

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
June 10, 2011
Action Items



COMPLIANCE

Action

I. COMPLIANCE

A. Request Authorization to Commence Rule Amendment Process

1. Background

Florida Administrative Code Rule Chapter 67-53 establishes the compliance procedures by which Florida Housing or any duly authorized representative of Florida Housing shall be permitted at any reasonable time to inspect and monitor developments and tenant records and facilities.

2. Present Situation

Staff recognizes a need to revise Rule Chapter 67-53 in order to eliminate references to the Financial Reporting Form (SR-1), Rev. 02/09, ("Form SR-1") which is in the process of being incorporated into Rule Chapter 67-48; and update the Rule to conform to the compliance monitoring activities reflected in RFP 2011-02 for Credit Underwriting, Construction and Permanent Loan Servicing, and Compliance Monitoring Services.

3. Recommendation

Authorize staff to commence the rule amendment process for Rule Chapter 67-53.

FISCAL

Action

II. FISCAL

A. Approval of Use for Uncommitted Funds

1. Background

- a) Florida Housing draws appropriated documentary stamp taxes from the state treasury and invests these funds until they are used in programs.
- b) Income earned on these funds remains with Florida Housing for allocation.
- c) The past two state fiscal years have seen very limited appropriations for Florida Housing: \$30.1 million in SHIP for fiscal year 2009-10 and \$37.5 million for Downpayment Assistance in fiscal year 2010-11.
- d) Florida Housing did not receive any program appropriations for the upcoming state fiscal year, 2011-12.
- e) During the 2011 legislative session, Florida Housing reported approximately \$64.3 million in uncommitted funds.

2. Present Situation

	Firm Commitment	Preliminary Commitment	Uncommitted	Total Funds Held
SAIL Fund	\$ 86,146,432	\$ –	\$ 28,663,298	\$ 114,809,730
Homeownership Assistance Fund	17,814,500	–	–	17,814,500
Predevelopment Loan Fund	7,408,213	4,404,450	5,255,790	17,068,453
State Housing Fund	15,222,130	–	2,773,896	17,996,026
Local Government Housing Fund	21,308,234	10,279,468	600,977	32,188,679
Hurricane Recovery Programs	1,696,801	–	26,991,633	28,688,434
Total	\$ 149,596,310	\$ 14,683,918	\$ 64,285,594	\$ 228,565,822

- a) Funds available in the SAIL Fund, approximately \$28.7 million, must remain in SAIL. In accordance with Section 420.5087(7), Florida Statutes, these funds are to be used for the SAIL program.
- b) Approximately \$5.2 million in the PLP Fund is currently not committed to specific developments. These funds must be used within PLP, either to fund program activities or for certain administrative costs of the program. This is a revolving loan fund which is replenished when loans outstanding pay off.
- c) There is approximately \$30.4 million not firmly committed, primarily from investment income earned on funds within the Local Government Housing Fund, the State Housing Fund and on previously appropriated Hurricane Recovery funds.

FISCAL

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3. Recommendation

- a) Affirm the use of funds as shown in the chart, including the use of uncommitted funds in SAIL and PLP within the respective programs.
- b) Authorize the use of \$30 million in uncommitted funds in the State Housing Fund, the Local Government Housing Fund and income earned on Hurricane Recovery funds for the SHIP program, and \$0.4 million for the Catalyst program and Florida Housing's contract with the Shimberg Center.

MULTIFAMILY BONDS

Action

III. MULTIFAMILY BONDS

A. Request Approval of the Recommendation of the Final Credit Underwriting Report for Groves of Delray II

Development Name: Groves of Delray II (“Development”)	Location: Palm Beach
Developer/Principal: Groves of Delray II/Auburn Development, LLC/Thomas Hinners, individually/Brian Hinners, individually (“Developer”, “Principal”, or “Owner”)	Set-Aside: 85% @ 60% AMI (MMRB)
Funding Sources: MMRB/HC	Amounts: \$9,350,000 Tax-Exempt Bonds
Number of Units: 158	Type: Rental
ADDITIONAL COMMENTS: Acquisition/Rehabilitation	

1. Background

Applicant submitted an Application (“Application”) on behalf of the proposed Development during the 2009 MMRB Supplemental Cycle. Applicant applied for tax-exempt bonds in the amount of \$11,408,000 in order to acquire and rehabilitate the Development.

