

From: Chris Bryant <cbryant@ohfc.com>

Sent: Friday, May 25, 2018 5:07 PM

To: Marisa Button <Marisa.Button@floridahousing.org>

Cc: Hugh Brown <Hugh.Brown@floridahousing.org>; 'Trey.Price@floirdahousing.org' <Trey.Price@floirdahousing.org>

Subject: Comments on Proposed Rules 67-21.031(2) and 67-48.031(2)

Dear Marisa-

On behalf of The CED Companies and related entities that own and operate tax credit-restricted affordable housing developments, I am submitting comments concerning portions of the proposed rules relating to the Qualified Contract application process (67-21.031(2) and 67-48.031(2)). The comments are contained in the attached letter which I submitted to the Joint Administrative Procedures Committee on Thursday, May 24.

Please consider these comments and supporting documents as written material submitted to the agency within 21 days of the date of publication of the notices of proposed rules in the May 8, 2018 Florida Administrative Register, pursuant to Section 120.54(3)(d), Fla. Stat.

We request that the Corporation reconsider those portions of the referenced proposed rules which purport to define or impose "intent," and particularly "good faith intent to sell," on Owners who initiate the Qualified Contract process. We believe these provisions are invalid as exceeding the Corporation's statutory authority, contravening the law implemented, and being arbitrary and capricious.

Further, we are concerned that a presumption of "good faith intent to sell" could result in a determination by the Corporation that an Owner who chose not to sell would be acting in "bad faith." It is not difficult to imagine the Corporation then taking the position that an Owner and made a "material misrepresentation" when the Owner initiated the Qualified Contract application process without intent to necessarily sell the Development. We are all well aware of the potential consequences for Owners who are accused of "material misrepresentation."

The federal statutory and regulatory scheme contemplates that Owners may (and must) initiate the Qualified Contract process in order to exercise their rights to terminate the affordability restrictions on tax credit-financed properties. The intent to terminate affordability restrictions is a right of owners under the Code and the IRS regulations, and is a valid and lawful purpose behind a Qualified Contract application.

Thank you for your consideration of our comments, and we are hopeful that this can be resolved through revision of the proposed rules.



M. Christopher Bryant, Attorney at Law

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May 24, 2018

Via E-mail (JONES.SHARON@leg.state.fl.us)

Ms. Sharon Jones, Senior Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

Re: Florida Housing Finance Corporation
Proposed Rules 67-21.031(2) and 67-48.031(2)

Dear Ms. Jones:

I represent the owners, managers, and developers of affordable rental properties in Florida who, historically and currently, obtain partial funding for the development of those properties from the Florida Housing Finance Corporation (“FHFC”). FHFC is an “agency” for purposes of rulemaking pursuant to Chapter 120, Florida Statutes. See, Section 420.504(2), Fla. Stat.

On May 8, 2018, FHFC published in the Florida Administrative Register, Volume 44, Number 90, Notices of Proposed Rules. The proposed rules consist of amendments to many portions of three rule chapters: Chapter 67-21, 67-48, and 67-60. We are particularly concerned about proposed revisions to Rules 67-21.0031(2) and 67-48.031(2). The excerpts of the proposed rules containing these provisions are enclosed with this letter as Attachments 1 and 2, respectively. The proposed rules contain essentially identical provisions that govern recipients of a particular type of funding that is awarded and distributed by FHFC.

Summary of Objections

The specific type of funding involved is federal low income housing tax credits (“LIHTC”). Some of the provisions which FHFC seeks to now impose on developments through its proposed rules are inconsistent with the federal laws and regulations governing the LIHTC program; exceed FHFC’s statutory authority; and constitute an invalid exercise of delegated legislative authority.

Specifically, rules proposed by FHFC purport to impose on development owners a subjective intent when owners seek to exercise their rights under federal law to cease operating the rental properties as “affordable housing.” FHFC has no authority to impute a particular “intent”

on a regulated party.

Further, in doing so, FHFC may be impermissibly attempting to create an evidentiary presumption. Generally, administrative agencies do not have the authority to create evidentiary presumptions, absent express legislative authority.

