

NOTICE OF PROPOSED RULEMAKING
FLORIDA HOUSING FINANCE CORPORATION

CHAPTER 67-21

MULTIFAMILY MORTGAGE REVENUE BOND (MMRB) PROGRAM

| RULE TITLES: | RULE NOS.: |
|--|------------|
| Definitions. | 67-21.002 |
| Application and Selection Process for Loans. | 67-21.003 |
| Applicant Administrative Appeal Procedures. | 67-21.0035 |
| Federal Set-Aside. | 67-21.004 |
| Public Policy Criteria Requirements and Qualified Resident Programs. | 67-21.0041 |
| Determination of Method of Bond Sale. | 67-21.0045 |
| Selection of Qualified Lending Institutions as Credit Underwriters, Originators or Servicers. | 67-21.005 |
| Development Requirements. | 67-21.006 |
| Fees. | 67-21.007 |
| Terms and Conditions of Loans. | 67-21.008 |
| Interest Rate on Mortgage Loans. | 67-21.009 |
| Issuance of Revenue Bonds. | 67-21.010 |
| No Discrimination. | 67-21.011 |
| Advertisements. | 67-21.012 |
| <u>Non-Credit Enhanced Private Placements of Multifamily Mortgage</u> Revenue Bonds. | 67-21.013 |

| | |
|--|-----------|
| Credit Underwriting Procedures. | 67-21.014 |
| Use of Bonds with Other Affordable Housing Finance Programs. | 67-21.015 |
| Compliance Procedures. | 67-21.016 |
| Transfer of Ownership. | 67-21.017 |
| Refundings and Troubled Development Review. | 67-21.018 |
| Issuance of Bonds for 501(c)(3) Entities. | 67-21.019 |

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

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 Cycle, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Application Cycles 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 in the 2004 Application Cycle.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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.

SPECIFIC AUTHORITY: 420.507, 420.508, FS.

LAW IMPLEMENTED: 420.507, 420.508, 420.509 FS.

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

BELOW:

TIME AND DATE: 9:30 a.m., January 20, 2004.

PLACE: Tallahassee City Hall, Commission Chambers, 891 South Adams Street,
Tallahassee, Florida 32301.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:

Wayne Conner, Deputy Development Officer, Florida Housing Finance Corporation, 227
North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850) 488-4197.

THE FULL TEXT OF THE PROPOSED RULES IS:

67-21.002 Definitions.

(1) “Acknowledgment Resolution” means the official action taken by Florida Housing to reflect its intent to attempt to finance a Development provided that the requirements of Florida Housing, the terms of the Loan Commitment, and the terms of the Credit Underwriting Report are met. Such official action shall not be taken until Florida Housing has received the information necessary to make the findings required by the Code and the Act.

(2) “Act” means the Florida Housing Finance Corporation Act, Chapter 420, Part V, F.S., as amended.

(3) “Address” means the address assigned by the United States Postal Service and must include address number, street name, city, state and zip code. If the address has not yet been assigned, include, at a minimum, street name and closest designated intersection, city, state and zip code.

(4) “Affiliate” means any person that (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant (ii) serves as an officer or director of the Applicant or of any Affiliate of the Applicant, or (iii) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i) or (ii) above.

(5) “Annual Recertification” means the compilation of the gross income of all persons or families in a given development qualified as lower-income residents to continue to meet the requirements established in section 142(d) of the Code.

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

(7) “Applicant” means any person or entity, for profit or not-for profit, that is seeking a loan from Florida Housing for a multifamily Development and that by submitting an Application has agreed to subject itself to the regulatory powers of Florida Housing.

(8) “Application” means the completed forms from the Universal Application Package, together with all exhibits submitted to Florida Housing in accordance with the provisions of this rule chapter in order to apply for the Program.

(9) “Application Deadline” means 5:00 p.m., Eastern Time, on the final day of the Application Period.

(10) “Application Period” means a period during which Applications shall be accepted, as posted on Florida Housing’s web site and with a deadline no less than thirty days from the beginning of the Application Period.

(11) “Assisted Living Facility” or “ALF” means a Florida licensed living facility that complies with Sections 400.401 through 400.454, F.S., and Rule Chapter 58A-5, F.A.C.

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

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

(14) “Bonds” or “Revenue Bonds” means the Bonds of Florida Housing issued to finance Mortgage Loans, including any Bond, debenture, note, or other evidence of financial indebtedness issued by Florida Housing under and pursuant to the Act.

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

(16) “Calendar Days” means, with respect to computing any period of time allowed by this Rule, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be

included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

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

(18) “Code” or “IRC” is the Internal Revenue Code of 1986, as in effect on the date of this rule chapter, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States, and is adopted and incorporated herein by reference.