2. Present Situation

- a) While the current Program Rule does not prohibit changes or modifications of the proposed Development during credit underwriting, the Board has directed staff to notify it of any such changes.
- b) The Application anticipated a \$11,408,000 MMRB Loan under the New Issue Bond Program (“NIBP”) for the rehabilitation and permanent financing of Groves of Delray II. However, the maximum amount of Bonds allowed by the FHA credit enhancement rounded to the nearest \$5,000 is \$9,350,000.
- c) Although not originally anticipated in the Application, the purchase price for acquisition of the development now includes the assumption of SAIL loan 93S-012 in the amount of \$1,502,000 as well as a Palm Beach County loan assumption in the amount of \$117,000.
- d) PNC provided a Letter of Intent (“LOI”) dated January 24, 2011, and revised February 14, 2011, to provide a Bridge Loan in the amount of \$2,183,271, that was not originally included in the Application.
- e) The Application included a PNC LOI dated March 23, 2010, which expired December 31, 2010. The March 23, 2010, PNC LOI anticipated providing tax credits at a rate of \$0.74 per allocated tax credit dollar. Total contributions were expected to be \$4,487,947. The Applicant subsequently provided a PNC LOI dated May 27, 2010, and revised February 14, 2011, to make an equity investment in the partnership in the amount of \$4,865,625 based on a rate of \$0.84 per allocated tax credit dollar.

MULTIFAMILY BONDS

Action

- f) The Application reflected the Developer entity would be Auburn Development L.L.C. with Auburn Management, Inc. having a 70% ownership interest and Florida Affordable Housing, Inc. having a 30% ownership interest. Pursuant to Rule 67-48.004 (14)(b), Applicant submitted a written request dated February 8, 2011 to Florida Housing to change the Developer entity to Auburn Group Company, L.L.C. . Auburn Group Company, L.L.C. is owned 100% by Brian J. Hinnners.
- g) The Application reflected CB Constructors, Inc. of Pompano Beach, Florida would be the General Contractor for the rehabilitation of the subject development. The General Contractor will be Seacoast Construction, Inc. of Miami, Florida.
- h) These changes have no material impact to the loan recommendation for this development.
- i) A Final Credit Underwriting Report dated May 26, 2011 is attached as [Exhibit A](#).

3. Recommendation

That the Board approve the recommendation of the Credit Underwriter outlined in the Final Credit Underwriting Report dated May 26, 2011, recommending that \$9,350,000 in tax exempt bonds be issued for the acquisition and rehabilitation of the Development, subject to further approvals and verifications by the Credit Underwriter, Bond Counsel, Special Counsel, and the appropriate Florida Housing staff.

MULTIFAMILY BONDS

Action

B. Request Approval of the Recommendation of the Final Credit Underwriting Report for Kings Terrace

Development Name: Kings Terrace (“Development”)	Location: Miami-Dade
Developer/Principal: Kings Terrace, LLC/ PHG - Kings Terrace, LLC/Pinnacle Housing Group, LLC/Louis Wolfson III, individually/Michael D. Wohl, individually/David O. Deutch, individually/Mitchell M. Friedman, individually (“Developer”, “Principal”, or “Owner”)	Set-Aside: 85% @ 60% AMI (MMRB)
Funding Sources: MMRB/HC	Amounts: \$24,000,000 Tax-Exempt Bonds \$1,600,000 HOME Funds
Number of Units: 300	Type: Rental
ADDITIONAL COMMENTS: New Construction	

1. Background

Applicant submitted an Application (“Application”) on behalf of the proposed Development during the 2009 MMRB Supplemental Cycle. Applicant applied for tax-exempt bonds in the amount of \$24,000,000 in order to acquire and rehabilitate the Development. The Applicant also submitted a response to RFP 2009-06, and was awarded funding for a HOME loan in the \$5,000,000.

2. Present Situation

- a) While the current Program Rule does not prohibit changes or modifications of the proposed Development during credit underwriting, the Board has directed staff to notify it of any such changes.
- b) In the Application, a commitment from CITI, for direct purchase of the bonds was submitted. However, a tax exempt multifamily mortgage revenue notes loan structure during the construction phase with a Standby Forward Commitment from Freddie Mac for bond credit enhancement, during the permanent phase will be the financing structure. According to CITI, this financing structure allows for it to receive Community Reinvestment Act lending credit for tax-exempt bond transactions and allows the Applicant to obtain an allocation of 4% Housing Credits.
- c) Applicant requested the following changes to the features and amenities committed to in the Application:
 - (1) From air conditioning with a minimum SEER rating of 16 or better (3 points) to air conditioning with a minimum SEER rating of 14 (1 point) and all windows single-pane with shading coefficient of .67 or better (2 points).
 - (2) From attic insulation of R-30 or better (1 point) to insulation of R-19 with radiant barrier on top floor only (1 point).
 - (3) From outside recreation facility: shuffleboard court (2 points) to outside recreation facility volleyball court (2 points).