Finally, this attributed “intent” may have consequences for the development owner and for other persons involved with the development in future unrelated dealings with FHFC. FHFC has other rules and statutory authority which allow it to ban owners, developers, and other related persons from participating in any FHFC funding programs if actions are taken by such owners, developers, or persons that constitute “material misrepresentation” or “fraudulent action.” See, Section 420.507(35), Fla. Stat., and existing Rule 67-48.004(2), Fla. Admin. Code. By the addition of “good faith intent” language, and a presumption of intent, my clients are concerned that a valid exercise of their rights to seek to terminate the affordability restrictions on an FHFC-financed property, which is an express, valid exercise by an owner under federal regulations, could result in loss of rights to participate in FHFC programs.

The specific language which we find objectionable is found in Rules 67-21.031(2) and 67-48.031(2). All of the language below is proposed new language, and the bolded portions are those we contend are invalid.

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 a qualified contract. While the qualified contract 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 . . .** . 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.

This proposed language is invalid because FHFC is seeking to impose on Development owners a subjective intent to actually sell their Development when they undertake the process required by federal law to terminate the affordability restrictions on the property. No state agency has authority to prescribe “intent” in parties who are regulated by it. Further, as explained more fully below, the federal program neither requires nor embodies the concept of an “intent to sell.” By requiring that owners act with a “good faith intent” to sell the Development, Florida Housing’s rule would lead to the conclusion that a Development owner who received an offer but chose not to sell was acting in bad faith.

The federal scheme which Florida Housing is charged with implementing in Florida creates no such “intent to sell,” and no such “good faith” and “bad faith” presumptions. There is no presumption in the federal scheme that a Development owner who submits a request for a Qualified Contract (as explained below) actually intends to sell the Development. A Development owner may lawfully initiate the Qualified Contract process with the intent of terminating the affordability restrictions on the property.

The Housing Tax Credit Program

Section 42 of the Internal Revenue Code (“IRC”), first enacted in 1986, created the LIHTC program. The purpose of the program was to assist private sector developers in the development of affordable rental housing for low-income persons. Under federal law, each state must designate a single state agency to serve as the state housing credit agency responsible for administering the LIHTC program in that state.

The LIHTC program works by awarding federal income tax credits to the owner of a particular proposed development, and the owner of the development “sells” the tax credits to raise capital for the initial construction of the development. The owner is usually a limited partnership or limited liability company created specifically for the purpose of owning that particular housing development. The “sale” of the tax credits (often referred to as “housing credits”) typically consists of the recipient of the housing credits selling the majority ownership interest in itself (i.e., the limited partner interest in a limited partnership, or the non-managing member interest in an LLC) to an institutional investor or other sophisticated investor. The funds are paid into the partnership or LLC by the investor during the course of construction of the development, and are a source of capital to pay a significant portion of the development and construction costs.

Once awarded, housing credits are received by the successful applicant each year for a 10 year period. As noted, the recipient of a housing credit award sells the right to receive that future stream of housing credits by the sale of the majority of its limited partner interest or LLC member ownership interest. The limited partner or LLC member can then use those tax credits to offset federal income tax liability attributable to other sources of income. The limited partner or LLC member ownership interests in entities that receive housing credits are typically 99.9% or more, and the income tax credits the limited partner or LLC member receives are in the same proportion as their ownership interest percentage.

Right to Terminate Low-Income Housing Commitment

In exchange for the award of housing credits, and as required by the Section 42 of the IRC, 26 U.S.C. Section 42, the development owner (i.e., the limited partnership or LLC), referred to in the Code as the “taxpayer,” commits to operate the development as affordable rental housing for a period of at least 15 years. This initial 15 year period is referred to in the federal scheme as the “Compliance Period.” Generally, operating the development as “affordable housing” means renting at least 20% of the residential units to persons whose income does not exceed 50% of the Area Median Income (“AMI”) for the geographic area in which the development is located; or renting at least 40% of the units to persons whose income does not exceed 60% of AMI. This

commitment is contained in an Extended Use Agreement (“EUA”), which is recorded in the Official Records of the County in which the Development is located.

Under the federal statute, the 15 year “Compliance Period” is followed by another 15 year period during which the owner must continue to operate the development as affordable housing; together, the 15 year Compliance Period and the additional 15 years are referred to as the “Extended Use Period.” However, under Section 42(h)(6)(E) of the IRC, the Extended Use Period contained in the EUA may be terminated in either of two situations. A copy of 42(h)(6)(E) is attached as Attachment 3. The first such situation is foreclosure of the financed development; that provision is not relevant for purposes of FHFC’s proposed rules.