(19) “Commercial Fishing Worker” means a laborer who is employed on a seasonal, temporary, or permanent basis in fishing in saltwater or freshwater and who derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. The term includes a person who has retired as a laborer due to age, disability, or illness. In order to be considered retired due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a commercial fishing worker. In order to be considered retired due to disability or illness, a person must:

(a) Establish medically that the person is unable to be employed as a commercial fishing worker due to such disability or illness; and

(b) Establish that he or she was previously employed as a commercial fishing worker.

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

(21) “Contact Person” means the person with whom Florida Housing will correspond concerning the Application and the Development. This person cannot be a ~~third-party part~~ consultant.

(22) “Corporation” or “Florida Housing” or “FHFC” means the Florida Housing Finance Corporation created pursuant to the Act.

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

(24) “Credit Enhancement or Guarantee Instrument” means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to Florida Housing or its Trustee for a minimum of ten years by a third party Credit Enhancer or financial institution securing, insuring or guaranteeing the repayment of the mortgage loan or Bonds under Florida Housing’s Program. A Credit Enhancement or Guarantee Instrument of less than ten years must be approved by the Board prior to being accepted to secure any Bonds.

(25) “Credit Enhancer” means a financial institution, insurer or other third party which provides a Credit Enhancement or Guarantee Instrument acceptable to Florida Housing securing repayment of the Mortgage Loan or Bonds issued pursuant to Florida Housing’s Program.

(26) “Credit Underwriter” means the independent contractor under contract with Florida Housing having the responsibility for providing credit underwriting services.

Such services shall include, for example, a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, and the evidence of need for affordable housing in order to determine that the Development meets the Program requirements. The Credit Underwriter shall determine a recommended Bond amount that should be made to a Development, whether an initial loan or a refunding.

(27) “Credit Underwriting” means an in-depth analysis of post-cure period information and all documents submitted in connection with the Application to produce the Credit Underwriting Report.

(28) “Credit Underwriting Report” means a report for a particular Development that is produced by the Credit Underwriter designated by Florida Housing and includes a thorough analysis of the proposed Development and a statement as to whether a loan is recommended, and if so, the amount recommended. The Credit Underwriter or Florida Housing may request such additional information as is necessary to properly analyze the credit risk being presented to Florida Housing and the bondholders. The Applicant shall pay the cost of such Credit Underwriting in addition to any other fees payable to Florida Housing in conjunction with the Application and Program financing.

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

(30) “Developer” means the individual, association, corporation, joint venturer or partnership identified as such in the Application. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

(31) “Developer Fee” means the fee earned by the Developer. Such fee shall be limited to 18 percent of Total Development Cost excluding land and, for rehabilitation, building acquisition costs. A Developer Fee on the building acquisition cost shall be limited to 4% of the cost of the building(s) exclusive of land cost. Consulting fees, if any, must be paid out of the Developer Fee. Consulting fees include payments for Application consultants, construction management or supervision, or local government consultants. Fees of the Applicant’s or Developer’s attorney(s) awarded in conjunction with litigation against Florida Housing with respect to a Development shall also not be included in Total Development Costs. Fees for services provided by architects, accountants, appraisers, engineers or Financial Advisors may be included as part of the Total Development Costs, except that those fees for a Financial Advisor that are in excess of \$18,000 must be paid out of the Developer Fee. In the event of extraordinary circumstances, Applicant may petition the Board for relief from the attorney fee and Financial Advisor caps. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest relationship as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowed for the Developer Fees pursuant to the HUD subsidy layering regulations. Florida Housing shall not authorize fees to be paid for duplicative services or duplicative overhead.

(32) “Development” means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing

housing, which is intended for use as multifamily rental housing, together with such related non-housing facilities as Florida Housing determines to be necessary, convenient, or desirable. A Development shall constitute a “project” within the meaning of the Act.

(33) “Development Cost” means the total of all costs incurred in the completion of a Development excluding Developer Fee, acquisition cost of existing developments, and total land cost as shown in the Development Cost line item on the development cost pro forma within the Application.

(34) “Difficult Development Area” or “DDA” means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with section 42(d)(5) of the Code. ~~A list of the 2003 Florida DDAs is adopted and incorporated herein by reference. A copy of such list is available on FHFC’s web site www.floridahousing.org.~~ The United States Department of Housing and Urban Development maintains the official DDA list. ~~The incorporated Florida DDA list is designed to assist the Applicant in the Application process.~~ Applicants are responsible for providing Florida Housing with accurate DDA information.

(35) “Disclosure Counsel” means the Special Counsel designated by Florida Housing to be responsible for the drafting and delivery of Florida Housing’s disclosure documents such as preliminary official statements, official statements, re-offering memorandums or private placement memorandums and continuing disclosure agreements. The fees of Disclosure Counsel shall be set by contract with Florida Housing and shall be paid from the Cost of Issuance Fee or from the Good Faith Deposit submitted with the Loan Commitment.

(36) “Elderly” means persons 62 years of age or older or qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), F.S.

(37) “Elderly Housing”, “Elderly Development”, or “Elderly Unit” means housing or a unit being occupied or reserved for qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), F.S., provided that such development meets the requirements for an Elderly Development as set forth in the Universal Application Package.