MULTIFAMILY BONDS

Action

- d) The Plan & Cost Review performed by Consultech confirms these changes are to be implemented at the Development. The Credit Underwriter considers these changes as reasonable and pose no material negative impact on the Development.
- e) Total Development Costs increased \$6,027,181 since the Application primarily due to increases in costs associated with construction, financial and acquisition, as well as developer fee.
 - (1) Construction costs increased due to the Development's unit sizes increase, as well as architectural and structural changes implemented by the Applicant. The Applicant initially considered constructing approximately 308,000 square feet ("SF") of buildable space, is instead constructing approximately 375,000 SF of buildable space for a 22% increase. The units were re-designed and enlarged to be commensurate with a large family oriented sub-market.
 - (a) The unit mix changed:
 - (i) from 150 to 156 two-bedroom/ two bathrooms;
 - (ii) from 93 to 72 three-bedroom/two bathrooms; and
 - (iii) from 12 four-bedroom/ two bathrooms to 32 four-bedroom/three bathroom units.
 - (b) The Application reflected 12 residential buildings with dwelling units. However, 13 residential buildings will be constructed.
 - (2) The redesign added approximately \$4,400,000 in additional construction costs. Correspondingly, the hard cost contingency was increased by approximately \$220,000.
 - (3) Financial costs increased approximately \$800,000 due to the addition of the Interest Rate Cap and increases to the preliminary estimates of borrower's bond loan cost of issuance.
 - (4) Acquisition costs increased due to a significant number of outstanding utility liens filed by the City of North Miami. The cost to satisfy these liens is presently \$585,060, of which \$247,000 has been paid by CITI. Therefore, the Applicant's budget reflects a \$338,060 net cost for the difference.
 - (5) Total available Developer Fee increased \$760,454 since the Application.
- f) The general contractor changed from CB Constructors, Inc. to PHG Builders according to the General Construction Contract.
- g) A Final Credit Underwriting Report dated May 26, 2011 is attached as [Exhibit B](#).

MULTIFAMILY BONDS

Action

3. **Recommendation**

That the Board approve the recommendation of the Credit Underwriter outlined in the Final Credit Underwriting Report dated May 26, 2011, recommending that \$24,000,000 in tax exempt bonds be issued for the acquisition and rehabilitation of the Development, subject to further approvals and verifications by the Credit Underwriter, Bond Counsel, Special Counsel, and the appropriate Florida Housing staff.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

IV. PROFESSIONAL SERVICES SELECTION (PSS)

A. Request for Qualifications (RFQ) for Inclusion in a Pool of Energy Consumption Providers

1. Background

At its March 18, 2011, meeting Florida Housing's Board authorized staff to begin the RFQ process, and establish a review committee, to select a pool of qualified professionals from which housing credit property owners may choose to perform utility allowance estimates using an "energy consumption model". A copy of the RFQ is attached as [Exhibit A](#).

2. Present Situation

- a) An RFQ process was initiated and RFQ 2011-01 was issued on April 8, 2010. Responses to the RFQ were due on or before 2:00 p.m., Friday, May 13, 2011.
- b) Ten (10) responses were received from the following:
 - (1) A Homebuyers Inspection Service
 - (2) All Elements Mechanical Corporation
 - (3) Diamond Property Consultants, Inc in conjunction with DcR Engineering Services, Inc.
 - (4) Energy House Technology
 - (5) Engineering Services Consultancy LLC
 - (6) ES Green & Company, LLC
 - (7) IKAP Energy Design, Inc.
 - (8) KN Consultants, LLC
 - (9) The Nelrod Company
 - (10) 2rw Consultants, Inc.
- c) The Review Committee members designated by the Executive Director were Robin Grantham, Compliance Monitoring Administrator, Matt Jugenheimer, Asset Management Manager, Elizabeth O'Neill, Senior Policy Analyst and Janet Peterson, Asset Management Systems Manager.
- d) The Review Committee meeting was held on Tuesday, May 24, 2011.

3. Recommendation

- a) The Review Committee recommends that the following firms be included in the pool of Energy Consumption Providers approved by Florida Housing to calculate utility allowance estimates using an "energy consumption model" for owners of Housing Credit Program developments monitored by Florida Housing contingent upon the firms providing additional information as follows:

PROFESSIONAL SERVICES SELECTION (PSS)

Action

- (1) Diamond Property Consultants, Inc. in conjunction with DcR Engineering Services, Inc. – Diamond Property Consultants, Inc., must provide evidence that it is qualified to do business in the State of Florida and that DcR Engineering Services, Inc. is required to be a party to the agreement between Diamond Property Consultants, Inc., and Florida Housing.
 - (2) r2w Consultants, Inc., must provide a resume of the Florida licensed engineer, Thomas Crowell.
 - (3) KN Consultants, LLC does not need to provide additional information.
- b) The Nelrod Company was deemed non-responsive for failure to provide evidence that the offeror or staff is a class 1 rater or a licensed engineer as defined by the RFQ . This item was a threshold requirement as stated in Section Six, Item B. 3, of the RFQ.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

