

CHAPTER 67-53 COMPLIANCE PROCEDURES

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67-53.003 Compliance Procedures.

(1) Any duly authorized representative of Florida Housing shall be permitted at any reasonable time to inspect and monitor Development and tenant records and facilities. All tenant records shall be maintained by the owner of the Development within 50 miles of the Development site.

(2) Florida Housing or its representative shall conduct on-site Development inspections at least annually.

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

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

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

(c) Key management company representative attendance at a Florida Housing compliance workshop; and

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

(4) Florida Housing shall document approval of the management company to the owner of the Development after successful completion of items (3)(a)-(d).

(5) The owner of the Development shall maintain complete and accurate income records pertaining to each tenant occupying a Set-Aside unit. Records for each occupied Set-Aside unit shall contain the following documentation:

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

(b) An executed lease agreement listing the term of the tenancy and all of the tenants residing in the unit;

(c) Verification of the income of each tenant as is acceptable to prove income under section 8 of the U.S. Housing Act of 1937, which is adopted and incorporated herein by reference, as in effect on the date of this rule chapter;

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

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

(6) The Applicant shall submit Program Reports pursuant to the following: The initial Program Report shall be submitted prior to the time of Loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by the Recap of Tenant Income Certification Information, Form AR-1, and the certificate of continuing program compliance and copies of all Tenant Income Certifications executed since the last Program Report and shall be sent to Florida Housing, the Trustee and the monitoring agent.

(7) The Developer shall, at least monthly, submit to Florida Housing, the Trustee and the monitoring agent, a certificate of continuing program compliance stating the percentage of dwelling units that are:

(a) Occupied by Lower-Income Residents.

(b) Being held vacant for occupancy by Lower-Income Residents.

(c) Occupied by other persons.

(8) Florida Housing shall monitor compliance of all terms and conditions of the Loan and in the Land Use Restriction Agreement, which Land Use Restriction Agreement shall be recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement shall be recorded first. Violation of any term or condition of the documents evidencing or securing the Loan shall constitute a default during the term of the Loan. Florida Housing shall take legal action to effect compliance if a violation of any term or condition relative to the Set-Aside of units for Lower-Income Residents is discovered during the course of compliance monitoring or by any other means.

(9) Borrowers shall annually certify that the household gross income of each household occupying a unit set aside for Lower Income Residents meets income requirements specified in the Code. Should the annual recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a qualifying household in order to ensure continuing compliance of the Development.

(10) The compliance monitoring for MMRB will begin following loan closing or, if the Development is occupied, prior to loan closing.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (13), (14), 420.508, 420.509 FS. History—New 1-7-98, Formerly 9I-21.016, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Formerly 67-21.016.

67-53.004 Right to Inspect and Monitor Funded Developments.

Florida Housing or its agents shall have the right to inspect and monitor the records and facilities of all Developments. Inspections shall occur while the repairs or improvements are being made and may occur after completion of the repairs or improvements.

Specific Authority 420.5087(3)(d) FS. Law Implemented 420.5087(3)(d) FS. History—New 10-2-89, Formerly 9I-32.010, Amended 11-9-98, 1-2-00, Repromulgated 12-31-00, Amended 3-17-02, Repromulgated 5-5-03, Formerly 67-32.010.

67-53.005 Compliance Monitoring for Housing Developed With SHIP Local Housing Distribution Funds.

(1) The staff or entity with administrative authority for a local housing assistance plan must develop a tracking system to ensure that the local housing distribution funds disbursed from the local housing assistance trust fund are at all times expended in accordance with the set-aside requirements in Rule 67-37.007, F.A.C., and time restraints detailed at subsection 67-37.005(6), F.A.C.

(2) The combined household annual gross income of an applicant who is applying as an owner/occupant of a residence must be verified and certified by the SHIP program administrator or his/her designee using income verification and certification procedures such as those established by the U.S. Department of Housing and Urban Development or the Rural Housing Service Farmers Home Administration. Other verification procedures must be submitted to the Review Committee for analysis to determine if they are acceptable to the Committee, prior to the allocation of any SHIP program assistance. Whichever verification and certification method is used, annual gross income must be used and the SHIP Program income limits cannot be exceeded.

(3) The staff or entity with administrative authority for a local housing assistance plan assisting rental developments shall monitor and determine tenant eligibility and the amount of subsidy using the same guidelines as specified at subsection (2) above, at least annually for 15 years or the term of assistance, whichever is longer. The Corporation will monitor the activities of the local governments to determine compliance with program requirements as defined in Section 420.9075(3)(e), F.S.

(4) The staff or entity with administrative authority for a local housing assistance plan must provide documented evidence to the Corporation or its designated monitoring agent, that permits as defined in Sections 163.3164(7) and (8), F.S., for affordable housing projects are expedited to a greater degree than other projects and that there is an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption.

