that said withdrawal does not negatively impact the Development through the remainder of the Compliance Period. 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 the applicable 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.

To the extent there are any Housing Credits that are not sold to an investor(s) (and at the minimum price referenced in paragraph 67-48.0072(29)(h), F.A.C.), in excess of 0.01 percent of the Applicant's Housing Credit Allocation, then it will be assumed those unsold Housing Credits are valued at the same price as those Housing Credits sold to an investor(s) and that total value will be considered to be part of the Developer ~~F~~fee.

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

(17) 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 documentation;

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

(d) If deemed necessary by the Corporation and the Credit Underwriter in their evaluation of construction completion guarantees in (15) above, sSecure 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;

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

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

(g) 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 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "subcontractor"; and,

(h) 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 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

(18) For SAIL and HOME, the Credit Underwriter shall require an operating deficit guarantee. Upon written request of the guarantor(s) to the Corporation or its agent, the operating deficit guarantee will be released upon achievement of a 1.15x debt service coverage ratio for the combined permanent first mortgage and SAIL or HOME 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 earlier than 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. An operating deficit guarantee, to be released upon achievement of 1.00x debt service coverage for a minimum of six (6) consecutive months for the combined permanent first mortgage and SAIL or HOME loan will be required for Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the SAIL or HOME loan and all superior mortgages.

(19) 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, Moderate Rehabilitation, Substantial 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. Contingency reserves shall not be paid from SAIL or HOME funds.

(20) 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.

(21) Information required by the Credit Underwriter shall be provided as follows:

(a) For SAIL, EHCL, and HOME Developments, the Corporation shall issue a firm loan commitment after approval of the Credit Underwriter's recommendation for funding by the Board.

(b) For SAIL, EHCL, and HOME ~~that is not in conjunction with Competitive HC~~, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within twelve (12) ~~nine (9)~~ months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial twelve (12) ~~nine (9)~~ month deadline is approved. If an approved extension is utilized, for profit Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. Non-Profit

Applicants may request to pay the extension fee at the time of closing. Any such request must be made in writing to the Corporation. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

~~(c) For SAIL and HOME that is in conjunction with Competitive HC, the firm loan commitment must be issued within the time frame outlined in the competitive solicitation.~~

~~(c)~~ For Competitive HC Developments, regardless of whether the HC is in conjunction with SAIL or HOME, all preliminary items required for the Credit Underwriter's preliminary HC allocation recommendation must be provided to the Credit Underwriter within 21 Calendar Days of the date of the invitation to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to submit the required credit underwriting information by the specified deadline shall result in withdrawal of the invitation to enter credit underwriting. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. If the Corporation's decision is to deny the Applicant's request for an extension, then prior to the withdrawal of the invitation, the Board shall consider the facts and circumstances of the Applicant's request, the Corporation's denial, and any credit underwriting report, if available, and make a determination of whether to grant the requested extension.

(22) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation, shall result in withdrawal of the preliminary commitment or the invitation to enter credit underwriting, or both, as applicable. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. If the Corporation's decision is to deny the Applicant's request for an extension, then prior to the withdrawal of the preliminary commitment or the invitation to enter credit underwriting, or both, as applicable, the Board shall consider the facts and circumstances of the Applicant's request, the Corporation's denial, and any credit underwriting report, if available, and make a determination of whether to grant the requested extension.

(23) 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.

(24) For SAIL, EHCL, and HOME, the Credit Underwriter's loan recommendations will be sent to the Board for approval.

(25) For SAIL, EHCL, and HOME, the Corporation shall issue a firm loan commitment within seven (7) Calendar Days after approval of the Credit Underwriter's recommendation for funding by the Board.

(26) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation that is not in conjunction with Competitive HC, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, for profit Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. Non-Profit Applicants may request to pay the extension fee at the time of

closing. Any such request must be made in writing to the Corporation. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be obligated.

~~(27) For SAIL and HOME that is in conjunction with Competitive HC, upon issuance of the preliminary loan commitment, these Corporation loans and other mortgage loans related to the Development must close within the time frame outlined in the competitive solicitation.~~

~~(27)~~(28) Prior to any loan closing:

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

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

~~(28)~~(29) For Competitive Housing Credits, 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:

1. Unless otherwise stated in a competitive solicitation, twenty (20) basis points over the percentage as of the date of invitation to enter credit underwriting with a minimum of 9 percent for 9 percent credits for new construction and Rehabilitation Developments 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,

2. Fifteen (15) basis points over the percentage as of the date of invitation to enter credit underwriting up to 4 percent for 4 percent credits for acquisition and federally subsidized Developments, 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 Ffee. Consulting fees cannot cause the Developer Ffee to exceed the maximum allowable fee as set forth in subsection 67-48.0072(16), F.A.C.

(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 Competitive Housing Credit Allocation, the recommendation will be the lesser of:

1. The qualified basis calculation result,
2. The gap calculation result, or
3. The Housing Credit award considered in the Application.

During the credit underwriting process and as a part of the final cost certification process, the Development will be subjected to the Total Development Cost per unit limitation test as outlined in a competitive solicitation.

(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. In addition, the price of the Housing Credits being sold must reflect a market rate value at a minimum or one will be utilized when determining a recommendation for the amount of the Housing Credit Allocation using the gap calculation.

(g) When utilizing the gap calculation in determining a recommendation for the amount of the Housing Credit Allocation as part of the process the Corporation uses to determine financial feasibility as set forth in Section 42(m)(2) of the IRC, the Credit Underwriter shall assume a first mortgage loan amount from a non-governmental agency (i.e., a traditional first mortgage lender) to be the greater of:

1. The actual amount committed to the Development, or
2. The amount of the proposed Development's minimum qualifying first mortgage as determined herein. The Development's minimum qualifying first mortgage shall be the lesser of a. or b. as follows:
  - a. An amount that yields a debt service coverage ratio of 1.25x based on the pro forma for the proposed Development's 15th year given an annual rate of increase for revenues of the lesser of 2 percent or the annual rate of



increase utilized in credit underwriting, along with an annual rate of increase for operating expenses of the greater of 3 percent or the annual rate of increase utilized in credit underwriting, or

b. The greater of either:

(I) An amount that yields a debt service coverage ratio of 1.50x, or

(II) An amount that yields a net cash flow after debt service of \$1,000 per unit.

Both (I) and (II) above are based on the pro forma for the proposed Development's initial year as presented in the final credit underwriting report.

With regard to subparagraph 2., above, unless otherwise stated in a competitive solicitation, the first mortgage shall be sized based on an interest rate equal to the actual interest rate of the actual first mortgage of the proposed Development, but no less than an interest rate floor of the greater of 7.0 percent or 325 basis points over the 10-year Treasury Rate as of the submission deadline for the applicable competitive solicitation and an interest rate ceiling of no greater than 100 basis points over said interest rate floor. The first mortgage shall be sized based on an amortization term equal to the greater of the actual amortization term of the actual first mortgage of the proposed Development or 30 years. If the resulting calculated minimum qualifying first mortgage is less than \$500,000, then the Development shall assume to have no minimum qualified first mortgage. This determination applies to any Development that did not qualify as a Homeless or Persons with Special Needs Demographic Development, which said Homeless or Persons with Special Needs Demographic Developments would only use its actual committed debt.

(h) 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 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 process set forth in subsection 67-48.023(5), ~~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.

~~(29)(30)~~ 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 Allocation certificate. 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 Allocation shall be met or satisfied by the Applicant within 45 Calendar Days from the date of issuance or as otherwise indicated on the certificate.

~~(30)(31)~~ For Competitive HC, the credit underwriting report must be finalized no later than the deadline provided in the Carryover Allocation Agreement, unless extended as provided in the Carryover Allocation Agreement, or the Housing Credits will be deemed to be returned to the Corporation.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History—New 2-7-05, Amended 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-48.0075 Miscellaneous Criteria.**

(1) In addition to the alteration, improvement or modification of an existing structure, Rehabilitation or Preservation with respect to the HOME Program and Rehabilitation or Preservation with respect to the Housing Credit Program also includes:

- (a) For HOME Developments, moving an existing structure to a foundation constructed with HOME funds.

Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction.

(b) For Competitive Housing Credit Developments, what is stated in Section 42(e) of the IRC, except that 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 \$25,000 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 Land Use Restriction Agreement and the Extended Use Agreement.

(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. However, offsite improvements are not eligible to be paid with HOME funds.

(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/Moderate Rehabilitation/Substantial 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 67-48.002, 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 Rule 67-48.0072, F.A.C.

(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.