B. Request for Proposals to Assist in Evaluating Capital and Rehabilitation Needs of Older Properties in Florida Housing's Portfolio

1. Background

- a) As properties in Florida Housing's portfolio age, there are and will be additional stressors on the entire system as developments have capital and rehabilitation needs. Many of the properties will remain in Florida Housing's portfolio for 30-50 years. As these properties are aging, Florida Housing will have to decide as part of its preservation strategy which developments are important to refinance, recapitalize and rehabilitate with our limited resources.
- b) With the exception of Guarantee Program properties, private investors, such as Housing Credit syndicators, Bond purchasers and private lenders are the key monitors of property risk, and in some cases, these properties are refinanced and rehabilitated without having to come to Florida Housing for competitive resources. For example, they may use Bonds and non-competitive 4% Housing Credits for this purpose. However, many properties are not positioned well to use Bonds and 4% Housing Credits for this purpose (properties may be too small, serve special needs or lower income tenants with rents that are unable to support bond debt). This means that these properties require additional resources, such as gap financing (for example, State Apartment Incentive Loan [SAIL] or HOME funds), or competitive 9% Housing Credits – all resources that are in short supply to meet all the affordable rental housing needs in Florida.

2. Present Situation

- a) Florida Housing's strategic plan calls for us to carry out two strategies to refine our preservation priorities and keep our portfolio strong as it ages:
 - (1) Systematize strategies and procedures to prioritize existing properties for preservation funding and refinancing; and
 - (2) Analyze the portfolio and best practices to determine financial structuring models that promote the maintenance of high functioning properties over the long term.
- b) As part of a broader comprehensive property assessment and portfolio analysis, the staff received approval from the Board in the 2011 operating budget to procure professional services to perform physical needs assessments on a representative sample of properties in our portfolio that are 15+ years old. This will allow us to understand the physical condition and attendant rehabilitation costs that can be expected in these older properties.

3. Recommendation:

Staff recommends that the Board authorize staff to begin the solicitation process to procure professional services to perform physical needs assessments on a representative sample of properties in our portfolio that are 15+ years old. Staff also recommends that the Board authorize the Executive Director to establish a Review Committee to review the Request for Proposals responses and make a recommendation to the Board.

PROFESSIONAL SERVICES SELECTION (PSS)

Action Supplement

I. PROFESSIONAL SERVICES SELECTION (PSS)

A. Approval of Housing Counseling Agencies for the Hardest Hit Fund for Unemployment Mortgage Assistance and Mortgage Loan Reinstatement Programs

1. Background

- a) On February 19, 2010, President Obama announced \$1.5 billion in funding called the Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets (HFA Hardest-Hit Fund) to help families in the five states that have been hit the hardest by the combination of housing price declines and unemployment. There are now 18 states and the District of Columbia participating in this \$7.6 billion program. Florida's share of these funds now totals over \$1 billion.
- b) As a result of the September 21, 2010 meeting between Treasury, ten state HFA's including Florida Housing, Fannie Mae, Freddie Mac, the Federal Housing Finance Administration and six major loan servicers throughout the country, standardized plans for Unemployment Mortgage Assistance and Mortgage Loan Reinstatement programs were finalized.

2. Present Situation

- a) A Request for Qualifications (RFQ) process was initiated and RFQ 2010-07 was issued on Friday, June 18, 2010. The RFQ allows for additional counseling agencies to be included in this program. Florida Housing will hold additional review committee meetings before each scheduled Board meeting in order to include these additional counseling agencies. The responses received in time for the June 10, 2011 board meeting are:
 - (1) Centro Campesino Farmworker Center, Inc.
 - (2) Jewish Family & Children's Services of Sarasota-Manatee, Inc.
 - (3) Mind Over Money Consulting
 - (4) Project Hope for Housing, Inc.
 - (5) Tri-County Community Council, Inc.
 - (6) Vision to Victory Human Services
- b) The Review Committee members designated by the Executive Director are: David Westcott, Director of Homeownership Programs, Nicole Gibson, Federal Loan Programs Administrator, Rob Dearduff, Special Programs Administrator & Local Government Liaison and Susan Parks, Chief Information Officer.
- c) The members of the Review Committee individually reviewed the Proposals prior to convening for the Review Committee meeting. The Review Committee meeting was held at 10:00 a.m. on Tuesday, June 7, 2011.
- d) The review committee had tabled a response from Genius Financial Recovery Services, LLC., because of the actions of a principal of the corporation. An investigation was instituted by the Inspector General, Stephanie Sgouros. A copy of her report is attached as [Exhibit A](#).