(5) The Corporation, or any duly authorized representative shall be permitted to inspect the local housing assistance plan, advertisements, applications, income verifications and certifications, plan participation contracts, financial records, plan tracking records, construction cost verification including receipts and contracts, and any other applicable documents at any reasonable time with or without notice. Such records must be maintained within the participating county or eligible municipality at a place accessible to the Corporation staff or its designated monitoring agent.

(6) If the Corporation staff or its designated monitoring agent determines that an eligible jurisdiction has established a pattern of violation of the criteria of its local housing assistance plan established under Sections 420.907-9079, F.S., or that an eligible sponsor has established a pattern of violation of the applicable award conditions, the Corporation shall report such pattern of violation to the Executive Office of the Governor at which time the distribution of program funds to the county or eligible municipality will be suspended. The eligible jurisdiction, with assistance from the Affordable Housing Catalyst Program, shall develop a corrective action plan (CAP). The CAP shall be submitted to the Corporation within 60 days of the date of the letter from the Corporation notifying the eligible jurisdiction of the pattern of violation. The CAP must describe the proposed corrective action for each violation and how the correction actions will be implemented within 3 months of the CAP's approval by the Corporation. Upon receipt of the CAP, the Corporation shall have 30 days to review and approve or recommend changes to the CAP. Upon approval of the CAP, program funds will be distributed.

(7) Within 12 months of approval of the corrective plan of action the Corporation staff or its designated monitoring agent will audit the eligible jurisdiction to determine if the plan has been implemented. If the Corporation's staff or its designated monitoring agent determines that the corrective actions have not been implemented, the Corporation shall report such pattern of violation of criteria or violation of award conditions to the Executive Office of the Governor. The distribution of program funds to the county or eligible municipality will be suspended until such time as the corrective plan of action has been satisfactorily implemented, at which time funds will be distributed.

(8) Projects receiving assistance from the local housing assistance plan and from other State or federal programs which may have conflicting verification, certification, and monitoring requirements, shall comply with requirements of the most restrictive program.

Specific Authority 420.9072(9) FS. Law Implemented 420.907, 420.9075(3)(e) FS. History—New 2-9-94, Amended 12-28-94, 1-6-98, Formerly 9I-37.015, Amended 12-26-99, 9-22-03, Formerly 67-37.015.

67-53.006 Compliance and Monitoring Procedures.

(1) Units within the Development that are occupied at the time of Loan closing, shall meet Development Set-Aside requirements at that time.

(2) For new construction or rehabilitation of rental units not occupied at the time of Loan closing, the Applicant shall notify the Corporation prior to the leasing of any units in the Development. The units shall be leased by income eligible tenants.

(3) For rental Developments which obtain construction or permanent financing from Corporation programs, the compliance and monitoring requirements of the program or programs under which funding is received shall apply.

(4) For rental Developments that obtain construction or permanent financing from sources other than Corporation programs and no Corporation funds remain in the Development:

(a) Any duly authorized representative of the Corporation shall be permitted at any reasonable time to inspect and monitor the records and facilities of the Development for compliance with the following conditions;

1. For home ownership Developments: The Corporation and or its representative shall perform an initial review to determine home buyer eligibility and verify permanent residency.

2. For multifamily rental Developments: The Corporation or its representative shall monitor tenant records and facilities for compliance during the Compliance Period with the following conditions:

a. All tenant records shall be maintained by the Applicant within 50 miles of the Development Site.

b. The Corporation or its representative shall conduct on-site Development inspections at least annually.

c. The Corporation must approve the Applicant's selection of a management company prior to the company assuming responsibility for the Development based upon the following criteria:

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

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

(iii) Key management company representative attendance at a Corporation compliance workshop; and

(iv) A meeting between Corporation compliance staff and the key management company representative after the compliance workshop.

(b) The Applicant or an authorized representative, if any, shall attend a compliance training workshop or meet with a representative from the Corporation or the monitoring agent for a compliance training conference prior to initial leasing of any units.

(c) The Applicant shall maintain complete and accurate income records pertaining to each tenant occupying a set-aside unit. Records for each occupied set-aside unit shall contain at least the following documentation:

1. The tenant's application which shall contain the name or names of each household member, employment and income information for each household member, and other information required by the Applicant;

2. A copy of the lease agreement listing the term of the tenancy and each tenant residing in the unit;

3. Verification of the income of each tenant as is acceptable to prove income under Section 8 of the U.S. Housing Act of 1937, as amended;

4. Information as to the assets owned by each tenant; and

5. Income Certification Form TIC-1 for each tenant. Form TIC-1, which is hereby incorporated by reference, can be obtained from the Corporation. For Developments participating in Section 8 and RD Programs, the HUD Forms 50058 or 50059 or RD (or FmHA) Form 1944-8 may be used in lieu of Form TIC-1 as long as proper documentation is maintained in the tenant files.