Under the federal statutes and regulations governing the housing credit program, the second situation under which an Extended Use Period may be terminated arises when a specific set of conditions have been met. First, after at least the initial fourteen years of operating the affordable housing development, during the Compliance Period, the development owner must file an application for a “Qualified Contract” with the state low-income housing credit agency (here, FHFC), notifying the agency of its desire to discontinue operating the property as low-income rental housing. The state’s low-income housing credit agency then has within one year of receiving a completed application to present to the Owner a “Qualified Contract” for the purchase of the development by a person or entity who will continue to operate it as low-income housing. Notably, if the state agency presents the owner with a “Qualified Contract” and the owner rejects or fails to act on that contract, the conditions for termination will not be deemed to have been met, and the owner must continue to operate the development as affordable housing. See, 26 CFR Section 1.42-18(a)(iii), copy attached as Attachment 4; and Florida Housing’s Rule 67-48.031(9) Fla. Admin. Code (renumbered as (11) in the current rulemaking).

In short, if the state’s housing credit agency wants the Development to continue to operate as affordable housing, it has one year to find a buyer willing to purchase the Development from the owner and continue to operate it as such. If no such buyer can be found, the current owner is entitled to be relieved of the obligation to operate it as affordable housing. But if the current owner is presented with a Qualified Contract and the contract does not close, through no fault of the current owner, the current owner is required to continue to operate the development as affordable rental housing for the Extended Use Period.

Further, under FHFC’s Rule 67-48.031(10), Fla. Admin. Code, an owner is only allowed one Qualified Contract request. So if an offer deemed by FHFC to be a Qualified Contract offer is not accepted or acted upon by the owner, the owner loses the ability to seek a new Qualified Contract. The development must continue to operate as affordable rental housing for the entire Extended Use Period.

IRC Section 42(h)(6)(F) defines the term “qualified contract” as a “bona fide contract” to acquire the development (within a reasonable period of time after the contract is entered into) for a price designated as the “Qualified Contract Price” (or “QC Price”). The QC Price is arrived at by a formula set out in federal regulations. The QC Price is not intended to reflect the actual market value of the proposed development, either with or without the affordability restrictions.

Some components of the QC Price formula which are not customary components of a market-based appraisal are included in the Internal Revenue Code formula for policy reasons.

If in response to marketing efforts a potential purchaser presents a bona fide contract at (or exceeding) the QC Price to acquire the Development, the current owner of the Development may decline to sell, but doing so generally means the owner must continue to operate the Development as affordable housing for the entire 30 year Extended Use Period. If no potential purchaser presents a bona fide contract to pay the QC Price, the current owner is entitled to be relieved of the commitment to continue to operate the Development as affordable rental housing, subject to a transition period for existing low-income tenants. FHFC then executes a Termination of the Extended Use Agreement, which is recorded in the Official Records of the County in the same manner as the Extended Use Agreement. The owner could then operate the Development as market rate rental housing, or sell the Development to some other purchaser for that purpose, or may otherwise dispose of the Development (again, subject to a transition period for existing low-income tenants).

Right to Terminate as a “Quid Pro Quo”

Applicants who develop affordable rental housing with the financial assistance of the housing credit program do so with the understanding that they must operate the housing as affordable rental housing for a period of at least fifteen years. However, such applicants also enter into the housing credit program with the understanding and agreement that they will have the right to be relieved of that affordability restriction at the end of the initial 15 year Compliance Period unless a potential purchaser presents a bona fide contract offer to acquire the development at a particular price. The public purpose served by awarding tax credits is the guaranteed availability of clean, safe affordable housing stock for rental to low income persons for 15 years. The second 15 years of the Extended Use Period are not guaranteed, and, again, under the federal scheme, are subject to lawful termination.

In fact, the provision of the Code of Federal Regulation addressing the Qualified Contract application process is found in the section entitled “Termination of extended use period.” See, again, Attachment 4. This section, 26 CFR 1.42-18 (a)(1)(ii) states that the extended use period “will terminate” upon either (1) foreclosure or (2) no Qualified Contract being presented to the Development owner by the state agency within one year. This is consistent with the IRC provision discussed previously (Attachment 3), which indicates the conditions under which the Extended Use Period “shall terminate.”