(7) 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 420.5087, 420.5089, 420.5099 FS. History—New 2-7-05, Amended 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17, Amended\_\_\_\_\_.*

## **PART II STATE APARTMENT INCENTIVE LOAN PROGRAM**

### **67-48.009 SAIL General Program Procedures and Restrictions.**

(1) Loans shall be in an amount not to exceed 25 percent of the Total Development Cost except as described in subsections (2) and (3), below, or the minimum amount required to make the Development economically feasible, whichever is less, as determined by the Credit Underwriter.

(2) The following types of Sponsors are eligible to apply for loans in excess of 25 percent of Total Development Cost pursuant to Section 420.507(22), F.S.:

(a) Non-Profit and public Sponsors which are able to secure grants, donations of land, or contributions from other sources collectively totaling at least 10 percent of Total Development Cost; and,

(b) Sponsors that set aside at least 80 percent of their total units for residents qualifying as Farmworkers as defined in Section 420.503, F.S., Commercial Fishing Workers as defined in Section 420.503, F.S., or the Homeless as defined in Section 420.621, F.S., or Persons with Special Needs as defined in Section 420.0004(13), F.S., over the life of the loan.

(3) Unless stated otherwise in any competitive solicitation, the following types of Sponsors are eligible to apply for loans that do not exceed 35 percent of Total Development Cost for proposed Developments serving the Family or Elderly demographic categories, as well as those serving the Homeless, Farmworker, Commercial Fishing Worker, or Persons with Special Needs demographic categories that do not meet the criteria outlined in subsection (2), above:

(a) Applicants requesting both SAIL and Competitive HC that commit to set aside more than 10 percent of the total units for ELI Households; and,

(b) Applicants requesting SAIL without Competitive HC that commit to set aside at least 5 percent of the total units for ELI Households.

(4) At a minimum, the percentage of set-aside units committed to in the Application must be held for Very Low-Income persons or households for a period of time equal to the greater of the following:

- (a) The term of the SAIL loan, or
- (b) 12 years from the date the first residential unit is occupied, or
- (c) Such longer term agreed to by the Applicant in the Application.

The set-aside requirements apply to the total number of residential units in the Development beginning on the later of the first day on which any residential unit in the Development is occupied or the SAIL loan closing date. For a period of 12 months beginning on the SAIL loan closing date (the “transition period”), the failure to satisfy the set-aside requirements shall not cause noncompliance.

(5) Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for SAIL Program funding if any of the following pertain to the proposed Development:

(a) Construction or construction-permanent financing of the costs associated with construction, Moderate Rehabilitation or Substantial Rehabilitation of the Development, including tax-exempt bonds or conventional financing with conversion clauses, has closed or will close prior to the date of the preliminary commitment for the applicable SAIL funding.

(b) The proposed Development has received an allocation of Housing Credits or a Competitive Housing Credit commitment, unless:

1. The Applicant is also applying for Corporation-issued tax exempt bonds or provides evidence of a non-Corporation-issued tax exempt bond commitment, or
2. Written notice has been provided to the Corporation prior to the deadline to apply for the applicable SAIL funding withdrawing acceptance of such allocation or commitment and returning the previously awarded HC funding.

(c) A preliminary commitment of funding for the proposed Development through the SAIL Program or the HOME Program has already been accepted, unless written notice has been provided to the Corporation prior to the deadline to apply for the new SAIL funding withdrawing such acceptance and returning the prior SAIL Program or HOME Program funding.

(d) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following exceptions applies:

1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community

Loan Program, or

2. A LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the deadline to apply for the applicable SAIL funding, where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Acquisition and Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Preservation, or Acquisition and Preservation.

(6) Unless stated otherwise in a competitive solicitation, the SAIL Minimum Set-Aside Requirement is:

(a) 20 percent of the SAIL Development's units set-aside for residents with annual household incomes at or below 50 percent of the area, metropolitan statistical area ("MSA") or state or county median income, whichever is higher, adjusted for family size, or

(b) 40 percent of the SAIL Development's units set-aside for residents with annual household incomes at or below 60 percent of the area, MSA or state or county median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting this minimum set-aside only if the SAIL Development is scheduled to be assisted with Housing Credits, in addition to the SAIL loan.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.009, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

**67-48.0095 Additional SAIL Selection Procedures.**

(1) Subject to the provisions of Section 420.507(48), F.S., during the first six (6) months following the publication date of the first Notice of Funding Availability published in any year within the state of Florida, SAIL funds shall be allocated in accordance with the ranking and selection process set forth in the applicable competitive solicitation and based upon the requirements specified in Section 420.5087(3), F.S., which specifies the required funding within the five (5) demographic categories of:

- (a) Family;
- (b) Elderly;
- (c) Homeless;
- (d) Commercial Fishing Workers and Farmworkers; and,
- (e) Persons with Special Needs.

(2) 10 percent of the funds for Developments in the Elderly category shall be made available for the EHCL Program to provide loans to Sponsors of housing for the Elderly for the purpose of making life-safety or security-related repairs or improvements to such housing which are required by federal, state or local regulation, as further specified in Section 420.5087, F.S., and this rule chapter.

(3) The Corporation shall make available tentative loan amounts to Applicants in each demographic and geographic category, up to the total amount available.

(4) In the event that the 10 percent of program funds required to be allocated to counties with a population of 100,000 or less remains unallocated at the conclusion of a competitive solicitation, the unallocated funds shall be equitably distributed pursuant to Board approval.

(5) Selection for SAIL Program participation is contingent upon fund availability at the conclusion of the appeals process as set forth in Rule 67-60.009, F.A.C.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087 FS. History—New 12-23-96, Amended 1-6-98, Formerly 9I-48.0095, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, Repromulgated 3-30-08, 8-6-09, 11-22-11, Amended 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17,\_\_\_\_\_.*

**67-48.010 Terms and Conditions of SAIL Loans.**

(1) The proceeds of all SAIL loans shall be used for new construction or rehabilitation which creates or preserves affordable, safe and sanitary multifamily rental housing units.

(2) The SAIL loan may be in a first, second, or other subordinated lien position. For purposes of this rule, mortgages securing a letter of credit as credit enhancement for the bonds financing the first mortgage shall be considered a contingent liability and part of the first mortgage lien, provided that the Applicant's counsel furnishes an opinion regarding the contingent nature of such mortgage satisfactory to the Corporation and its counsel.

(3) The loans shall be non-amortizing and shall have interest rates as provided in Section 420.507(22), F.S., and specified in an applicable competitive solicitation.

(4) Except as provided in Section 420.5087(5), F.S., the amount of any superior mortgages combined with the SAIL mortgage shall be less than the appraised value of the Development. Any debt service reserve requirement associated with a superior mortgage shall be excluded from the amount of the superior mortgage for purposes of this calculation.

(5) Payment on the loans shall be based upon the Development Cash Flow, as determined pursuant to the financial



reporting requirements as provided in a competitive solicitation, or shall be due annually as determined by the Corporation's Board of Directors. Such determination by the Board shall be based upon a written recommendation by the Credit Underwriter which has considered the economic and financial viability of the Development as well as the protection of the Corporation's repayment of principal and interest. Any distribution or payment to the Principal(s) of the Applicant or Developer or any Affiliate of the Principal of the Applicant or Developer or any Affiliate of the Applicant or Developer, whether paid directly or indirectly, which was not expressly disclosed in determining the annual debt service coverage in the Board approved final credit underwriting report, with the exception of payment of the Developer Fee allowable to maximum of 20 percent per year, will be added back to the amount of cash available for the SAIL loan interest payment, pursuant to the financial reporting process, for the purpose of determining interest due. Interest may be deferred as set forth in subsection 67-48.010(8), F.A.C., without constituting a default on the loan.

(6) The loans described in subsection 67-48.010(3), F.A.C., above, shall be repaid from Development Cash Flow, and if the SAIL loan is not a first mortgage loan, each year, subject to the provisions of subsection 67-48.010(8), F.A.C., below, Development Cash Flow shall be applied to pay the following items in order of priority:

- (a) All superior mortgage fees and debt service as calculated and disclosed in the Board approved final credit underwriting report;
- (b) Development Expenses for the SAIL Development, plus up to 20 percent of total Developer Fees per year;
- (c) Interest payment on SAIL loan balance equal to the percentage specified in the applicable competitive solicitation over the life of the SAIL loan;
- (d) Interest payments on the SAIL loan deferred from previous years;
- (e) Mandatory payment on subordinate mortgages.

After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

(7) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of subsection 67-48.010(8), F.A.C., below, Development Cash Flow shall be applied to pay the following items in order of priority:

- (a) First mortgage fees and interest payment on the SAIL loan balance equal to the percentage specified in the applicable competitive solicitation over the life of the SAIL loan;
- (b) Development Expenses on the SAIL Development plus up to 20 percent of total Developer Fees per year;

- (c) Interest payments on the SAIL loan deferred from previous years;
- (d) Mandatory payment on subordinate mortgages.