(38) “Family” or “Family Household” describes a household composed of one or more persons.

(39) “Farmworker” means any laborer who is employed on a seasonal, temporary or permanent basis in the planting, cultivating, harvesting, or processing of agricultural or aquacultural products and who has derived at least 50% of his/her income in the immediately preceding 12 calendar months from such employment. “Farmworker” also includes a person who has retired as a laborer due to age, disability, or illness. In order to be considered retired from farm work due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker immediately preceding retirement. In order to be considered retired from farm work due to disability or illness, it must be:

(a) Medically established that the person is unable to be employed as a Farmworker due to such disability or illness; and

(b) Established that he or she had previously met the definition of Farmworker.

(40) “Farmworker Development” means a Development:

(a) Of not greater than 160 units, at least 60% of the total residential units of which are occupied or reserved for Farmworker Households;

(b) For which independent market analysis demonstrates a local need for such housing, and;

(c) For which the Applicant has developed a detailed plan to attract, serve and keep the targeted population.

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

(42) “Financial Advisor” means, with respect to an issue of Bonds, a professional who is either under contract to Florida Housing or is engaged by the Applicant who advises on matters pertinent to the issue, such as structure, timing, marketing, fairness of pricing, terms, bond ratings, cash flow, and investment matters.

(43) “Financial Beneficiary” means any Developer and its principals or the principals of the Applicant entity who receives or will receive a financial benefit of:

(a) 3% or more of Total Development Cost (including deferred fees) if Total Development Cost is \$5 million or less; or

(b) 3% of the first \$5 million and 1% of any costs over \$5 million (including deferred fees) if Total Development Cost is greater than \$5 million.

The definition does not include third party lenders, third party management agents or companies, housing credit syndicators, credit enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or building

contractors whose total fees are within the limit described in subsection 67-21.002(48), F.A.C.

(44) “Florida Housing” or “FHFC” means the Florida Housing Finance Corporation as created by the Act.

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

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

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

(c) Federal properties.

(46) “Funding Cycle” means the period of time established by the Corporation pursuant to this rule chapter and concluding with the issuance of allocations or Loans to Applicants who applied during a given Application Period.

(47) “General Contractor” means an entity duly licensed in the State of Florida which to be eligible for the maximum 14% fee, must meet the following conditions:

(a) The Development superintendent must be employed by the General Contractor and the costs of that employment must be charged to the general requirements line item of the General Contractor’s budget;

(b) The Development construction trailer and other overhead must be paid directly by the General Contractor and charged to general requirements;

(c) Building permits must be issued in the name of the General Contractor;

(d) Payment and performance bond (or approved alternate security for General Contractor’s performance, such as a letter of credit or other guarantee acceptable to

Florida Housing) must be issued in the name of the General Contractor by a company rated at least “A-” by AMBest & Co.;

(e) None of the General Contractor duties to manage and control the construction of the Development may be subcontracted; and

(f) Not more than 20 percent of the construction cost is sub-contracted to any one entity unless otherwise approved by the Board for a specific Development.

(48) “General Contractor’s Fee” means a fee inclusive of general requirements, profit and overhead. General Contractor’s Fees shall be limited to 14 percent of hard costs, excluding any hard cost contingencies. For the purpose of the HUD Risk Sharing Program, if there exists an Indentity of Interest as defined herein between the Applicant and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements. Additionally, fees shall be allowed to be paid only to the person or entity that actually meets the definitional requirements to be considered a General Contractor. Florida Housing shall not allow fees for duplicative services or duplicative overhead.

(49) “Geographic Set-Aside” means, with respect to a MMRB Development, the amount of allocation that has been designated by Florida Housing for Developments located in specific geographical regions within the State of Florida.

(50) “Good Faith Deposit” means a total deposit equal to one percent of the Loan amount reflected in the Loan Commitment paid by the Applicant to Florida Housing at the times required by this rule chapter. If the Good Faith Deposit is exhausted, the Applicant shall be required to pay, within three days of notice, an additional deposit to ensure payment of the expenses associated with the processing of the Application, the

sale of the Bonds, including document production and the securitization of the Loan. The Good Faith Deposit shall be remitted by certified check or wire transfer.

(51) “HC” or “Housing Credit Program” means the Low-Income or Very Low-Income rental housing program administered by Florida Housing in accordance with section 42 of the Code and Section 420.5099, F.S., under which Florida Housing is designated the Housing Credit Agency for the State of Florida within the meaning of section 42(h)(7)(A) of the Code, and Rule Chapter 67-48, F.A.C.

(52) “Homeless” or “Homeless Household” means an individual or Family who lacks a fixed, regular, and adequate nighttime residence or an individual or Family who has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing;

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

(53) “HUD” means the U.S. Department of Housing and Urban Development.

(54) “HUD Risk Sharing Program” means the program authorized by section 542(c) of the Housing and Community Development Act of 1992, which is adopted and incorporated herein by reference.