Clearly, then, the federal regulations do not contemplate that the purpose of the Qualified Contract process is to keep the Development operating as affordable housing. The Qualified Contract process is a necessary step that an owner must take in order to terminate the extended use period, and to have the affordability restrictions lifted. An owner who initiates the Qualified Contract process may do so because he must do so to terminate the extended use period. The Owner cannot be either required or presumed to initiate the Qualified Contract process with “good faith intent to sell.” Further, an Owner who has no intention of selling but who initiates the Qualified Contract process in order to seek to terminate the affordability requirement, cannot be

presumed to be acting in bad faith.

Florida Housing lacks the authority to create a standard for subjective intent of Development Owners, particularly when that is inconsistent with the intent that the federal regulations allow. An intent allowed by the federal Qualified Contract process is, as designated in the federal regulations, “termination of the extended use period.”

Invalid Exercise of Delegated Legislative Authority

As you know, Chapter 120 defines an “invalid exercise of delegated legislative authority” as action that goes beyond the powers, functions, and duties delegated to a state agency the Legislature. Section 120.52(8), Fla. Stat. A proposed rule is an invalid exercise if, among other circumstances:

* * *

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by S. 120.54(3)(a)1;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by S. 120.54(3)(a)1;

* * *

(e) The rule is arbitrary or capricious. . .

* * *

Section 120.52(8), Fla. Stat.

Florida Housing has exceeded its grant of rulemaking authority, because it has not been extended the authority to impose a subjective “intent” on persons participating in its funding program, or to create a presumption of intent for persons so participating.

Florida Housing has been designated “the housing credit agency for the state” for purposes of the LIHTC program created by the Internal Revenue Code. See Section 420.5099(1), Fla. Stat. This statute authorizes FHFC to establish procedures necessary for the allocation and distribution of these tax credits, and to “exercise all powers necessary to administer the allocation of the credits.” However, the Legislature did not authorize FHFC to act inconsistently with the federal statutes and regulations governing the program. The federal statute and regulations contemplate that termination of affordability restrictions is an entitlement of Owners if the Qualified Contract process does not produce a contract to purchase the property and continue to operate it as affordable; Florida Housing’s proposed rules are based on the premise that continuation of the affordability restrictions is the purpose of the Qualified Contract process. This conflict must be resolved in favor of the federal statutes and regulations that created the program.

Finally, the proposed rules are arbitrary because they are not supported by facts, and capricious because they are contrary to facts. Many Owners initiate the Qualified Contract process with the intent of terminating the affordability restrictions on the property, which is, again, an entirely permissible purpose under the federal program. Assigning a particular intent, or imputing an intent, that is (or may be) contrary to the Owner's intent is not supported by fact and is contrary to fact.

This is particularly true when the consequences of such an imputed or assigned intent could subject the Owner to disciplinary action, including disqualification from Florida Housing programs. If an Owner applies for a Qualified Contract with an FHFC-defined or presumed intent to sell the Development, and then permissibly declines to sell the Development, he may be deemed to have materially misrepresented his intent behind the initial QC application.

Finally, state agencies, which includes Florida Housing for purposes of Chapter 120, cannot create presumptions unless expressly authorized to do so. See, *McDonald v. Department of Professional Regulation*, 582 So.2d 660, 664 (Fla. 1st DCA 1991). I am unaware of any statutory authority for Florida Housing to create a presumption. The only purpose for such a presumption would be for Florida Housing to seek to use it against the Development Owner or related entities in disciplinary or compliance matters, or to assert it is a form of equitable defense if a Development Owner is forced to litigate against Florida Housing to enforce its right to terminate the affordability restrictions on the properties.

Conclusion

We urge you to advise Florida Housing that the above noted provisions of their proposed rules constitute an invalid exercise of delegated legislative authority, as exceeding statutory authority and conflicting with the provisions of the federal program that has been delegated to Florida Housing.