After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

(8) The determination of lien position, determination of Development Cash Flow, determination of payment priorities, and payment of interest on SAIL loans shall occur annually. A change in lien position from subordinate to first changes payment priorities. Any payments of accrued and unpaid interest due annually on SAIL loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this rule chapter. If Development Cash Flow is under-reported and such report causes a deferral of SAIL interest, such under-reporting shall constitute an event of default on the SAIL loan. A penalty of 5 percent of any required payment shall be assessed.

(a) By the date that is 151 Calendar Days after the Applicant's fiscal year end of each year of the SAIL loan term, the Applicant shall provide the Corporation's servicer with audited financial statements and a certification detailing the information needed to determine the annual payment to be made. However, this certification requirement will be waived until 151 Calendar Days after the Applicant's fiscal year end following the fiscal year within which the first unit is occupied. In the case where the SAIL 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 SAIL loan closing is observed. The certification shall require submission of audited financial statements and any other financial reporting requirements as provided in a competitive solicitation. 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 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 \$500 will be assessed by the Corporation for failure to submit the required audited financial statements and certification by 151 Calendar Days after the Applicant's fiscal year end of each year of the SAIL loan term. If the Applicant has not submitted the required audited financial statements, the Corporation servicer shall deem the Development Cash Flow sufficient and issue a billing for interest due on the SAIL loan for the Applicant's immediately preceding fiscal year by 212 Calendar Days after the Applicant's fiscal year end. After receipt of the audited financial statements, the Corporation servicer shall issue revised billing, if necessary. Failure to submit the required audited financial statements and certification by 151 Calendar Days after the Applicant's fiscal year end of each year of the SAIL loan term shall constitute an event of default on the SAIL loan. The Applicant shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant's principal financial or accounting officer, covering such financial matters as the Corporation or its servicer may reasonably request, including without limitation, monthly statements with respect to the Development.

For SAIL loans applied for prior to February 22, 2001, the Corporation will extend the annual filing deadline for submission of the audited financial statements and certification detailing the information needed to determine the annual payment to be made, pursuant to subsection 67-48.010(8), F.A.C., to May 31 of each year of the SAIL loan term. The Corporation servicer shall issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by July 31 of each calendar year of the SAIL loan. In addition, for SAIL loans applied for prior to December 23, 1996, so long as the executed loan agreements contain a provision to assess a late fee for failure to provide the audited financial statement and certification detailing the information needed to determine the annual payment due, such fee will be assessed by the Corporation as outlined above.

(b) The Corporation servicer shall issue a billing for interest due on the SAIL loan for the Applicant's immediately preceding fiscal year by 212 Calendar Days after the Applicant's fiscal year end of each year of the SAIL loan term.

(c) The Applicant shall remit the interest due to the Corporation servicer no later than 243 Calendar Days after the Applicant's fiscal year end of each year of the SAIL loan term. The first payment of SAIL interest will be due no later than 243 Calendar Days after the Applicant's fiscal year end following the fiscal year within which the first unit is occupied. The first payment of interest shall include all interest for the period which begins accruing on the date of the first Draw and ends on the date of the Applicant's fiscal year end of the fiscal year during which the first unit is occupied.

(9) After maturity or acceleration, the Note shall bear interest at its default interest rate, as provided therein, from

the due date until paid. Unless the Corporation has accelerated the SAIL loan, the Applicant shall pay the Corporation a late charge of 5 percent of any required payment that is not received by the Corporation within 15 days of the due date.

(10) The final billing for the purpose of payoff of the SAIL loan shall also include a billing for compliance fees to cover monitoring of SAIL Program requirements beyond the maturity date of the Note. Such fees shall be computed by determining the present value of the annual compliance monitoring fee for the number of years for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. The applicable present value discount rate shall be established in each competitive solicitation. Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Development for the period, provided:

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

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

(11) The SAIL loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.

(12) The Corporation shall monitor compliance of all terms and conditions of the SAIL loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement and recorded in the public records of the county wherein the Development is located. Violation of any material term or condition of the documents evidencing or securing the SAIL loan shall constitute a default during the term of the SAIL loan. The Corporation shall take appropriate legal action to effect compliance if a violation of any material term or condition relative to the set-asides of units for Very Low-Income persons or households is discovered during the course of compliance monitoring or by any other means.

(13) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender, the Corporation, or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance as required by the terms and conditions outlined in a competitive solicitation.

(14) The SAIL loan term shall be for a period of not more than 15 years. However, if both a SAIL loan and federal Housing Credits are to be used to assist a Development, the Corporation may set the SAIL loan term for a period

commensurate with the investment requirements associated with the Housing Credit syndication. The term of the loan may also exceed 15 years if the lien of the Corporation's encumbrance is subordinate to the lien of another mortgage, in which case the term may be made coterminous with the longest term of the superior loan.

(15) After accepting a preliminary commitment, the Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the SAIL mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. The Corporation must be notified in writing of any such change.

Following construction completion, the Corporation will recommend that the Board deny any requests to increase the amount of any superior mortgage, unless the criteria outlined in subsection 67-48.0105(5), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance, the following calculation shall be used: divide the amount of the original SAIL mortgage by the combined amount of the original SAIL mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage from the current balance. For example, if the amount of the original SAIL mortgage is \$2,000,000, the original superior mortgage is \$4,400,000, with a current balance of \$3,000,000, a proposed new superior mortgage of \$5,000,000, then the amount of the increase in the superior mortgage would be \$2,000,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance would be \$625,000. This \$625,000 would be applied first to accrued interest and then to principal.

(16) All SAIL loans shall be in conformance with applicable federal and state statutes. The Corporation shall allow units dedicated to occupancy by the Elderly in a Development designed for occupancy by elderly households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR Part 100.

(17) Rent controls are determined in a manner consistent with Section 42(g)(2) of the IRC. 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.

(18) The documents creating, evidencing or securing each SAIL loan must provide that any violation of the terms

and conditions described in Rule Chapter 67-48, F.A.C., any competitive solicitation, or both, constitutes a default under the SAIL loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

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

(20) If, after a four-month rent-up period commencing after issuance of the last certificate of occupancy on the units, an Applicant is unable to meet the agreed-upon demographic commitment for Elderly, Homeless, Persons with Special Needs, Farmworker or Commercial Fishing Worker, the Applicant may request to rent such units to Very Low-Income persons or households without demographic restriction.

(a) The written request must provide documentation of marketing efforts implemented over the past four-month period which demonstrate the inclusion of sources of potential residents, advertising to be used, other means of encouraging residents to rent at the Development, and priority to the original targeted group of residents. If the Corporation determines that prior marketing efforts were insufficient, a revised plan which is satisfactory to the Corporation must be submitted and implemented for a four-month period prior to reconsideration.

(b) The Corporation will recommend that the Board require that Applicants provide additional amenities or resident programs suitable for the proposed resident population.

(c) The Corporation will recommend that the Board require that Applicants to modify loan documents to conform to the terms and conditions, including the interest rate, as outlined in the competitive solicitation, or to accelerate payments of SAIL loan principal or interest.

(21) Failure to provide the Corporation and its servicer with any financial reporting required in a competitive solicitation detailing the information needed to determine the annual payment to be made pursuant to this rule chapter shall constitute a default on the SAIL loan.

(22) For SAIL loans applied for prior to March 17, 2002, at the borrower's request, the Corporation will include up to 20 percent of total Developer Fees per year as a Development Expense when calculating the interest due on the SAIL loan for the 2003 calendar year for the billing issued in 2004 and for the billing for interest due each calendar year thereafter. Development Expense will not include Developer Fees for determination of payment of interest on SAIL loans applied for prior to March 17, 2002 for the 2002 calendar year or any previous calendar year. For purposes in this paragraph, Development Expense has the same meaning as Project Expense and Eligible Project Expense as

those terms are used in SAIL loans applied for prior to March 17, 2002.

(23) The Compliance Period for a SAIL Development shall be, at a minimum, a period of time equal to the greater of:

- (a) The term of the loan,
- (b) 12 years from the date the first residential unit is occupied, or
- (c) Such longer period agreed to by the Applicant in the Application.

The set-aside requirements apply to the total number of residential units in the Development beginning on the later of the first day on which any residential unit in the Development is occupied or the SAIL loan closing date. For a period of 12 months beginning on the SAIL loan closing date (the “transition period”), the failure to satisfy the set-aside requirements shall not cause noncompliance.

(24) Unless and until a guarantor’s obligations for a SAIL 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 paragraphs (a) through (c), below, as the Corporation or its servicer may reasonably request.

(a) 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 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

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

(c) 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.