(d) With respect to rental Developments, program reports shall be submitted as follows:

1. Initial program reports for rehabilitation/acquisition Developments with units occupied at the time of the execution of the Invitation to Participate shall be submitted at the time of execution of the Invitation to Participate.

2. Initial program reports shall be submitted for Developments with no units occupied at the time of the closing of the Loan within 10 days following the end of the calendar quarter during which the leasing of any unit within the Development occurred.

3. Subsequent program reports shall be submitted each year during the Compliance Period and are due on the dates assigned by the Corporation according to an alphabetical breakdown by property.

(5) For homeownership Developments, the initial sale of all units shall be to income eligible purchasers.

Specific Authority 420.528 FS. Law Implemented 420.528 FS. History—New 1-16-96, Formerly 9I-38.0145, Amended 3-26-98, 7-17-00, 7-21-03, Formerly 67-38.0145.

67-53.007 Compliance Procedures.

(1) The Corporation or the servicer shall inspect and monitor the records and facilities all of the funded Projects. Such inspections may occur without notice at any reasonable time. The information shall be reported in the format and time specified in the Florida Housing Finance Corporation's Compliance Manual which can be requested from the Corporation's Compliance Supervisor. Failure to meet the requirements related to compliance shall constitute a default on the loan by the borrower.

(2) At a minimum, the units specified in the minimum set-aside requirement must be held for very low-income persons or households for a period of time equal to the longest of the following:

(a) The term of the SAIL/Hurricane Andrew Recovery and Rebuilding Program loan; or

(b) 12 years; or

(c) Such longer term agreed to by the Applicant.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS., Chapter 93-186, Laws of Florida. History—New 1-25-94, Formerly 9I-43.011, 67-43.011.

67-53.008 Compliance and Reporting Requirements.

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

(2) On-site inspections for HC Developments:

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

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

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

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

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

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

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

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

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

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

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

(b) An executed lease agreement listing the term of the tenancy and all of the residents residing in the unit;

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

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

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

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

(a) The initial HC Program Report shall be submitted upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any unit. Subsequent Program Reports shall be submitted each year of the Housing Credit Compliance Period and shall be due no later than the dates assigned by the Corporation. The Program Reports shall be accompanied by copies of Tenant Income Certifications executed since the last Program Report for at least 10% of the Housing Credit Set-Aside units in the Development (to be sent to the monitoring agent only); and the Annual Owner Compliance Certification Form, to be signed by the owner of the Development, certifying that for the preceding 12 month period the Development met its Housing Credit Set-Aside requirements (to be sent to the Corporation only). Forms PR-1 and AOC-1 shall be provided by the Corporation and shall be submitted for all Developments receiving Housing Credit Allocations since January 1, 1987.

(b) The failure of the initial or any subsequent HC Program Reports to confirm compliance as required in paragraph (a) above, shall, upon written notice of such failure from Florida Housing or its agent to the Applicant, require correction of the failure within 90 days of such written notice. This shall be deemed the "correction period." During the correction period:

1. An Applicant may request a 60-day extension of the correction period by submitting a written request to the Compliance Department Administrator. Such written request must be Received by the Compliance Department Administrator at least 7 days prior to the expiration of the correction period.

2. Florida Housing shall consider the nature of the failure of compliance and the Applicant's past compliance history in determining whether to grant a 60-day extension of the correction period.

The Development shall not be deemed non-compliant prior to the expiration of the correction period, unless otherwise required by 26 CFR 1.42-5. If the failure to comply is not, however, corrected within the correction period, or any extension of the correction period, such Development shall then be deemed to be in non-compliance and be reported to the Board.

(c) If the Development is occupied at loan closing, the initial HOME Program Report shall be submitted prior to the pre-loan closing review and an updated Program Report shall be submitted as of the date of loan closing, or if not occupied at loan closing, upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any unit. HOME Program Reports shall confirm compliance as follows:

1. If the Development is not occupied at loan closing, the initial HOME Program Report and all subsequent Program Reports shall confirm compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA.

2. If the Development is occupied at loan closing, compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA, shall be confirmed by the first HOME Program Report submitted 12 months following the expiration of the last then-existing tenant lease, without regard to any extension of the term of any then-existing tenant lease. The calculation of the above 12-month period shall begin with the date of the HOME loan closing.

3. Subsequent Program Reports shall be submitted each year of the period of affordability and the Compliance Period and shall be due no later than the dates assigned by the Corporation. All subsequent HOME Program Reports shall confirm compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA.