(55) “Identity of Interest” means, for the purpose of the HUD Risk Sharing Program, any person or entity that has a one percent or more financial interest in the Development and in any entity providing services for a fee to the Development. Unless otherwise excluded, persons or entities that share in the net profits of the Development shall be construed as having an ownership interest to the extent that they share in Development or project revenues. The Identity of Interest definition shall not apply to the tax credit syndicator, limited partner investors, or professionals who are retained pursuant to a negotiated fee arrangement consistent with industry standards and which fee arrangement does not incorporate the payment of fees from Development operating revenues.

(56) “Income Certification,” “Tenant Income Certification” or “Form TIC-1” means the form which is adopted and incorporated herein by reference, effective January 2004 ~~6/2002~~, and which shall be used to certify the income of all tenants residing in a Set-Aside unit in a Development. A copy of such form is available on FHFC’s web site at www.floridahousing.org.

(57) “Issuer” means the Florida Housing Finance Corporation.

(58) “Land Use Restriction Agreement,” “LURA” or “Regulatory Agreement” means that agreement among Florida Housing, the Bond Trustee and the Applicant which sets forth certain restrictions on the use of the Development to comply with the Code, the Act, the rules and policies of Florida Housing and any requirements of a Credit Enhancer. Such document shall be recorded prior to the Mortgage in the public records in the county where the Development is located, unless the Board expressly agrees to subordinate the LURA to facilitate the financing.

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

(60) “Loan” means the loan made by Florida Housing to the Applicant from the proceeds of the Bonds issued by Florida Housing.

(61) “Loan Agreement” means the Program Documents or Loan Documents wherein Florida Housing and the Applicant agree to the terms and conditions upon which the proceeds of the Bonds shall be loaned, and the terms and conditions for repayment of the Loan.

(62) “Loan Commitment” means the Program Documents or Loan Documents executed by Florida Housing and the Applicant after the issuance of a favorable Credit Underwriting Report that defines the conditions under which Florida Housing agrees to lend the proceeds of the Bonds to the Applicant for the purpose of financing all or a portion of a Development and is filed with Florida Housing along with full payment of the Good Faith Deposit before substantive work commences on Program Documents other than the Loan Commitment.

(63) “Local Government” means a unit of local general-purpose government as defined in Section 218.31(2), F.S.

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

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

(66) “Lower Income Residents” means individuals or families whose annual income does not exceed either 50 percent or 60 percent depending on the minimum Set-Aside elected of the area median income as determined by HUD with adjustments for household size. In no event shall occupants of a Development unit be considered to be Lower Income Residents if all the occupants of a unit are students as defined in section 151(c)(4) of the Code or if the residents do not comply with the provisions of the Code defining Lower Income Residents. (See section 142 of the Code.) If Taxable Bonds, other than Taxable Bonds issued simultaneously with Tax-Exempt Bonds, in which case the above referenced provisions apply, or Bonds that do not require State Bond Allocation are being used to finance the Development, Lower Income Residents shall be defined as an individual or family with an Annual Household Income not in excess of 80 percent of the state or county median income, whichever median income is higher. In the event Bonds are issued on behalf of a corporation organized under section 501(c)(3) of the Code, the Set-Aside shall not be less than that required by the section 501(c)(3) documents.

(67) “Mortgage” means the instrument securing the Loan which creates a first, co-equal or acceptable subordinate lien on the Development, subject to permitted encumbrances.

(68) “Mortgage Loan” means the Loan secured by the Mortgage and evidenced by a Note or Mortgage Note.

(69) “Note” means a unilateral agreement containing an express and absolute promise to pay to Florida Housing a principal sum of money for the Loan together with interest on a specified date. The Note will provide the interest rate and will be secured by a mortgage.

(70) “Preservation Development” means an existing Development currently subject to documented rent restrictions or income restrictions through a federal, state or local government affordable housing program, where the rent restrictions or income restrictions for the Development will end within five years.

(71) “Principal” means any individual acting in their individual capacity or acting as president, vice president, treasurer or secretary, member of the board of directors or the legal or beneficial owner of 10% or more of any class of stock of a corporation which is a general partner of a limited partnership Applicant or Developer; or the general partner of a limited partnership that is the general partner of a limited partnership Applicant or Developer; or is a partner in a general partnership or joint venture acting alone or as a part of another entity that is an Applicant or Developer. With respect to a limited liability company either acting alone or as a part of another entity that is an Applicant or Developer, each manager and each member is a principal. With respect to a registered limited liability partnership either acting alone or as a member of another entity that is an Applicant or Developer, each partner is a principal. With respect to a trust either acting alone or as a part of another entity that is an Applicant or Developer, any individual or entity owning 10% or more of the beneficial interest in the trust is a

principal. A General Contractor, management agent, architect/engineer, attorney that participates on an arms-length fee arrangement are not considered Principals of the Applicant entity.