Sincerely,



M. Christopher Bryant

cc: Hugh R. Brown, General Counsel
Florida Housing Finance Corporation

Notice of Proposed Rule

FLORIDA HOUSING FINANCE CORPORATION

RULE NOS.:RULE TITLES:

<u>67-21.001</u>	Purpose and Intent
<u>67-21.002</u>	Definitions
<u>67-21.0025</u>	Miscellaneous Criteria
<u>67-21.003</u>	Application and Selection Process for Developments
<u>67-21.004</u>	Federal Set-Aside Requirements for MMRB Loans
<u>67-21.0045</u>	Determination of Method of Bond Sale
<u>67-21.006</u>	MMRB Development Requirements
<u>67-21.007</u>	MMRB Fees
<u>67-21.008</u>	Terms and Conditions of MMRB Loans
<u>67-21.009</u>	Interest Rate on Mortgage Loans
<u>67-21.010</u>	Issuance of Revenue Bonds
<u>67-21.013</u>	Non-Credit Enhanced Multifamily Mortgage Revenue Bonds
<u>67-21.014</u>	MMRB Credit Underwriting Procedures
<u>67-21.015</u>	Use of Bonds with Other Affordable Housing Finance Programs
<u>67-21.017</u>	Transfer of Ownership of a MMRB Development
<u>67-21.018</u>	Refundings and Troubled Development Review
<u>67-21.019</u>	Issuance of Bonds for Section 501(c)(3) Entities
<u>67-21.025</u>	HC Fees
<u>67-21.026</u>	HC Credit Underwriting Procedures
<u>67-21.027</u>	HC General Program Procedures and Requirements
<u>67-21.028</u>	HC with Tax-Exempt Bond-Financed Developments
<u>67-21.029</u>	HC Extended Use Agreement
<u>67-21.030</u>	Sale or Transfer of a Housing Credit Development
<u>67-21.031</u>	Qualified Contracts

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

- (1) Administer the Application process, determine bond allocation amounts and implement the provisions of the Multifamily Mortgage Revenue Bond (MMRB) Program authorized by Section 142 of the Code and Section 420.509, F.S.; and
- (2) Administer the Application process, determine Non-Competitive Housing Credit amounts, and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, F.S.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the State of Florida.

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

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this 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.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 420.507, 420.508, FS.

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

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

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

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th 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 RULE IS: Marisa Button, Director of Multifamily Allocations, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850) 488-4197.

THE FULL TEXT OF THE PROPOSED RULE IS:

PART I ADMINISTRATION

67-21.001 Purpose and Intent.

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

(1) Administer the Application process, determine loan amount and make and service mortgage loans for new construction or rehabilitation of affordable rental units under the Multifamily Mortgage Revenue Bonds (MMRB) Program authorized by Section 420.509, F.S.; and,

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

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

67-21.002 Definitions.

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

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

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

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

(5) "Affiliate" means any person that:

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

Allocation;

- (l) Be subject to the provisions in this rule chapter pertaining to the required Extended Use Agreement;
- (m) Be subject to the monitoring fee specified in the Non-Competitive Application Package;

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

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

67-21.029 HC Extended Use Agreement.

(1) Pursuant to Section 42(h)(6) of the IRC, the Applicant and the Corporation shall enter into an Extended Use Agreement. The purpose of the Extended Use Agreement is to set forth the Housing Credit Extended Use Period, the Compliance Period, and to evidence commitments made by the Applicant in the Application or subsequently agreed to by the Corporation.

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

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

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

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

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

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

67-21.030 Sale or Transfer of a Housing Credit Development.

An owner of a Housing Credit Development, its successor or assigns which has been granted a Final Housing Credit Allocation shall not sell the Housing Credit Development without having first notified the Treasury of the impending sale and complying with the Treasury's procedure or procedures for completing the transfer of ownership and utilizing the Housing Credit Allocation. The owner of a Housing Credit Development shall notify the Corporation in writing of an impending sale and of compliance with any requirements by the Treasury for the transfer of the Housing Credit Development. The proposed transferee agrees to maintain all set-asides and other requirements of the Extended Use Agreement for the period originally specified; pay any and all unpaid compliance monitoring fees through the end of the Extended Use Agreement; and execute any assignment and assumption documents the Corporation deems necessary to effectuate the ownership change. For those Developments that have not waived the right to submit a qualified contract, any transfer of that Development will require the transferee to agree to a waiver of the right to submit a qualified contract before approval of the transfer will be provided by the Corporation. The owner of a Housing Credit Development shall notify the Corporation in writing of the name and address of the party or parties to whom the Housing Credit Development was sold within 14 Calendar Days of the transfer of the Housing Credit Development.

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

67-21.031 Qualified Contracts.