4. The Program Reports shall be accompanied by copies of Tenant Income Certifications executed since the last Program Report for at least 10% of the HOME-Assisted Units in the Development (to be sent to the monitoring agent only).

5. The failure of the initial or any subsequent HOME Program Reports to confirm compliance as required in this subsection, shall, upon written notice of such failure from Florida Housing or its agent to the borrower, require correction of the failure within 90 days of such written notice. This shall be deemed the "correction period." During the correction period:

a. A borrower may request a 60-day extension of the correction period by submitting a written request to the Compliance Department Administrator. Such written request must be Received by the Compliance Department Administrator at least 7 days prior to the expiration of the correction period.

b. Florida Housing shall consider the nature of the failure of compliance and the borrower's past compliance history in determining whether to grant a 60-day extension of the correction period.

The Development shall not be deemed non-compliant prior to the expiration of the correction period. If the failure to comply is not, however, corrected within the correction period, or any extension of the correction period, such Development shall then be deemed to be in non-compliance and be reported to the Board.

(d) If the Development is not occupied at loan closing, the initial SAIL Program Report shall be prepared as of the 15th of the month after the first unit is occupied and submitted by the 25th of that month. If the Development is occupied at the time of loan closing, the initial SAIL Program Report shall be submitted prior to the time of the pre-loan closing review and an updated Program Report shall be submitted as of the date of the loan closing. SAIL Program Reports shall confirm compliance as follows:

1. If the Development is not occupied at loan closing, the initial SAIL Program Report and all subsequent Program Reports shall confirm compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA.

2. If the Development is occupied at the time of loan closing, compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA, shall be confirmed by the first SAIL Program Report submitted 12 months following the expiration of the last then-existing tenant lease, without regard to any extension of the term of any then-existing tenant leases. The calculation of the above 12-month period shall begin with the date of the loan closing.

3. Subsequent Program Reports shall be prepared as of the 15th of each month and are due no later than the 25th of each month thereafter. All subsequent SAIL Program Reports shall confirm compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA.

4. The Program Reports shall be accompanied by copies of all Tenant Income Certifications executed since the last Program Report for at least 10% of the Development's SAIL set-aside units (to be sent to the monitoring agent).

5. The failure of the initial or any subsequent SAIL Program Reports to confirm compliance as required in this subsection, shall, upon written notice of such failure from Florida Housing or its agent to the borrower, require correction of the failure within 90 days of such written notice. This shall be deemed the "correction period." During the correction period:

a. A borrower may request a 60-day extension of the correction period by submitting a written request to the Compliance Department Administrator. Such written request must be Received by the Compliance Department Administrator at least 7 days prior to the expiration of the correction period.

b. Florida Housing shall consider the nature of the failure of compliance and the borrower's past compliance history in determining whether to grant a 60-day extension of the correction period.

The Development shall not be deemed non-compliant prior to the expiration of the correction period. If the failure to comply is not, however, corrected within the correction period, or any extension of the correction period, such Development shall then be deemed to be in non-compliance and be reported to the Board.

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

(9) Compliance monitoring for each program will begin:

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

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

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

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

(10) SAIL loan Applicants shall annually certify that the household gross income, adjusted for family size, of each household occupying a unit set aside for Very Low-Income persons or households meets income requirements specified in Section 142(d)(3)(B) of the Code, which is adopted and incorporated herein by reference. Should the annual recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a household qualifying under the provisions of Section 420.5087(2), F.S., in order to ensure continuing compliance of the Development.

(11) The Corporation shall approve the SAIL loan Applicant's selection of a management company prior to such company assuming responsibility for the Development. The SAIL loan Applicant, its designated representative, or the managing agent of the Development must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History--New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.006, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, Formerly 67-48.00, Amended 1-17-05.

67-53.009 Compliance and Monitoring.

(1) The Servicer shall inspect and monitor the Development's construction site and records, as necessary, with inspections occurring during regular business hours.

(2) The Servicer shall monitor the sale of houses and determine homebuyer eligibility at initial purchase. Failure to comply with the agreed upon set-aside requirements shall result in a retroactive interest rate adjustment from the HAP or HOME Construction Loan interest rate to the current market rate.

Specific Authority 420.507(12), (23) FS. Law Implemented 420.507(23), 420.5088, 420.5089 FS. History--New 9-5-02, Formerly 67-50.100.

67-53.010 Forms.

The following forms are hereby incorporated by reference. Copies are available on the Corporation's Website or may be obtained by contacting the Compliance Department, Florida Housing Finance Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329:

AOC-1 – Annual Owner Compliance Certification Form

PR-1 – Program Report

TIC-1 – Tenant Income Certification

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.509, 420.5099. 420.524, 420.9072 FS. History--New 1-17-05.