PROFESSIONAL SERVICES SELECTION (PSS)

Action Supplement

3. **Recommendation**

- a) The Committee recommends that Florida Housing enter into contract negotiations with the following contingent upon specific requirements from each entity:
- (1) Centro Campesino Farmworker Center, Inc., is to provide resumes of all counselors to be performing services for the hardest hit fund.
 - (2) Jewish Family & Children's Services of Sarasota-Manatee, Inc., - no further documentation required.
 - (3) Mind Over Money Consulting – is to provide evidence of current errors & omissions insurance. In addition, Florida Housing will appoint a Technical Advisor to determine whether the Offeror is qualified to provide services as outlined in the RFQ. The Technical Advisor will submit reports to Florida Housing before contracts are signed with the Offeror.
 - (4) Tri-County Community Council, Inc., is to provide a current Certificate of Good Standing from the Florida Department of State. In addition, Florida Housing will appoint a Technical Advisor to determine whether the Offeror is qualified to provide services as outlined in the RFQ. The Technical Advisor will submit reports to Florida Housing before contracts are signed with the Offeror.
 - (5) Project: Hope for Housing is to provide a current Certificate of Good Standing from the Florida Department of State and evidence of current errors & omissions insurance. In addition, Florida Housing will appoint a Technical Advisor to determine whether the Offeror is qualified to provide services as outlined in the RFQ. The Technical Advisor will submit reports to Florida Housing before contracts are signed with the Offeror.
 - (6) Vision to Victory Human Services was deemed non-responsive because the required number of copies was not submitted for review. Florida Housing only received an original of the response. An e-mail was sent to the contact person requesting the additional copies by Friday, June 3, 2011. The additional copies were not received.
- b) The review committee further recommends that the response from Genius Financial Recovery Services, LLC, be rejected based on the conduct of one of the principals, Tina White, during the request for qualifications process. The review committee has determined that it is not in the best interest of Florida Housing to enter into a contract with this corporation.
- c) The review committee has determined that Florida Housing has sufficient coverage statewide for advisor services at this time and a recommendation is made that the “rolling RFQ” be suspended until a time that the program staff feels that additional coverage is needed. Florida Housing will not accept additional responses until further notice.

STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

Action

V. STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

A. Request Award of SAIL Funding for Madison Reserve, Ltd. (2009-197CS)

Development Name: Madison Reserve (“Development”)	Location: Hernando County
Developer/Principal: ARD MR, LLC (“Developer”)	Set-Aside: 10% @ 35% AMI and 90% @ 60% AMI
Number of Units: 90	Requested SAIL Amount: \$3,000,000
Type: Garden Style	Housing Credit Allocation: \$1,275,000
Demographics: Elderly	MMRB: N/A

1. Background/Present Situation

- a) During the 2009 Universal Cycle, Madison Reserve, Ltd. (“Madison Reserve”), applied for an allocation of Low Income Housing Tax Credits to construct Madison Reserve (the “Development”) in Hernando County, Florida. Florida Housing scored Petitioner’s application and determined that it failed a threshold requirement, did not achieve maximum points, and was designated as a Priority II application.
- b) On or about December 28, 2009, Madison Reserve filed a “Petition for Informal Administrative Hearing,” challenging Florida Housing’s scoring decision of its application.
- c) A formal hearing was held before Administrative Law Judge R. Bruce McKibben, Division of Administrative Hearings (“DOAH”), on August 30, 2010. Judge McKibben issued a Recommended Order on November 9, 2010 which recommended that a Final Order be entered into deeming Madison Reserve’s application “to have met the zoning threshold; that the application be granted Priority I status; and that the application meets or exceeds all statutory and rule criteria”. Upon further review and pursuant to section 120.57(4), Florida Statutes, the parties entered into a Settlement Agreement on December 3, 2010. A Final Order accepting the terms of the Settlement Agreement and adopting those recommendations from Judge McKibben was entered on December 10, 2010.
- d) On March 31, 2011, Florida Housing received a “Request for Relief and Agreement to Vary from the Terms of the Request for Proposals,” (“Request”) from Madison Reserve. A copy of the Request is attached as [Exhibit A](#).
- e) Although the Request is styled as a Petition for Waiver, it does not meet the statutory criteria to be considered as a Petition for Waiver and is being considered as a Request for Funding.
- f) Madison Reserve intended to request American Recovery and Reinvestment Act (“ARRA”) exchange funds if awarded a housing credit allocation in the 2009 UAC, which were allocated in accordance with Request for Proposal 2010-04 (“RFP”). As Madison Reserve was unable to meet the RFP deadlines due to the adverse scoring issues being litigated at DOAH, it was unable to obtain ARRA exchange funding. All ARRA exchange funds have been processed and no other ARRA exchange funding is available.

STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

Action

- g) Madison Reserve, in its 2009 Universal Cycle Application, No. 2009-197C, indicated its intent to request \$4,500,000 in ARRA exchange funds. Without additional gap financing, the Applicant has indicated that it cannot construct the Development and that it would suffer irreparable harm if it is not able to obtain funds to fill the financing gap that otherwise would be provided for under the ARRA program. Madison Reserve requests State Apartment Incentive Loan (“SAIL”) funds in the amount of up to \$3,000,000 to finance the construction of the Development in lieu of the ability to obtain ARRA exchange funds.