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

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

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

(3) Qualified contract means a bona fide contract (as defined herein) to acquire the development (within a reasonable period after the contract is entered into) for the qualified contract amount (also referred to as the qualified contract price). Bona fide contract means a certain and unambiguous offer to purchase the Development for an amount which equals or exceeds the qualified contract amount (the qualified contract purchase price) made by a purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract to purchase. The bona fide contract shall be in the form of a contract for sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Corporation, and must provide for an initial non-refundable earnest money deposit (the initial deposit) from the purchaser in the minimum amount of \$50,000 and obligate the purchaser to make a second non-refundable earnest money deposit (the second deposit) equal to three (3) percent of the qualified contract price as follows: The initial deposit must be deposited with an escrow agent designated by the owner at the time of submission of the qualified contract request, or if no such escrow agent is designated, with a nationally recognized title insurance company offering escrow services, contemporaneously with the submission of the contract to the owner; and, by its terms, the contract must obligate the purchaser to deposit the second deposit with the escrow agent within 15 business days following the end of the due diligence period (subject to any rights reserved by the purchaser to cancel or terminate the contract during such period) which period shall end no later than 90 Calendar Days following execution of the contract by the owner. A contract submitted to the owner which otherwise meets the requirements of this subsection (3), including the deposit of the initial deposit with the escrow agent, which is accepted by owner within 15 business days after its submission, shall be deemed a qualified contract for purposes of this rule and the qualified contract regulations at such time as the second deposit is deposited with the escrow agent in accordance with the terms of the contract, as same may be amended from time to time, unless waived in writing by the owner. And, in such event, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract. A contract submitted to the owner which otherwise meets the requirements of this subsection (3), including the deposit of the initial deposit with the escrow agent, which is not accepted by owner within 15 business days after its submission, shall be deemed a qualified contract for purposes of this rule and the qualified contract regulations at such time as the 15-day period expires. And, in such event, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract.

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

(5)(3) All information contained in a Qualified Contract Package is subject to independent review, analysis and verification by the Corporation or its agents. The Corporation may request additional information to document the qualified contract amount calculated by the owner. The Corporation may also engage the services of its own

certified public accountant (CPA) and real estate appraiser to assist in the review of a Qualified Contract Package. Real estate appraisers involved in the qualified contract process must be licensed by the state of Florida, be an MAI-designated as-certified general appraiser, appraisers and be otherwise acceptable to the Corporation.

~~(6)~~(4) The qualified contract regulations provide that the fair market value of the non-low-income portion of the building includes the fair market value of the underlying land and that the valuation of the underlying land must take into account the existing and continuing requirements contained in the Extended Use Agreement. Pursuant to Section 193.017, F.S., and the statutes cited therein, the Extended Use Agreement recorded in connection with a Housing Credit property is a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement that must be considered by the county property appraiser in assessing the value of the property. Unless the owner elects otherwise as provided below, for purposes of a qualified contract request, the fair market value of the underlying land shall be the value attributed to the underlying land by the county property appraiser in the most recent year's assessed value of the Development provided that the county property appraiser's valuation of the land takes into account the existing and continuing requirements contained in the Extended Use Agreement. The county property appraiser's valuation methodology shall be verified upon submission of a qualified contract request in order to determine if the valuation of the land has taken into account the existing and continuing requirements contained in the Extended Use Agreement. If the owner is of the opinion that the county property appraiser's valuation does not represent the fair market value of the underlying land within the contemplation of the qualified contract regulations at the time of the qualified contract request, the owner may elect to submit with its qualified contract request a value (the "owner's appraised value") for the underlying land at the fair market value determined by a real estate appraiser (the "owner's appraiser") engaged by the owner for that purpose in lieu of the county property appraiser's valuation. A copy of the real estate appraisal (the "owner's appraisal report") upon which the owner's appraised value is based shall be included with the owner's qualified contract request. If the owner elects to rely on the county property appraiser's valuation of the land and the Corporation determines that the county property appraiser's valuation did not take into account the existing and continuing requirements contained in the Extended Use Agreement, the county property appraiser's valuation shall be disregarded, and instead, the owner must obtain and submit to the Corporation an owner's appraisal report together with the owner's appraised value as provided above. The owner's appraiser must certify in the appraisal report that the valuation represents the fair market value of the underlying land taking into account the existing and continuing requirements contained in the Extended Use Agreement for the property. The owner's appraisal report must also include a narrative describing the methodology or manner in which the requirements contained in the Extended Use Agreement were considered by the owner's appraiser in arriving at the owner's appraised value of the underlying land, and, for comparison and evaluation purposes, the opinion of the owner's appraiser as to what the fair market value of the underlying land would be if unencumbered by the requirements of the Extended Use Agreement. The lower of the restricted and unrestricted appraised values should be included in the qualified contract price if the owner's appraised value is submitted. The owner's appraised value of the underlying land and the owner's appraisal report shall be subject to review and approval by the Corporation. The Corporation may engage the services of one or more real estate appraisers, or other professionals, to assist in the review and evaluation of the owner's appraised value and the owner's appraisal report.