(25) Any SAIL Applicant from SAIL Application cycles with non-amortizing loans at 9 percent simple interest per annum with payments based on Development Cash Flow pursuant to the applicable cycle rule, may submit a written renegotiation request to the Corporation to modify their SAIL loan interest rate going forward from 9 percent simple interest per annum to 3 percent simple interest per annum with payments based on Development Cash Flow pursuant to subsections 67-48.010(5)-(10), F.A.C., in exchange for providing a payment to the Corporation of the deferred interest based on an accrual rate of 3 percent simple interest per annum in no more than five (5) equal annual installments but in no event shall it be later than the maturity date of the loan. Payments made from Development Cash Flow, shall be included as Development Expenses as stated in paragraph 67-48.010(6)(b), F.A.C. All loan renegotiation requests must be submitted in writing to the Director of Special Assets. In addition to any related professional fees, the Corporation shall charge a non-refundable renegotiation fee as outlined in the most current competitive solicitation. The Corporation shall not proceed with the request until the Applicant or Developer has satisfied any financial obligations for which the Applicant or Developer, or Principal, Affiliate or Financial Beneficiary of the Applicant or Developer is in arrears to the Corporation or any agent or assignee of the Corporation.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.010, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-48.0105 Sale, Transfer or Refinancing of a SAIL Development.**

(1) Any sale, conveyance, assignment, or other transfer of interest or the grant of a security interest in all or any part of the title to the Development other than a superior mortgage shall be subject to the Corporation’s prior written approval. The Board shall consider the facts and circumstances of each Applicant’s request and any credit underwriting report, if available, prior to determining whether to grant such request.

(2) The SAIL loan shall be assumable upon sale or transfer of the Development if the following conditions are met:

(a) The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the SAIL loan for the period originally specified or longer; and,

(c) The proposed transferee and release of transferor receives a favorable recommendation from the Credit



Underwriter and approval by the Board of Directors of the Corporation.

All assumption requests must be submitted in writing to the Director of Special Assets and contain the specific details of the transfer and assumption. In addition to any related professional fees, the Corporation shall charge a non-refundable assumption fee of one-tenth of one percent of the SAIL loan principal amount as outlined in the most current competitive solicitation. The applicable fee will be determined by the rule in effect at the time of the assumption request.

(3) If the SAIL loan is not assumed since the buyer does not meet the criteria for assumption of the SAIL loan, the SAIL loan (principal and any outstanding interest) shall be repaid from the proceeds of the sale in the following order of priority:

(a) First mortgage debt service, first mortgage fees;

(b) SAIL compliance and loan servicing fees;

(c) An amount equal to the present value of the compliance monitoring fee for the periods for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. Such amount shall be reduced by the amount of any compliance monitoring fees collected by the Corporation for the Development for that period, provided:

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

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

(d) Unpaid principal balance of the SAIL loan;

(e) Any interest due on the SAIL loan;

(f) Expenses of the sale;

(g) If there will be insufficient funds available from the proposed sale of the Development to satisfy paragraphs (3)(a)-(f), above, the SAIL loan shall not be satisfied until the Corporation has received:

1. An appraisal prepared by an appraiser selected by the Corporation or the Credit Underwriter indicating that the purchase price for the Development is reasonable and consistent with existing market conditions,

2. A certification from the Applicant that the purchase price reported is the actual price paid for the Development, as supported by a copy of the final executed purchase and sale agreement, and that no other consideration passed

between the parties, as supported by a draft and final closing statement, and that the Development Cash Flow reported to the Corporation during the term of the SAIL loan was true and accurate,

3. A certification from the Applicant that there are no Development funds available to repay the SAIL loan, including any interest due, and the Applicant knows of no source from which funds could or would be forthcoming to pay the SAIL loan; and,

4. A certification from the Applicant detailing the information needed to determine the final billing for SAIL loan interest. Such certification shall require submission of financial statements and other documents that may be required by the Corporation and its servicer.

(4) The Corporation may renegotiate and extend the loan in order to extend or retain the availability of housing for the target population. Such renegotiations shall be based upon:

(a) Performance of the Applicant during the SAIL loan term;

(b) Availability of similar housing stock for the target population in the area;

(c) Documentation and certification by the Applicant that funds are not available to repay the Note upon maturity;

(d) A plan for the repayment of the loan at the new maturity date;

(e) Assurance that the security interest of the Corporation will not be jeopardized by the new term(s); and,

(f) Industry standard terms which may include amortizing loans requiring regularly scheduled payments of principal and interest.

All loan renegotiation requests, ~~including requests for extension,~~ must be submitted in writing to the Director of Special Assets and contain the specific details of the renegotiation. In addition to any related professional fees, the Corporation shall charge a non-refundable renegotiation fee of one-half of one percent of the SAIL loan principal amount as outlined in the most current competitive solicitation. The applicable fee will be determined by the rule in effect at the time of the renegotiation request. All loan extension requests must be submitted in writing to the Director of Special Assets and contain the specific details of the extension. In addition to any related professional fees, the Corporation shall charge a non-refundable extension fee of one-tenth of one percent of the SAIL loan principal amount. The applicable fee will be determined by the rule in effect at the time of the extension request.

(5) The Corporation will recommend that the Board approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(6) The Corporation will recommend that the Board deny any requests for mortgage loan refinancing which require extension of the SAIL loan term or otherwise adversely affect the security interest of the Corporation, unless the criteria outlined in subsection 67-48.0105(5), F.A.C., are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development, or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Corporation will recommend that the Board limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

The Corporation will recommend that the Board deny any requests to increase the amount of any superior mortgage, unless the criteria outlined in subsection 67-48.010(15), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL loan balance.

All requests which only require subordination of the regulatory agreements must be submitted in writing to the Director of Special Assets and contain the specific details of the subordination. In addition to any related professional fees, the Corporation shall charge a non-refundable subordination fee of \$1,000 for each regulatory agreement to be subordinated. The applicable fee will be determined by the rule in effect at the time of the subordination request.

All requests which only require extension of the affordability period under the regulatory agreements must be submitted in writing to the Director of Special Assets and contain the specific details of the extension. In addition to any related professional fees, the Corporation shall charge a non-refundable extension fee of \$1,000 for each extension of the regulatory agreement. The applicable fee will be determined by the rule in effect at the time of the extension request.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087 FS. History—New 12-23-96, Amended 1-6-98, Formerly 91-48.0105, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, Repromulgated 2-7-05, Amended 1-29-06, 4-1-07, Repromulgated 3-30-08, Amended 8-6-09, Repromulgated 11-22-11, Amended 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

#### **67-48.013 SAIL Construction Disbursements and Permanent Loan Servicing.**

(1) SAIL loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the SAIL loan to the Total Development Cost, unless approved by the Corporation and the Credit

Underwriter.

(2) Ten (10) business days prior to each Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw. The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.

(3) The Corporation and its servicer shall review the request for a Draw, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw.

(4) The Corporation shall disburse construction Draws through Automated Clearing House (ACH). The Applicant may request disbursement of construction Draws via a wire transfer. The Applicant will be charged a fee of \$10 for each wire transfer requested. This charge will be netted against the Draw amount.

(5) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Applicant in connection with the request for a Draw, if:

(a) The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs from that as shown on the loan documents, or

(b) The percentage of progress of construction of the improvements differs from that shown on the request for a Draw.

(6) The servicer may request submission of revised construction budgets.

(7) Based on the Applicant's progress of construction, if the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Draw, the Applicant shall pay to the Credit Underwriter a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter.

(8) Retainage in the amount of 10 percent per Draw shall be held by the servicer during construction until the Development is 50 percent complete. At 50 percent completion, no additional retainage shall be held from the remaining Draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the SAIL loan agreement.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.013, Amended 11-9-98, 2-24-00, 2-22-01, 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, 11-22-11, Amended 10-9-13, Repromulgated 10-8-14, Amended 9-15-16, Repromulgated 5-24-17,\_\_\_\_\_.*

### **PART III HOME INVESTMENT PARTNERSHIPS PROGRAM**

#### **67-48.014 HOME General Program Procedures and Restrictions.**

(1) Unless otherwise provided in a competitive solicitation, the Corporation shall utilize up to 10 percent of the HOME allocation for administrative costs pursuant to 24 CFR Part 92.

(2) The Corporation shall utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92. In order to apply under the CHDO set-aside, the CHDO must meet all CHDO requirements as defined by HUD in 24 CFR Part 92 and other Corporation requirements identified in a competitive solicitation.

(3) For any rental funding administered pursuant to Rule Chapter 67-48, F.A.C., the Corporation will distribute funds as provided in the applicable competitive solicitation.

(4) The maximum per-unit subsidy amount of HOME funds that the Corporation shall invest on a per-unit basis in affordable housing shall not exceed the per-unit dollar limits established by the Corporation as identified in the applicable competitive solicitation.