2. **Recommendation**

Staff recommends that the Board approve an award of SAIL funds in an amount of up to \$3,000,000 allocated in accordance with the terms of the SAIL loan program, subject to Florida Housing’s credit underwriting standards and Rule Chapter 67-48, Florida Administrative Code.

STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

Action

B. Request Approval of Credit Underwriting Report for Madison Reserve (2009-197CS)

Development Name: Madison Reserve (“Development”)	Location: Hernando County
Developer/Principal: ARD MR, LLC (“Developer”)	Set-Aside: 10% @ 35% AMI and 90% @ 60% AMI
Number of Units: 90	Allocated SAIL Amount: \$2,603,198
Type: Garden Style	Housing Credit Allocation: \$1,275,000
Demographics: Elderly	MMRB: N/A

1. Background/Present Situation

- a) On May 23, 2011, staff issued an at-risk invitation to enter credit underwriting to Madison Reserve, Ltd. (“Madison Reserve”) for an award of up to \$3,000,000 of State Apartment Incentive Loan (“SAIL”) funds subject to Board approval on June 10, 2011 as reflected in the respective staff recommendation to the Board. Although Madison Reserve requested SAIL funds in the amount of \$3,000,000, the SAIL loan amount was reduced to \$2,603,198 during credit underwriting.
- b) On May 26, 2011, staff received a credit underwriting report with a positive recommendation for a SAIL loan in the amount of \$2,603,198 ([Exhibit B](#)). Staff has reviewed this report and finds that the Development meets all of the requirements of SAIL Rule Chapter 67-48, F.A.C.

2. Recommendation

Approve the final credit underwriting report and direct staff to proceed with issuance of a firm loan commitment and loan closing activities.

UNIVERSAL CYCLE

Action

VI. UNIVERSAL CYCLE

A. 2011 Universal Application Cycle – Rulemaking

1. Background/Present Situation

- a) To solicit comments concerning Rule Chapters 67-21 and 67-48, F.A.C., and proposed changes to the Universal Application, a public meeting was held following the February 26, 2010 Board meeting and rule development workshops were held on April 29, 2010, June 17, 2010, July 29, 2010, August 17, 2010, and September 15, 2010.
- b) As a result of these meetings and workshops, staff revised the Universal Application and the rules governing the multifamily programs.
- c) Governor Scott issued Executive Order 11-01 on January 4, 2011, suspending all rulemaking pending a review of the proposed rules by the Office of Fiscal Accountability and Regulatory Reform (OFARR). The Governor issued Executive Order 11-72 on April 8, 2011, superseding Executive Order 11-01. Upon receipt of the Board's approval of the proposed Rules and Application, staff will immediately submit the complete text of the approved Universal Application and the proposed Rules for OFARR's review and consent.
- d) A supplement to the Board Package will be provided which contains the proposed Rules and Application.
- e) If the Board approves the proposed Rules and Application *as presented* and if OFARR's consent is received timely, the Notices of Proposed Rulemaking (NOPRs) will be published in the July 1, 2011 edition of the Florida Administrative Weekly (FAW). The NOPRs will announce the Rule Hearing which is scheduled for July 26, 2011, in Tallahassee. Following review of the public comments received at the Rule Hearing and the comments received from the Joint Administrative Procedures Committee (JAPC) following its review of the NOPRs, if no further modification is required, staff will file the Rules for adoption and the application cycle will open in mid-August.
- f) If, on the other hand, the Board approves the proposed Rules and Application *conditioned upon specific modifications and authorizes staff to proceed with the rulemaking process without the requirement of another Board meeting to obtain approval of the revised document(s)*, staff will incorporate the required changes, the revised documents will be submitted to OFARR for review and, upon receipt of OFARR's consent, the NOPRs will be submitted for publication in the FAW and review by JAPC. The Rule Hearing will then be held no earlier than 21 days from publication of the NOPRs in the FAW. Following review of the public comments received at the Rule Hearing and the comments received from JAPC following its review of the NOPRs, if no further modification is required, staff will file the Rules for adoption no earlier than 14 days following the Rule Hearing. The application cycle will open shortly thereafter.
- g) Or, if the Board *requires modifications be made prior to approval of the proposed Rules and Application*, staff will submit the revised documents for approval at a future board meeting. Upon Board approval, the revised documents will be submitted to OFARR for review and, upon receipt of

UNIVERSAL CYCLE

Action

OFARR's consent, the NOPRs will be submitted for publication in the FAW and review by JAPC. The Rule Hearing will then be held no earlier than 21 days from publication of the NOPRs in the FAW. Following review of the public comments received at the Rule Hearing as well as the comments received from JAPC following its review of the NOPRs, and if no further modification is required, staff will file the Rules for adoption no earlier than 14 days following the Rule Hearing. The application cycle will open shortly thereafter.