(72) “Private Placement” or “Limited Offering” means the sale of Florida Housing Bonds directly or through an underwriter or placement agent to 35 or fewer initial purchasers who are not purchasing the Bonds with the intent to offer the Bonds for retail sale and who are Qualified Institutional Buyers.

(73) “Program” means Florida Housing’s Multifamily Mortgage Revenue Bond (MMRB) Program.

(74) “Program Documents or Loan Documents” means the Loan Commitment, Loan Agreement, Note, Mortgage, Credit Enhancement or Guarantee Instrument, Land Use Restriction Agreement, Trust Indenture, Preliminary and Final Official Statements, Intercreditor Agreement, Assignments, Bond Purchase Agreement, Compliance Monitoring Agreement, Mortgage Servicing Agreement and such other ordinary and customary documents necessary to issue and secure repayment of the Bonds and Mortgage sufficient to protect the interests of the Bond owners and Florida Housing.

(75) “Program Report” or “Form PR-1” means the report format which is required to be completed and submitted to Florida Housing pursuant to this rule chapter, and is adopted and incorporated herein by reference, effective June 2003 ~~October 2002~~. A copy of such form is available on FHFC’s web site at www.floridahousing.org.

(76) “Public Policy Criteria and Qualified Resident Programs” means the requirements and guidelines established by Florida Housing and set forth in Rule 67-21.004, F.A.C., and the Universal Application package. The programs and requirements

shall be incorporated in the Loan Commitment and Program Documents. Such Public Policy Criteria and Qualified Resident Programs have been adopted for the purpose of accomplishing the programmatic goals of the Code, Florida Housing and the Act.

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

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

1. Any insurance company as defined in section 2(13) of the Securities Exchange Act, which is adopted and incorporated herein by reference;
2. Any investment company registered under the Investment Company Act or any business development company as defined in section 2(a)(43) of that Act, which is adopted and incorporated herein by reference;
3. Any Small Business Investment Company licensed by the U.S. Small Business Administration under sections 301(c) or (d) of the Small Business Investment Act of 1958, which is adopted and incorporated herein by reference;
4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees;
5. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, which is adopted and incorporated herein by reference;

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

7. Any business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940, which is adopted and incorporated herein by reference;

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

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

(c) Any dealer registered under section 15 of the Securities Exchange Act, which is adopted and incorporated herein by reference, acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

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

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

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

(78) “Qualified Census Tract” or “QCT” means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50% or more of the households at an income which is less than 60% of the area median gross income, or a poverty rate of at least 25%, in accordance with section 42(d)(5)(C) of the Code. ~~A list of the 2003 Florida QCTs is adopted and incorporated herein by reference. A copy of such list is available on FHFC’s web site www.floridahousing.org.~~ The United States Department of Housing and Urban Development maintains the official QCT list. ~~The incorporated Florida QCT list is designed to assist the Applicant in the Application process.~~ Applicants are responsible for providing Florida Housing with accurate QCT information.

(79) “Qualified Lending Institution” means any lending institution designated by Florida Housing.

(80) “Qualified Project Period” means the period of time, as provided in the Code, that a Development financed with Tax-exempt Bonds must comply with the Lower Income Tenant Set-Aside.

(81) “Received” as it relates to delivery of a document by a specified deadline means, unless otherwise indicated, delivery by hand, U.S. Postal Service, or other courier service, in the office of the Corporation no later than 5:00 p.m., Eastern Time, on the deadline date.

(82) “Rehabilitation Development” means a Development, the Rehabilitation Expenditures with respect to which equal or exceed 15% of the portion of the cost of acquiring such Development to be financed with Bond proceeds.

(83) “Rehabilitation Expenditures” has the meaning set forth in section 147(d)(3) of the Code.

(84) “Scattered Sites” for a single Development means a Development consisting of more than one parcel in the same county where two or more of the parcels (i) are not in the same county, contiguous to one another or are divided by a street or easement and (ii) it is readily apparent from the proximity of the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development, sharing at least one common boundary between them, or within such reasonable proximity to each other as to appear to the public to be under the dominion and control of the Applicant.

(85) “Set-Aside” means the occupancy requirements or restrictions for Developments financed by Florida Housing. Such Set-Aside requirements shall be set forth in the Land Use Restriction Agreement and other such Program Documents as are deemed necessary by Florida Housing. The minimum Set-Aside requirements are as follows:

(a) For Taxable Bonds – 20 percent or more of the residential units in the Development shall be occupied or held available for occupancy by a Family whose Annual Household Income does not exceed 80 percent of the state or county median income, whichever median income is higher, provided, however, that if such taxable bonds are being issued in connection with Tax-exempt Bonds, the requirement of (b) below shall govern.