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

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

~~(9)~~(7) The running of the one-year period described in Section 42(h)(6)(I) of the IRC shall be suspended by the

Corporation at any time upon written notice to the owner if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Marisa Button, Director of Multifamily Allocations, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (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 32301-1329, (850) 488-4197

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 44, Number 19,
January 29, 2018

Notice of Proposed Rule

FLORIDA HOUSING FINANCE CORPORATION

RULE NOS.:RULE TITLES:

- 67-48.001 Purpose and Intent
- 67-48.002 Definitions
- 67-48.004 Selection Procedures for Developments
- 67-48.007 Fees
- 67-48.0072 Credit Underwriting and Loan Procedures
- 67-48.0075 Miscellaneous Criteria
- 67-48.009 SAIL General Program Procedures and Restrictions
- 67-48.0095 Additional SAIL Selection Procedures
- 67-48.010 Terms and Conditions of SAIL Loans
- 67-48.0105 Sale, Transfer or Refinancing of a SAIL Development
- 67-48.013 SAIL Construction Disbursements and Permanent Loan Servicing
- 67-48.014 HOME General Program Procedures and Restrictions
- 67-48.015 Match Contribution Requirement for HOME Allocation
- 67-48.017 Eligible HOME Activities
- 67-48.018 Eligible HOME Applicants
- 67-48.019 Eligible and Ineligible HOME Development Costs
- 67-48.020 Terms and Conditions of Loans for HOME Rental Developments
- 67-48.0205 Sale, Transfer or Refinancing of a HOME Development
- 67-48.022 HOME Disbursements Procedures and Loan Servicing
- 67-48.023 Housing Credits General Program Procedures and Requirements
- 67-48.025 Qualified Allocation Plan
- 67-48.027 Tax-Exempt Bond-Financed Developments
- 67-48.028 Carryover Allocation Provisions
- 67-48.029 Extended Use Agreement
- 67-48.030 Sale or Transfer of a Housing Credit Development
- 67-48.031 Qualified Contracts
- 67-48.040 EHCL General Program Procedures and Restrictions
- 67-48.041 Terms and Conditions of EHCL Loans

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 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.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or 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, 2:00 p.m. Eastern Time

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th 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 RULE 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 91-48.001, 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

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 9I-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 9I-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 9I-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>, 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,

ed as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term "qualified corporation" means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the

amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term "extended use period" means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F) Qualified contract

For purposes of subparagraph (E), the term "qualified contract" means a bona fide con-

CFR › Title 26 › Chapter I › Subchapter A › Part 1 › Section 1.42-18

26 CFR 1.42-18 - Qualified contracts.

§ 1.42-18 Qualified contracts.

(a) *Extended low-income housing commitment* -

(1) ***In general.*** No credit under section 42(a) is allowed by reason of section 42 with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of such taxable year. A commitment must be in effect for the extended use period (as defined in paragraph (a)(1)(i) of this section).

(i) ***Extended use period.*** The term *extended use period* means the period beginning on the first day in the compliance period (as defined in section 42(i)(1)) on which the building is part of a qualified low-income housing project (as defined in section 42(g)(1)) and ending on the later of -

(A) The date specified by the low-income housing credit agency (Agency) in the commitment; or

(B) The date that is 15 years after the close of the compliance period.

(ii) ***Termination of extended use period.*** The extended use period for any building will terminate -

(A) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Commissioner determines that such acquisition is part of an arrangement with the taxpayer ("the owner") a purpose of which is to terminate such period; or

(B) On the last day of the one-year period beginning on the date (after the 14th year of the compliance period) on which the owner submits a written request to the Agency to find a person to acquire the owner's interest in the low-income portion of the building if the Agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building (as defined in section 42(c)(2)).

(iii) ***Owner non-acceptance.*** If the Agency provides a qualified contract within the one-year period and the owner rejects or fails to act upon the contract, the building remains subject to the existing commitment.