- h) If, following review of the public comments received at the Rule Hearing and the comments received from JAPC, modification of the proposed Rules is required, staff will prepare Notices of Change (NOCs) to incorporate all proposed modifications to the proposed Rules and submit the NOCs to OFARR for review. Upon receipt of OFARR's consent, the revised documents will be submitted to JAPC for review and, if required, staff will also submit the NOCs for Board approval. The NOCs will then be filed for publication in the FAW. Assuming there is no request for another hearing, staff will file the Rules for adoption no earlier than 21 days following the publication of the NOCs in the FAW. The application cycle will open shortly thereafter.

2. **Recommendation**

- a) Approve the proposed underline/strike through Rules and Universal Application as presented, authorize staff to file the rules for OFARR's review and consent, and upon receipt of OFARR's consent, authorize staff to file the rules for adoption following the Rule Hearing if a NOC is not required.
- b) If the Board requires that substantial modifications be made prior to approval of the proposed Rules and Application, staff recommends that a telephonic board meeting be called to obtain Board approval of the NOPRs so that OFARR's consent can be obtained, the required review by JAPC can commence, and the documents can be filed for publication in the FAW.
- c) If, following the Rule Hearing, a NOC is required, authorize the Chair to determine whether the NOCs makes material, substantive changes to the rule chapters. If he determines that it does not, staff recommends that the Board approve such NOCs without the requirement of another Board meeting. In the alternative, if the Chair determines that any NOC does make material, substantive changes to the rule chapters, staff recommends that a telephonic board meeting be called to obtain Board approval for any required changes, with such changes to be ratified at the next regularly scheduled Board meeting.

LEGAL

Action Supplement

I. LEGAL

A. HTG Harbor Village, Ltd. v. Florida Housing Finance Corporation – FHGC Case No. 2010-026GA/DOAH Case No. 10-6673

1. Background

- a) During the 2009 Universal Cycle, HTG Harbor Village, Ltd. (“Petitioner”) applied for an allocation of Low Income Housing Tax Credits to finance the construction of Crestwood Apartments (the “Development”), a 114-unit elderly development to be located in Palm Beach County. Petitioner was preliminarily awarded an allocation of tax credits and invited into credit underwriting on February 26, 2010.
- b) Subsequently, in recognition of the collapse of the low income housing tax credit market, Florida Housing issued RFP 2010-04 to distribute stimulus funds to Developments that were awarded tax credits in the 2009 Universal Cycle, permitting the Developers to exchange their awarded tax credits for direct funding. Developments funded under this RFP are governed by the same requirements as applied in the 2009 Universal Cycle, including credit underwriting requirements.
- c) Petitioner applied for and was preliminarily awarded Exchange funding under RFP 2010-004, and was invited into credit underwriting on March 17, 2010. During the underwriting process, the credit underwriter determined that the Development would have a negative impact on a nearby development participating in Florida Housing’s Guarantee Fund Program, and on June 18, 2010 presented a Preliminary Determination Letter to the Board of Directors recommending that Florida Housing rescind the award of Exchange funding to Petitioner. The Board unanimously accepted this recommendation and rescinded the award. Petitioner received formal notice of the Board’s decision on June 25, 2010.
- d) On July 12, 2010, Florida Housing received a “Petition for Administrative Hearing” (“Petition”) from Petitioner. A copy of the Petition is attached as [Exhibit A](#). After reviewing the Petition, Florida Housing legal staff determined that it raised disputed issues of material fact, and forwarded the Petition to the Division of Administrative Hearings for proceedings under Section 120.57(1), Florida Statutes. In its Petition and at final hearing Petitioner alleged that Florida Housing erred in rescinding the Exchange funding and challenged the recommendation of the credit underwriter. A formal hearing on this case was held January 19-20, 2011, in Tallahassee, Florida before Administrative Law Judge June C. McKinney (“ALJ”). Following the hearing, Petitioner and Florida Housing timely filed Proposed Recommended Orders.

LEGAL

Action Supplement

- e) After consideration of the evidence, arguments, testimony presented at hearing and the Proposed Recommended Orders, Judge McKinney issued Recommended Order on March 16, 2011. A true and correct copy of the Recommended Order is attached hereto as [Exhibit B](#). The ALJ recommended that Florida Housing enter a Final Order rescinding funding to the Crestwood development, upholding the recommendation of the credit underwriter and the Board's decision to rescind funding.
- f) Petitioner has not filed exceptions to the Recommended Order.