(5) The minimum amount of HOME funds that must be invested in a Rental Development is \$1,000 times the number of HOME-Assisted Units in the Development.

(6) A Development qualifies as affordable housing and for HOME funds if, with respect to income and occupancy:

(a) 80 percent of the HOME-Assisted Units are occupied by families whose annual income does not exceed 60 percent of the median family income for the area, as determined by HUD, with adjustments for family size; and,

(b) 20 percent of the HOME-Assisted Units are occupied by families whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD, with adjustments for family size.

(c) When the income of a resident increases above 80 percent of area median income, the next unit that becomes available in the Development must be rented to a HOME income-eligible resident. If the income of a Very Low-Income household increases above the limits for a Very Low-Income household, then the Developer must rent the next available unit to a Very Low-Income household. The amount of rent the resident whose income has increased must pay is the lesser of the amount payable by resident under state or local law or 30 percent of the adjusted monthly income for rent and utilities.

(d) High HOME rent means 80 percent of the HOME-Assisted Units in a Development must have rents set at no

more than the lesser of the Section 8 Fair Market Rent (FMRs) or rents that are 30 percent of the gross income of a Family at 65 percent of median income limit, minus utility allowance. Low HOME rent means 20 percent of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs), or 30 percent of the gross income of a Family at 50 percent of the area median income, minus utility allowance. The rent limits for a HOME Rent-Restricted Unit is the maximum gross rent that can be charged for a HOME Rent-Restricted Unit (FMRs, 30 percent of the gross income of a family at 65 percent of median income, or 30 percent of the gross income of a family at 50 percent of the area median income), less the applicable utility allowance. These rent limits are published in HUD periodically, HOME-Assisted Units with Section 8 subsidy must compare the Section 8 gross rent (resident rent, subsidy amount, and utility allowance) to the maximum applicable HOME high or low rent limit minus utilities. However, Developments with project-based rental assistance may utilize the project-based rents as compared to the HOME High and Low rents. Compliance with the HOME rent restrictions will take precedence over the Developer's acceptance of a full Section 8 (resident-based) subsidy for the HOME-Assisted Units. However, if a HOME Rent-Restricted Unit receives federal or state project-based rental subsidy and the Family's contribution toward rent does not exceed 30 percent of the Family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.

(e) The minimum Compliance Period for Rehabilitation Developments is 15 years from Project Completion as defined in 24 CFR §92.2.

The set-aside requirements apply beginning on the later of the first day on which any residential unit in the Development is occupied or the HOME loan closing date. The Compliance Period will be extended until the later of such longer term agreed to by the Applicant in its Application or the loan is repaid as enumerated in subsection 67-48.020(1), F.A.C.

(f) The minimum Compliance Period for newly-constructed rental housing is 20 years from Project Completion as defined in 24 CFR §92.2. The set-aside requirements apply beginning on the later of the first day on which any residential unit in the Development is occupied or the HOME loan closing date. The Compliance Period will be extended until the later of such longer term agreed to by the Applicant in its Application or the loan is repaid as enumerated in subsection 67-48.020(1), F.A.C.

(g) The minimum percentage of HOME-Assisted Units within a Development must be at least equal to the

percentage (ratio) calculated by dividing the HOME loan amount by the Total Development Cost. This percentage will be utilized to determine the minimum number of HOME-Assisted Units required within a Development. HOME-Assisted Units must be identified at the time of Application. For purposes of meeting affordable housing requirements for a Development, the HOME-Assisted Units counted may be changed over the Compliance Period, so long as the total number of HOME-Assisted Units remains the same, and the substituted units are, at a minimum, comparable in terms of size, features, and number of bedrooms to the original HOME-Assisted Units.

(h) The Development will remain affordable, pursuant to commitments documented within the executed Land Use Restriction Agreement without regard to the term of the mortgage or to transfer of ownership.

(7) The Development must comply with all applicable provisions of 24 CFR Part 92, Rule Chapter 67-48, F.A.C., and any competitive solicitation process.

(8) A Development that is under construction may be eligible to apply for HOME funds only if the final building permit is dated no earlier than six (6) months prior to the submission deadline for the applicable competitive solicitation, the Development is able to provide evidence of compliance with federal labor standards (if 12 or more units are developed under a single contract) for any work already completed, and the Development is able to provide evidence of compliance with HUD environmental requirements as well as all other federal HOME regulations as listed in Rule 67-48.014, F.A.C., and 24 CFR Part 92. The federal requirements may require completion of activities prior to submission of an Application for HOME funding.

(9) Any single contract for the development (rehabilitation or new construction) of affordable housing with 12 or more units under the HOME Program must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. §§3142 – 3144, 3146 and 3147 (2002), 24 CFR §92.354, 24 CFR Part 70 (volunteers), and 40 U.S.C. §3145 (2002), will be paid to all laborers and mechanics employed for the construction or rehabilitation of the Development, and such contracts must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§3701 – 3706 and 3708 (2002), the Copeland Act (Anti-Kickback Act), 40 U.S.C. §3145 (2002), and the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201 et seq.).

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

(a) Equal Opportunity and Fair Housing as enumerated in 24 CFR §92.202 and 92.251, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Fair Housing Act (42 U.S.C. §§3601-3619), Age Discrimination Act

of 1975, as amended (42 U.S.C. §6101), Executive Order 11063 (amended by Executive Order 12259), and 24 CFR §5.105(a).

(b) Affirmative Marketing as enumerated in 24 CFR §92.351.

(c) Environmental Review as enumerated in 24 CFR §92.352, 24 CFR Part 58 and National Environmental Policy Act of 1969.

(d) Displacement, Relocation, and Acquisition as enumerated in 24 CFR §92.353, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4201-4655), 49 CFR Part 24, 24 CFR Part 42 (Subpart C), and Section 104(d) “Barney Frank Amendments.”

(e) Lead-based Paint as enumerated in 24 CFR §92.355 and 24 CFR Part 35.

(f) Conflict of Interest as enumerated in 24 CFR §92.356, 2 CFR §200.317 and 2 CFR §200.318.

(g) Debarment and Suspension as enumerated in 24 CFR Part 24.

(h) Handicapped Accessibility as enumerated in Section 504 of the Rehabilitation Act of 1973 (implemented in 24 CFR Part 8) and 24 CFR §100.205.

(i) Americans with Disabilities Act as enumerated in 42 U.S.C. §12131; and 47 U.S.C. §§155, 201, 218 and 225.

(j) Equal Opportunity Employment as enumerated in Executive Order 11246 (implemented in 41 CFR Part 60).

(k) Economic Opportunity for Low- and Very Low-Income Persons as implemented in 24 CFR Part 135.

(l) Minority/Women Employment as enumerated in 2 CFR §200.321 and Executive Orders 11625, 12432, and 12138.

(m) Site and Neighborhood Standards as enumerated in 24 CFR §92.202.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(2) FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.014, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17,\_\_\_\_\_.*

**67-48.015 Match Contribution Requirement for HOME Allocation.**

(1) The Corporation is required by HUD to match non-federal funds to the HOME allocation as specified in 24 CFR Part 92.

(2) A Match Credit Fund funded by the state of Florida has been appropriated to the Corporation. The funds are to be used for demonstration Developments, pilot programs, or other Developments selected and approved by the Corporation’s Board of Directors. Such pilot programs or Developments shall be counted as the Corporation’s required



match for HUD purposes and may be any eligible activity acceptable to 24 CFR Part 92 and approved by the Corporation's Board of Directors.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(4) FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.015, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-48.017 Eligible HOME Activities.**

HOME funds may be used for acquisition (must include new construction and/or Rehabilitation), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities or for tenant based rental assistance pursuant to 24 CFR Part 92.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.017, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, Amended 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-48.018 Eligible HOME Applicants.**

(1) Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for HOME Program funding if any of the following pertain to the proposed Development:

(a) The proposed Development has received an allocation of Housing Credits or a Competitive Housing Credit commitment, unless written notice has been provided to the Corporation prior to the deadline to apply for the applicable HOME funding withdrawing acceptance of such allocation or commitment and returning the previously awarded HC funding;

(b) A preliminary commitment of funding for the proposed Development through the HOME Program or the SAIL Program has already been accepted, unless written notice has been provided to the Corporation prior to the deadline to apply for the new HOME funding withdrawing such acceptance and returning the prior HOME Program or SAIL Program funding.

(c) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following applies:

1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community

Loan Program, or

2. A LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the deadline to apply for the applicable HOME funding, where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation, Acquisition and Rehabilitation, Preservation or Acquisition and Preservation.