(b) For Tax-exempt Bonds – 20 percent or more of the residential units in the Development shall be occupied or held available for occupancy by a Family whose Annual Household Income does not exceed 50 percent of the state or county median income whichever is higher, or 40 percent or more of the residential units in the Development shall be occupied by or held available for a Family whose Annual Household Income does not exceed 60 percent of the state or county median income, whichever is higher, or that which is required by the Code at the time of issuance of the Bonds or required by Florida Housing to meet its programmatic purposes.

(86) “Single Room Occupancy” or “SRO” means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. An SRO does not include facilities for students.

(87) “Special Counsel” means any attorney or law firm retained by Florida Housing, pursuant to an RFQ, to serve as counsel to Florida Housing, including Disclosure Counsel.

(88) “State Board of Administration” or “SBA” means the State Board of Administration created by and referred to in s. 9, Article XII of the State Constitution.

(89) “State Bond Allocation” means the allocation of the State private activity bond volume limitation pursuant to Chapter 159, Part VI, F.S., administered by the Division of Bond Finance and allocated to Florida Housing for the issuance of its Tax-exempt Bonds.

(90) “State Office on Homelessness” means the office created within the Department of Children and Family Services under Section 420.622, F.S.

(91) “Student” means an individual who is considered a full-time student by the educational institution being attended or will be a full-time student at an educational institution with regular facilities and students other than correspondence school, during five months of the certification year.

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

(93) “Tax Exempt Bond-Financed Development” means a Development which has been financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the Code.

~~(94)~~(93) “Tax-exempt Bonds” means those Bonds on which all or part of the interest earned is excluded from gross income of the owner for federal income tax purposes pursuant to the Code.

~~(95)~~(94) “Tie-Breaker Measurement Point” means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means Developments the Applicant must select a single point on one of the Scattered Sites which comprise the

Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.

~~(96)~~~~(95)~~ “TEFRA Hearing” means a public hearing held pursuant to the requirements of the Code and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), section 147(f) of the Code, at which members of the public or interested persons are provided an opportunity to present evidence or written statements or make comments regarding a requested application for Tax-exempt financing of a Development by Florida Housing.

~~(97)~~~~(96)~~ “Total Development Cost” means the sum total of all costs incurred in the construction of a Development all of which shall be subject to the approval by the Credit Underwriter and shall be approved by Florida Housing as reasonable and necessary. Such costs may include:

- (a) The cost of acquiring real property and any building thereon, including payment for options, deposits, or contracts to purchase properties.
- (b) The cost of site preparation, demolition, and development.
- (c) Any expenses relating to the issuance of Tax-exempt Bonds or Taxable Bonds by Florida Housing related to the particular Development.
- (d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, Financial Advisors and Florida Housing. The fees for attorneys and Financial Advisors are limited pursuant to subsection 67-21.002(43), F.A.C.

(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, ad valorem tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Development.

(f) The cost of the construction, rehabilitation, and equipping of the Development.

(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services.

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

(i) Allowances established by Florida Housing for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first two years after completion of construction of the Development.

(j) The cost of other such items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for Bonds, as the Corporation shall determine to be reasonable and necessary for the construction or rehabilitation of the Development.

~~(98)(97)~~ “Universal Application Package” or “UA1016 ~~(Rev. 2-04)~~ Rev. 8-03” means the forms and instructions, obtained from Florida Housing at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to Florida Housing in accordance with this rule chapter in order to apply for the Program. The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.

~~(99)(98)~~ “Urban In-Fill Development” means a Development (i) in a site or area that is targeted for in-fill housing or neighborhood revitalization by the local, county, state or federal government as evidenced by its inclusion in a HUD

Empowerment/Enterprise Zone, a HUD-approved Neighborhood Revitalization Strategy, Florida Enterprise Zone, area designated under a Community Development Block Grant (CDBG) or area designated as a HOPE VI or Front Porch Florida Community or a Community Redevelopment Area as described and defined in the Florida Community Redevelopment Act of 1969, or the proposed Development is located in a Qualified Census Tract and the development of which contributes to a concerted community revitalization plan, and (ii) in a site which is located in an area that is already developed and part of an incorporated area or existing urban service area.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.503, 420.507, 402.508 FS. History—New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 2-6-97, 1-7-98, Formerly 9I-21.002, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 10-5-03, _____.

67-21.003 Application and Selection Process for Loans.

(1) All Applications must be complete, legible and timely when submitted, except as described below. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application.

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Universal Application Package and these rules. Preliminary scores shall be transmitted to all Applicants.

(4) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 7 Calendar Days of the date of receipt of the preliminary scores, a written Notice of Possible Scoring Error (NOPSE). Each NOPSE must specify the assigned Application number and the scores in question, as well as describe the alleged deficiencies in detail. Each NOPSE is limited to the review of only one Application's score. Any NOPSE that seeks the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of NOPSEs that may be submitted. The Corporation's staff will review each written NOPSE timely Received.

(5) The Corporation shall transmit to each Applicant the NOPSEs submitted by other Applicants with regard to its Application. The notice shall also include the Corporation's decision regarding the NOPSE, along with any other items identified by the Corporation to be addressed by the Applicant.