2. Present Situation

The Board must rule on the findings of fact and conclusions of law of the Recommended Order and enter a Final Order in this matter.

3. Recommendation

Staff recommends the Board adopt the Findings of Fact, Conclusions of Law and Recommendation of the Recommended Order as its own and issue a Final Order consistent with same in this matter.

PROFESSIONAL SERVICES SELECTION (PSS)

Action Supplement

I. PROFESSIONAL SERVICES SELECTION (PSS)

A. Approval of Housing Counseling Agencies for the Hardest Hit Fund for Unemployment Mortgage Assistance and Mortgage Loan Reinstatement Programs

1. Background

- a) On February 19, 2010, President Obama announced \$1.5 billion in funding called the Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets (HFA Hardest-Hit Fund) to help families in the five states that have been hit the hardest by the combination of housing price declines and unemployment. There are now 18 states and the District of Columbia participating in this \$7.6 billion program. Florida's share of these funds now totals over \$1 billion.
- b) As a result of the September 21, 2010 meeting between Treasury, ten state HFA's including Florida Housing, Fannie Mae, Freddie Mac, the Federal Housing Finance Administration and six major loan servicers throughout the country, standardized plans for Unemployment Mortgage Assistance and Mortgage Loan Reinstatement programs were finalized.

2. Present Situation

- a) A Request for Qualifications (RFQ) process was initiated and RFQ 2010-07 was issued on Friday, June 18, 2010. The RFQ allows for additional counseling agencies to be included in this program. Florida Housing will hold additional review committee meetings before each scheduled Board meeting in order to include these additional counseling agencies. The responses received in time for the June 10, 2011 board meeting are:
 - (1) Centro Campesino Farmworker Center, Inc.
 - (2) Jewish Family & Children's Services of Sarasota-Manatee, Inc.
 - (3) Mind Over Money Consulting
 - (4) Project Hope for Housing, Inc.
 - (5) Tri-County Community Council, Inc.
 - (6) Vision to Victory Human Services
- b) The Review Committee members designated by the Executive Director are: David Westcott, Director of Homeownership Programs, Nicole Gibson, Federal Loan Programs Administrator, Rob Dearduff, Special Programs Administrator & Local Government Liaison and Susan Parks, Chief Information Officer.
- c) The members of the Review Committee individually reviewed the Proposals prior to convening for the Review Committee meeting. The Review Committee meeting was held at 10:00 a.m. on Tuesday, June 7, 2011.
- d) The review committee had tabled a response from Genius Financial Recovery Services, LLC., because of the actions of a principal of the corporation. An investigation was instituted by the Inspector General, Stephanie Sgouros. A copy of her report is attached as [Exhibit A](#).

PROFESSIONAL SERVICES SELECTION (PSS)

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3. **Recommendation**

- a) The Committee recommends that Florida Housing enter into contract negotiations with the following contingent upon specific requirements from each entity:
- (1) Centro Campesino Farmworker Center, Inc., is to provide resumes of all counselors to be performing services for the hardest hit fund.
 - (2) Jewish Family & Children's Services of Sarasota-Manatee, Inc., - no further documentation required.
 - (3) Mind Over Money Consulting – is to provide evidence of current errors & omissions insurance. In addition, Florida Housing will appoint a Technical Advisor to determine whether the Offeror is qualified to provide services as outlined in the RFQ. The Technical Advisor will submit reports to Florida Housing before contracts are signed with the Offeror.
 - (4) Tri-County Community Council, Inc., is to provide a current Certificate of Good Standing from the Florida Department of State. In addition, Florida Housing will appoint a Technical Advisor to determine whether the Offeror is qualified to provide services as outlined in the RFQ. The Technical Advisor will submit reports to Florida Housing before contracts are signed with the Offeror.
 - (5) Project: Hope for Housing is to provide a current Certificate of Good Standing from the Florida Department of State and evidence of current errors & omissions insurance. In addition, Florida Housing will appoint a Technical Advisor to determine whether the Offeror is qualified to provide services as outlined in the RFQ. The Technical Advisor will submit reports to Florida Housing before contracts are signed with the Offeror.
 - (6) Vision to Victory Human Services was deemed non-responsive because the required number of copies was not submitted for review. Florida Housing only received an original of the response. An e-mail was sent to the contact person requesting the additional copies by Friday, June 3, 2011. The additional copies were not received.
- b) The review committee further recommends that the response from Genius Financial Recovery Services, LLC, be rejected based on the conduct of one of the principals, Tina White, during the request for qualifications process. The review committee has determined that it is not in the best interest of Florida Housing to enter into a contract with this corporation.
- c) The review committee has determined that Florida Housing has sufficient coverage statewide for advisor services at this time and a recommendation is made that the “rolling RFQ” be suspended until a time that the program staff feels that additional coverage is needed. Florida Housing will not accept additional responses until further notice.