(2) Applicants for HOME loans may include CHDOs, Public Housing Authorities, Local Governments, Non-Profit organizations, and private for-profit organizations. The Applicant must be a legally-formed, existing entity at the time of Application. Pursuant to 24 CFR Part 92, Applicants may not request additional HOME funding during the period of affordability.

(3) For tenant based rental assistance, eligible Public Housing Authorities or their designees, who are Section Eight administrators, shall be limited to those Public Housing Authorities that provide a copy of their most recent Section Eight Management Assessment Program (SEMAP) and can demonstrate compliance with 24 CFR §982.401.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.018, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, Repromulgated 9-15-16, Amended 5-24-17, Repromulgated \_\_\_\_\_.*

**67-48.019 Eligible and Ineligible HOME Development Costs.**

(1) HOME funds may be used to pay for the following eligible costs as enumerated in 24 CFR Part 92:

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

1. New construction, the costs necessary to meet all applicable local and state codes, ordinances, and zoning requirements. Note that 24 CFR §92.251 requires that HOME-Assisted new construction projects must meet state or local residential and building codes, as applicable or, in the absence of a state or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council,

2. Rehabilitation, the costs necessary to meet all applicable local and state codes, ordinances, and requirements or, in the absence of a state or local building code, the International Existing Building Code of the International Code Council and Uniform Physical Condition Standards pursuant to 24 CFR 5.705,

3. Both new construction and rehabilitation, costs to demolish existing structures, improvements to the

Development site and utility connections;

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

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

1. Architectural, engineering or related professional services required to prepare plans, drawings, specifications or work write-ups,
2. Costs to process and settle the HOME financing for a Development, such as credit reports, fees for evidence of title, recordation, building permits, attorney fees, cost certifications, and estimates,
3. Developer's and General Contractor's fees as described in Rule 67-48.0072, F.A.C.,
4. Impact fees,
5. Costs of Development audits required by the Corporation,
6. Affirmative marketing and fair housing costs,
7. Temporary relocation costs as required under 24 CFR Part 92.

(2) HOME funds shall not be used to pay for the following ineligible costs:

- (a) Development reserve accounts for replacements, unanticipated increases in operating costs, or operating subsidies, except as described in 24 CFR §92.206(d)(5);
- (b) Public housing;
- (c) Administrative costs, or
- (d) Any other expenses not allowed under 24 CFR Part 92.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.019, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, Amended 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, Amended 10-8-14, 9-15-16, Repromulgated 5-24-17,\_\_\_\_\_.*

**67-48.020 Terms and Conditions of Loans for HOME Rental Developments.**

All HOME Rental Development loans shall be in compliance with the Act, 24 CFR Part 92 and, at a minimum, contain the following terms and conditions:

(1) The HOME loan may be in a first, second, or subordinated lien position. The term of the loan shall be for a minimum period of 15 years for Rehabilitation Developments and 20 years for new construction Developments. The term of the HOME loan may be extended upon the recommendation of the Credit Underwriter and approval by the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of the financial feasibility of the Development.

(2) The annual interest rate will be determined by the following:

(a) All for-profit Applicants that own 100 percent of the ownership interest in the Development held by the general partner or managing member entity will receive a 1.5 percent per annum interest rate loan.

(b) All qualified non-profit Applicants that own 100 percent of the ownership interest in the Development held by the general partner or managing member entity will receive a 0 percent interest rate loan. For purposes of determining the annual HOME interest rate, the definition of Non-Profit found at Rules 67-48.002 and 67-48.0075, F.A.C., shall not apply; instead, qualified non-profit Applicants shall be those entities defined in 24 CFR Part 92, 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.

(c) If the Applicant is a Public Housing Authority, or if the Applicant is an entity created by a Public Housing Authority under Section 421.08, F.S., and such Public Housing Authority owns 100 percent of the ownership interest in the Development held by the general partner or managing member of such Applicant entity, the loans funded after February 20, 2011 will receive a 0 percent interest rate.

(d) An Applicant owned in part by a qualified non-profit or a Public Housing Authority, but which does not meet the requirements of paragraph (b) or (c), above, will, for loans funded after February 20, 2011, receive a 0 percent interest rate loan on the portion of the loan amount equal to the qualified non-profit's or Public Housing Authority's ownership interest in the Development held by the general partner or managing member of such Applicant entity. A 1.5 percent interest rate shall be charged on the balance of the loan amount. The interest rate charged on the total loan amount shall be determined by blending the rates proportionately. After closing, should the Applicant sell any portion of the Development ownership, the loan interest rate ratio will be adjusted to conform to the new percentage of ownership.

(e) Notwithstanding the provisions of paragraphs (a) through (d), above, the annual interest rate for those HOME loans closed after February 20, 2011 where the HOME Developments are at least partially financed with a MMRB

Loan (as defined in Rule Chapter 67-21, F.A.C.) shall be as specified in an applicable competitive solicitation.

(3) The loans shall be non-amortizing and repayment of principal shall be deferred until maturity, unless otherwise recommended by the Credit Underwriter and approved by the Corporation. Unless otherwise provided in any competitive solicitation, the Corporation will consider the facts and circumstances, inclusive of the financial feasibility of the Development.

(a) For HOME Developments that are not at least partially financed with a MMRB Loan (as defined in Rule Chapter 67-21, F.A.C.), interest payments on the loan shall be paid to the Corporation's servicer annually on the date specified in the Note.

(b) For HOME Developments that are at least partially financed with a MMRB Loan (as defined in Rule Chapter 67-21, F.A.C.) where the HOME loan closed after February 20, 2011:

1. Payment on the loans shall be based upon the Development Cash Flow as determined pursuant to the financial reporting requirements as provided in a competitive solicitation, or shall be due annually as determined by the Corporation's Board of Directors. Such determination by the Board shall be based upon a written recommendation by the Credit Underwriter which has considered the economic and financial viability of the Development as well as the protection of the Corporation's repayment of principal and interest. Any distribution or payment to the Principal(s) of the Applicant or Developer or any Affiliate of the Principal of the Applicant or Developer or any Affiliate of the Applicant or Developer, whether paid directly or indirectly, which was not expressly disclosed in determining debt service coverage in the Board approved final credit underwriting report, with the exception of payment of the Developer Fee allowable to maximum of 20 percent per year, will be added back to the amount of cash available for the HOME loan interest payment, pursuant to the financial reporting process, for the purpose of determining interest due. Interest may be deferred as set forth in subparagraph 3., below, without constituting a default on the loan.

2. The HOME loans shall be repaid from all Development Cash Flow, and Development Cash Flow shall be applied to pay the following items in order of priority:

a. All superior mortgage fees and debt service,

b. Development Expenses for the HOME Development plus up to 20 percent of total Developer Fees per year,

c. Interest payment on HOME loan balance as stated in subsection 67-48.020(2), F.A.C., over the life of the HOME loan,

d. Interest payments on the HOME loan deferred from previous years,

e. Mandatory payment on subordinate mortgages.

After the full HOME loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

3. The determination of Development Cash Flow, determination of payment priorities, and payment of interest on HOME loans shall occur annually. Any payments of accrued and unpaid interest due annually on HOME loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this rule chapter. If Development Cash Flow is under-reported and such report causes a deferral of HOME interest, such under-reporting shall constitute an event of default on the HOME loan. A penalty of 5 percent of any required payment shall be assessed.

(4) As approved by the Board of Directors, loans which finance demonstration Developments or Developments located in a state or federally declared disaster area may be provided with forgivable terms.

(5) The accumulation of all Development financing, including the HOME loan and all existing debt within a Development, may not exceed the Total Development Cost, as determined and certified by the Credit Underwriter.

(6) Before disbursing any HOME funds, there must be a written agreement with the Applicant ensuring compliance with the requirements of the HOME Program pursuant to this rule chapter and 24 CFR Part 92.

(7) A representative of the Applicant and the managing company of the Development must attend a Corporation-sponsored training session on income certification and compliance procedures.

(8) If the Development has 12 or more units to be developed under a single contract, the General Contractor and all available subcontractors shall attend a Corporation-sponsored preconstruction conference regarding federal labor standards provisions.

(9) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender, the Corporation, or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance as required by the terms and conditions outlined in a competitive solicitation.

(10) All loans must provide that any violation of the terms and conditions described in this rule chapter or 24 CFR Part 92 constitute a default under the HOME loan documents allowing the Corporation to accelerate its loan and seek foreclosure as well as any other remedies legally available to it.

(11) If a default on a HOME loan occurs, the Corporation will commence legal action to protect the interest of the Corporation. The Corporation shall acquire real and personal property or any interest in the Development if that

acquisition is necessary to protect any HOME loan; sell, transfer, and convey any such property to a buyer without regard to the provisions of Chapters 253 and 270, F.S.; and, if that sale, transfer, or conveyance cannot be consummated within a reasonable time, lease the Development for occupancy by Eligible Persons.