(6) Within 9 Calendar Days of receipt of the notice set forth in subsection (5) above, each Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues raised pursuant to subsections (3) and (5) above that could result in rejection of the Application or a score less than the maximum available. ~~Where specific pages of the Application are revised, changed or added, each new page(s) must be marked as "revised," and submitted. Failure to mark each new page(s) "revised"~~

~~will result in the Corporation not considering the revisions, changes or additions to that new page.~~ Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. The Applicant shall submit an original and three copies of all additional documentation and revisions. Only revisions, changes and other information received by the deadline set forth herein will be considered. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s).

(7) Within 7 Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above, all Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. Each NOAD is limited only to issues created by documents revised and/or added by the Applicant submitting the Application pursuant to subsection (6) above. Each NOAD must specify the assigned Application number, the pages and the documents in question, as well as describe the alleged deficiencies in detail. Each NOAD is limited to the review of only one Applicant's submission. However, there is no limit to the number of NOADs that may be submitted. NOADs that seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation will only review each written NOAD timely received.

(8) The Corporation shall transmit a copy of all NOADs to the affected Applicant.

(9) Following the receipt and review by the Corporation's staff of the documentation described in subsections (5), (6) and (7) above, the Corporation's staff shall then prepare final scores. In determining such final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the notices described in subsections (3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) and (7) above will still be justification for rejection or reduction of points as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in subsection (14) below can be identified at any time prior to sending the final scores to Applicants and will result in rejection of the Application. The Corporation shall then transmit final scores to all Applicants.

(10) Based on the order of the ranked Applications after informal appeals and the availability of State Bond Allocation designated by the Board for multifamily housing, the Board shall designate Applications for funding and offer the opportunity to enter Credit Underwriting, and shall designate those that are below the funding line on the MMRB ranked list. Any additional allocation designated by the Board for MMRB shall be applied to the next unfunded Application(s) on the ranked list, but only to the extent said Application's request can be fully funded. Any remaining allocation designated by the Board for multifamily housing, which as of December 1 of each year is insufficient to fully fund the next ranked Application shall be offered to the next ranked Applicant, continuing down the ranked list until sufficient to fully fund a proposed Development. After December 1, Applicants shall be permitted to downsize their allocation request by

up to 15% of the original allocation request for the purpose of becoming fully funded but may not reduce the number of units or the unit sizes in the development. Any unused allocation shall, at the option of the Board, be carried over and applied to the next calendar year allocation or applied to single family housing. Florida Housing may, after the cure period and upon a determination that such is necessary to assure timely processing of Applicants, invite Applicants who meet threshold into Credit Underwriting at their own risk. Applicants shall be notified in writing of the opportunity to enter Credit Underwriting. A detailed timeline for submitting required fees and information to the Credit Underwriter shall be included. Failure to meet the deadlines established by such timeline shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list. Applicants electing to proceed to Credit Underwriting without designation for funding do so at their own risk, and said opportunity does not ensure that the Application will be funded. Any Applicant that declines invitation to Credit Underwriting, when invited by the Board, shall be removed from the ranked list.

(11) Applications shall be limited to one submission per subject property with the exception that Local Government-issued Tax-Exempt Bond-Financed Developments may submit a separate Application for noncompetitive Housing Credits. Two or more Applications with the same Financial Beneficiary for Developments that are contiguous with the property of another Application, or that are divided by a street or easement, or if it is readily apparent from the two Applications, proximity, chain of title or other information available to the Corporation that the properties are part of a common or related scheme of development, the Applications will be considered to be submissions for

the same Development site and the Corporation will reject all such Applications except the Application with the highest (worst) lottery number. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Two Applications by Applicants with common Financial Beneficiaries for Developments that are contiguous, or that are divided by a street or easement, or that are otherwise part of a common or related scheme of development, will not be considered to be submissions for the same Development site if one of the Applicants applies for SAIL only.

(12) If the Board determines that any Applicant or any Affiliate of an Applicant:

(a) Has engaged in fraudulent actions;

(b) Has materially misrepresented information to the Corporation regarding any of its Developments, or within the current Application or in any previous applications for financing or an allocation of Housing Credits administered by the Corporation;

(c) Has been convicted of fraud, theft or misappropriation of funds;

(d) Has been excluded from federal or Florida procurement programs; or

(e) Has been convicted of a felony

and that such action substantially increases the likelihood that the Applicant will not be able to produce quality affordable housing, the Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two years, which will begin from the date the Board makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, Florida Statutes, or as a result of a finding by a court of competent jurisdiction.

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in subsection (6) above:

(a) The Development does not conform to the Application requirements specified in this rule chapter;

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application and Application instructions;

(c) The Applicant fails to file all applicable Application pages and exhibits that are provided by the Corporation and adopted under this rule chapter;

(d) An Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears for any financial obligation it has to the Corporation or any agent or assignee of the Corporation.