(12) The Corporation or its servicer shall monitor the compliance of each Development with all terms and conditions of the HOME loan and shall require that such terms and conditions be recorded in the public records of the county where the Development is located. Violation of any term or condition shall constitute a default during the term of the HOME loan.

(13) The Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the HOME mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. The Corporation must be notified of any such change. Following construction completion, the Corporation will recommend that the Board deny any requests to increase the amount of any superior mortgage, unless the criteria outlined in subsection 67-48.0205(4), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the HOME mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding HOME loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance, the following calculation shall be used: divide the amount of the original HOME mortgage by the combined amount of the original HOME mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage from the current balance. For example, if the amount of the original HOME mortgage is \$2,000,000, the original superior mortgage is \$4,400,000, with a current balance of \$3,000,000, a proposed new superior mortgage of \$5,000,000, then the amount of the increase in the superior mortgage would be \$2,000,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance would be \$625,000. This \$625,000 would be applied first to accrued interest and then to principal.

(14) Annually, within 151 Calendar Days following the Applicant's fiscal year end, the Applicant shall provide an audited financial statement and any other financial reporting requirements as provided in a competitive solicitation. The initial submission will be due following the fiscal year within which the first unit is occupied. In the case where the HOME 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 HOME 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 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 \$500 will be assessed by the Corporation for failure to submit the above documents by the stated deadline.

(15) Unless and until a guarantor's obligations for a HOME 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 paragraphs (a) through (c), below, as the Corporation or its servicer may reasonably request.

(a) 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 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

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

(c) 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.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(7), (8), (9) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.020, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

**67-48.0205 Sale, Transfer or Refinancing of a HOME Development.**

(1) The HOME loan shall be assumable upon Development sale, transfer or refinancing if the following conditions are met:

(a) The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the HOME loan for the period originally specified;

(c) The proposed transferee agrees to pay all loan servicing and compliance monitoring fees through the end of the HOME LURA; and,

(d) The proposed transferee and Application receives a favorable recommendation from the Credit Underwriter and approval by the Corporation's Board of Directors.

All assumption requests must be submitted in writing to the Director of Special Assets and contain the specific details of the transfer and assumption. In addition to any related professional fees, the Corporation shall charge a non-refundable assumption fee of one-tenth of one percent of the HOME loan principal amount as outlined in the most current competitive solicitation. The applicable fee will be determined by the rule in effect at the time of the assumption request.

(2) If the Development is sold and the proposed transferee does not meet the criteria for assumption of the loan, the HOME loan shall be repaid from the proceeds of the sale. If there will be insufficient funds available from the proposed sale of the Development, the HOME loan shall not be satisfied until the Corporation has received:

(a) An appraisal prepared by an appraiser selected by the Corporation indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

(b) A certification from the Applicant that the purchase price reported is the actual price paid for the Development, as supported by a copy of the final executive purchase and sale agreement, and that no other consideration passed

between the parties, as supported by a draft and final closing statement, and that the income reported to the Corporation during the term of the loan was true and accurate; and,

(c) A certification from the Applicant that there are no Development funds available to repay the loan and the Applicant knows of no source from which funds could or would be forthcoming to pay the loan.

(d) The proposed transferee will pay an amount equal to the present value of the annual compliance monitoring fee for the years for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. Such amount shall be reduced by the amount of any compliance monitoring fees collected by the Corporation for the Development for that period, provided:

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

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

(3) The Corporation may renegotiate and extend the loan in order to extend or retain the availability of housing for the target population. Such renegotiations shall be based upon:

(a) Performance of the Applicant during the HOME loan term;

(b) Availability of similar housing stock for the target population in the area;

(c) Documentation and certification by the Applicant that funds are not available to repay the Note upon maturity;

(d) A plan for the repayment of the loan at the new maturity date;

(e) Assurance that the security interest of the Corporation will not be jeopardized by the new term(s); and,

(f) Industry standard terms which may include amortizing loans requiring regularly scheduled payments of principal and interest.

All loan renegotiation requests, ~~including requests for extension,~~ must be submitted in writing to the Director of Special Assets and contain the specific details of the renegotiation. In addition to any related professional fees, the Corporation shall charge a nonrefundable renegotiation fee of one-half of one percent of the HOME loan principal amount as outlined in the most current competitive solicitation. The applicable fee will be determined by the rule in effect at the time of the renegotiation request.

All loan extension requests must be submitted in writing to the Director of Special Assets and contain the specific details of the extension. In addition to any related professional fees, the Corporation shall charge a non-refundable

extension fee of one-tenth of one percent of the HOME loan principal amount. The applicable fee will be determined by the rule in effect at the time of the extension request.

(4) The Corporation will recommend that the Board approve requests for mortgage loan refinancing only if Development cash flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(5) The Corporation will recommend that the Board deny any requests for mortgage loan refinancing which require extension of the HOME loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in subsection 67-48.0205(3), F.A.C., are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Corporation will recommend that the Board limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

All requests which only require subordination of the regulatory agreements must be submitted in writing to the Director of Special Assets and contain the specific details of the subordination. In addition to any related professional fees, the Corporation shall charge a non-refundable subordination fee of \$1,000 for each regulatory agreement to be subordinated. The applicable fee will be determined by the rule in effect at the time of the subordination request.

All requests which only require extension of the affordability period under the regulatory agreements must be submitted in writing to the Director of Special Assets and contain the specific details of the extension. In addition to any related professional fees, the Corporation shall charge a non-refundable extension fee of \$1,000 for each extension of the regulatory agreement. The applicable fee will be determined by the rule in effect at the time of the extension request.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(7), (8), (9) FS. History--New 12-23-96, Amended 1-6-98, Formerly 9I-48.0205, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, 8-6-09, 11-22-11, Amended 10-9-13, 10-8-14, 9-15-16, Repromulgated 5-24-17, Amended \_\_\_\_\_.*

#### **67-48.022 HOME Disbursements Procedures and Loan Servicing.**

(1) HOME loan proceeds shall be disbursed during the construction/rehabilitation phase in an amount per Draw

on a pro-rata basis with the other financing unless otherwise approved by the Corporation or the Credit Underwriter.

(2) Ten (10) business days prior to each Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw in a form and substance acceptable to the Corporation's servicer.

(3) The request shall set forth the amount to be paid and shall be accompanied by documentation as specified by the Corporation's servicer. Such documentation shall include invoices for labor and materials to date of the last inspection.

(4) The Corporation's servicer and the Corporation shall review the request for Draw and the Corporation's servicer shall provide the Corporation with approval of the request or an alternative recommendation of an amount to be paid after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation. For all Developments consisting of 12 or more units to be developed under a single contract, the borrower shall submit weekly payrolls of the General Contractor and subcontractors in accordance with Federal Labor Standards as enumerated in 24 CFR §92.354.

(5) Retainage in the amount of 10 percent per Draw shall be held by the servicer during construction until the Development is 50 percent complete. At 50 percent completion, no additional retainage shall be held from the remaining draws. Release of funds held as retainage shall occur in accordance with the HOME loan documents.

(6) The Corporation or its servicer shall elect to withhold any Draw or portion of any Draw, in addition to the retainage, notwithstanding any documentation submitted by the borrower in connection with a request for a Draw, if:

(a) The Corporation or the servicer determines at any time that the actual cost budget or progress of construction differs from that shown on the loan documents.

(b) The percentage of progress of construction of improvements differs from that shown on the request for a Draw.

(c) Developments subject to and not in compliance with Federal Labor Standards.

(7) To the extent excess HOME funds in the budget remain unused, the Corporation has the right to reduce the HOME loan by that amount.

(8) If 100 percent of the loan proceeds have not been expended within six (6) months prior to the HUD deadline

pursuant to 24 CFR §92.500, the funds shall be recaptured by the Corporation.

(9) The request for final disbursement of HOME funds, excluding retainage, shall be submitted within 60 days of completion of construction as evidenced by certificates of occupancy.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5089(1) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.022, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, 8-6-09, 11-22-11, Amended 10-9-13, Repromulgated 10-8-14, 9-15-16, 5-24-17, \_\_\_\_\_.*

## **PART IV HOUSING CREDIT PROGRAM**

### **67-48.023 Housing Credits General Program Procedures and Requirements.**

(1) Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for Competitive Housing Credits if any of the following pertain to the proposed Development:

(a) The proposed Development has received an allocation of Housing Credits or a Competitive Housing Credit commitment or has accepted an invitation to enter credit underwriting, unless written notice has been provided to the Corporation prior to the deadline to apply for the applicable new funding withdrawing acceptance of such allocation or commitment and returning the previously awarded HC funding;

(b) A preliminary commitment of funding for the proposed Development through the SAIL Program or the HOME Program has already been accepted, unless written notice has been provided to the Corporation prior to the deadline to apply for the applicable new funding withdrawing such acceptance and returning the prior SAIL Program or HOME Program funding.

(c) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following exceptions applies:

1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program, or

2. A LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the deadline to apply for the applicable Competitive Housing Credits, where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of

Rehabilitation, Acquisition and Rehabilitation, Preservation, or Acquisition and Preservation.

(2) 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 committed to by the Applicant in the Application.

(3) 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 or subsequently agreed to by the Corporation. Applications will not be considered approved to receive an allocation of Housing Credits until the Corporation issues a Preliminary Allocation to the Applicant and all contingencies of such documents are satisfied. Allocations are further contingent on the Applicant complying with its Application commitments, Rule Chapter 67-48, F.A.C., and Section 42 of the IRC.

(4) 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 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35.

(5) Each Housing Credit Development shall complete the final cost certification process as required in a competitive solicitation.

(6) 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.

(7) Final cost certification documentation shall be submitted 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 67-48.0072, F.A.C., along with the executed Extended Use Agreement, 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, an unqualified audit report prepared by an independent certified public accountant, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the competitive solicitation. The Final Housing Credit Allocation will not be issued until such time as all items required by a competitive solicitation are received and processed by the Corporation.

(8) 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 67-48.029, 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 documentation, 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.

(9) Annually, within 151 Calendar Days following the Applicant's fiscal year end, the Applicant shall provide the Corporation with an audited financial statement and any other financial reporting requirements as provided in a competitive solicitation. 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.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.023, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, Repromulgated 9-15-16, 5-24-17, Amended \_\_\_\_\_.*

**67-48.027 Tax-Exempt Bond-Financed Developments.**

Non-Competitive Housing Credits to be used with Tax-Exempt Bond-Financed Developments are available as outlined in Rule Chapter 67-21, F.A.C.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.027, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, Amended 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, Repromulgated 10-8-14, 9-15-16, 5-24-17, \_\_\_\_\_.*

**67-48.028 Carryover Allocation Provisions.**

(1) If an Applicant cannot complete its Development by the end of the year in which the Preliminary Allocation is issued, the Applicant must enter into a Carryover Allocation Agreement with the Corporation by December 31st of the year in which the Preliminary Allocation is issued. The Carryover Allocation allows the Applicant up to the end of the second year following the Carryover Allocation to have the Development placed-in-service.

(2) An Applicant shall have tax basis in the Housing Credit Development which is greater than 10 percent of the reasonably expected basis in the Housing Credit Development within six (6) months of the date the Corporation issues the Carryover Allocation Agreement, unless extended as provided in the Carryover Allocation Agreement, or the Housing Credits will be deemed to be returned to the Corporation. Certification that the Applicant has met the greater than 10 percent basis requirement shall be signed by the Applicant’s attorney or certified public accountant.

(3) All supporting Carryover documentation and the signed certification evidencing the required basis must be



submitted to the Corporation within six (6) months of the date the Corporation issues the Carryover Allocation Agreement, unless extended as provided in the Carryover Allocation Agreement, or the Housing Credits will be deemed to be returned.

(4) The Applicant for each Development for which a Carryover Allocation Agreement has been executed shall submit quarterly progress reports to the Corporation as outlined in the Carryover Allocation Agreement and the competitive solicitation. If the progress report does not demonstrate continuous and adequate development and construction progress, the Corporation will require monthly submission of progress reports until satisfactory progress is achieved, until the Development is placed in service, or until a determination is made by the Corporation that the Development cannot be placed in service by the Carryover deadline and the Housing Credits are returned to the Corporation in accordance with the terms of the Carryover Allocation Agreement. Each progress report shall include a written statement describing the current status of the Development; the financing, construction and syndication activity since the last report; the reasons for any changes to the anticipated placed-in-service date; and any other information relating to the status of the Development which the Corporation may request. The due date for the first report shall be as stated in the Carryover Allocation Agreement.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 91-48.028, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, Amended 8-6-09, 11-22-11, Repromulgated 10-9-13, Amended 10-8-14, Repromulgated 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-48.029 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 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 91-48.029, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, 3-17-02, 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, Amended 10-9-13, Repromulgated 10-8-14, 9-15-16, 5-24-17,\_\_\_\_\_.*

**67-48.030 Sale or Transfer of a Housing Credit Development.**

An owner of a Housing Credit Development, its successor or assigns which has been granted a Final Housing Credit Allocation shall not sell the Housing Credit Development without having first notified the Treasury of the impending sale and complying with the Treasury's procedure or procedures for completing the transfer of ownership and utilizing the Housing Credit Allocation. The owner of a Housing Credit Development shall notify the Corporation in writing of an impending sale and of compliance with any requirements by the Treasury for the transfer of the Housing Credit Development. The 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 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 91-48.030, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, 10-8-14, 9-15-16, 5-24-17, Amended \_\_\_\_\_.*

**67-48.031 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 or from \_\_\_\_\_ [http://www.flrules.org/Gateway/reference.asp?No=Ref\\_08187](http://www.flrules.org/Gateway/reference.asp?No=Ref_08187), which shall be completed and submitted to the Corporation in order to request a qualified contract. The Qualified Contract Package, Rev. ~~05-2018~~ 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 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 91-48.031, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, Amended 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-22-11, 10-9-13, Repromulgated 10-8-14, Amended 9-15-16, 5-24-17,\_\_\_\_\_.*

## **PART V ELDERLY HOUSING COMMUNITY LOAN PROGRAM**

### **67-48.040 EHCL General Program Procedures and Restrictions.**

(1) The proceeds of all loans shall be used for life-safety, health, sanitation, or security-related repairs or improvements which result in making the Development safe and secure, and meeting requirements of state, federal, or local regulations, as well as all requirements outlined in a competitive solicitation.

(2) Funding provided under the EHCL Program may not exceed \$750,000 per Housing Community for the Elderly.

(3) Loan proceeds shall not be used to pay for administrative costs, routine maintenance or new construction.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087(3) FS. History—New 10-8-14, Repromulgated 9-15-16, 5-24-17,\_\_\_\_\_.*

### **67-48.041 Terms and Conditions of EHCL Loan.**

(1) The loan shall be in compliance with this rule chapter and the Act, and loan documents shall, at a minimum, contain the following terms and conditions:

(a) The loan shall be non-amortizing and shall have an interest rate, as provided in Section 420.5087(3)(e), F.S.



The applicable interest rate shall be established in the competitive solicitation;

(b) Repayment of principal and interest may be deferred until maturity of the Note, as determined by the Credit Underwriter based on the debt service coverage ratio for the EHCL loan, including all superior mortgages;

(c) The loan term shall not exceed 15 years but may be for a shorter period of time as requested by the Applicant or recommended by the Credit Underwriter. However, if the lien of the Corporation's encumbrance is subordinate to the lien of another mortgage, then the term may be made coterminous with the longest term of the superior lien if requested by the borrower and approved by the Credit Underwriter based on debt service coverage ratio, loan to value ratio, and other factors established in a competitive solicitation.

(d) The Applicant shall certify annually to the Corporation that the Development is providing Housing for the Elderly as defined herein.

(2) Annually, within 151 Calendar Days following the Applicant's fiscal year end, the Applicant shall provide an audited financial statement and any other financial reporting requirements as provided in a competitive solicitation. The initial submission will be due following the fiscal year within which the 12 month anniversary of the EHCL 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 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.

(3) The Corporation shall forgive the portion of the loan attributable to the units in a project reserved for Extremely Low Income (ELI) Persons for Non-Profit organizations, not to exceed 25 percent, where the project will provide affordable Housing to the Elderly for 15 years or more.

(4) The loan shall not be assumable upon Development sale, transfer or refinancing of the Development, unless

approved by HUD.

(5) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender, the Corporation, or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance as required by the terms and conditions outlined in a competitive solicitation.

(6) If the loan is repaid due to sale, transfer, or refinancing of the Development, all available proceeds shall be applied to pay the following items in order of priority:

- (a) First mortgage debt service and fees;
- (b) Any other superior debt service and fees;
- (c) Expenses of the sale;
- (d) EHCL loan principal and accrued interest.

(7) The Corporation or an authorized representative of the Corporation shall monitor compliance of all terms and conditions of the loan as provided in the loan documents.

(8) Any violation of the terms and conditions required by this rule chapter or the loan documents constitutes a default under the loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5087(3) FS. History--New 10-8-14, Repromulgated 9-15-16, 5-24-17,\_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Marisa Button, Director of Multifamily Allocations, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850) 488-4197

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ray Dubuque, Chairman of the Board, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850) 488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 4, 2018

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