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of ~~the~~ Applicant;

(b) Name of each ~~the~~ Developer, including all co-Developers;

(c) Program(s) applied for;

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

~~(d) Number of units;~~

(e) Site for the Development;

(f) ~~Type of Development~~ type category;

(g) Designation selection;

(h) County;

(i) Total number of units;

~~(j)~~ Funding request, except for Taxable Bonds and as provided in subsection 67-21.003(10), F.A.C.; notwithstanding the foregoing, requested amounts exceeding the Corporation and Program funding limits can be reduced by the Applicant to reflect the maximum request amount allowed (and no other changes to this amount will be allowed);

~~(k)~~ The total set-aside percentage as stated in the last row of the total set-aside breakdown chart for the Program(s) applied for in the Total Set-Aside Commitment section of the Application;

~~(l)~~ Submission of one original hard copy with the required number of photocopies of the Application by the Application Deadline;

~~(m)~~ Payment of the required Application fee and TEFRA fee by the Application Deadline.

All other items may be submitted as cures pursuant to paragraph (6) above.

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

(16) If an Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer has any existing Developments participating in any Corporation programs that remain in non-compliance with the Code, this rule chapter, or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the Application or at the time of issuance of a Credit Underwriting Report, the requested allocation will, upon a determination by the Board that such non-compliance substantially increases the likelihood that such Applicant will not be able to produce quality affordable housing, be denied and the Applicant and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Corporation's programs for the subsequent cycle and continuing until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(17) When two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the Application instructions.

(18) At no time during the Application, scoring and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development. At no time from the Application Deadline until after issuance of the final scores as set forth in subsection (9) above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Application. If an Applicant or its representative does contact a Board member in violation of this section, the Board shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) Applicants may withdraw an Application from consideration only by submitting a written notice of withdrawal to the Corporation Clerk. Applicants may not rescind any notice of withdrawal that was submitted to the Corporation Clerk. For ranking purposes, Florida Housing shall disregard any withdrawal that is submitted after 5:00 p.m., Eastern Time, on the Friday preceding Board approval of the final rankings of the Applications and such Application shall be included in the ranking as if no notice of withdrawal had been submitted. After the Board has approved the final ranking, any notice of withdrawal submitted after that Friday and before the Board approves the final ranking, shall be deemed withdrawn immediately after final ranking. If an Applicant has applied for two or more Programs, the withdrawal by the Applicant from any one Program will be deemed by Florida Housing to be a withdrawal of the Application from all Programs.

(20) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is ~~mandated by local, state or federal governmental authorities, or otherwise~~ approved by the Corporation. ~~Evidence of such mandate must be submitted to the Corporation within 30 Calendar Days of notification by the local, state or federal authorities.~~

(21) If an Applicant or any Affiliate of an Applicant has offered or given consideration, other than the consideration to provide affordable housing, with respect to a local contribution and this is discovered prior to Board approval of the ranking, Florida Housing shall reject the Application and any other Application submitted by the same Applicant and any Affiliate of the Applicant. If discovered after the Board approves final

ranking, any tentative funding or allocation for the Application and any other Application submitted in the same cycle by the same Applicant and any Affiliate of the Applicant will be withdrawn. Such Applicant and any of such Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two years, which will begin the date the Board issues a Final Order on such matter in a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S.

~~(22)~~(20) Florida Housing shall initiate TEFRA Hearings on the proposed Developments whose Applications were received by the Application Deadline. Neither the TEFRA Hearing, the invitation into Credit Underwriting, nor the Acknowledgment Resolution obligate Florida Housing to finance the proposed Development in any way.

~~(23)~~(21) Upon receipt of the Credit Underwriting Report, Florida Housing shall submit the Application to its Financial Advisor for a preliminary recommendation of the method of bond sale for each Development pursuant to Rule 67-21.0045, F.A.C.

~~(24)~~(22) Proposed Developments that are ranked, but not selected by the Board to enter Credit Underwriting, shall remain on the ranked list in the event State Bond Allocation becomes available to fund additional Developments. If the current year's State Bond Allocation designated by the Board for multifamily housing is insufficient to fully finance a Development, subject to the provisions of subsection 67-21.003(10), F.A.C., permitting reduction of the requested amount, a new Application must be filed to be eligible for a future year's State Bond Allocation.

~~(25)~~(23) Florida Housing shall notify the Applicant, in writing, of the Board's determination related to approval of the Credit Underwriting Report and require the Applicant to submit one-half of the Good Faith Deposit within 7 Calendar Days from the

receipt of such notice. Developments designated for a portion of the current year's State Bond Allocation shall be required to close at such time as set forth in such notification. In the event the loan does not close within the designated time frame and the closing date is not extended in writing by Florida Housing, then the State Bond Allocation shall be forfeited.

~~(26)~~~~(24)~~ Upon favorable recommendation of the Credit Underwriting Report and preliminary recommendation of the method of bond sale from Florida Housing's Financial Advisor, the Board shall designate by resolution the method of bond sale considered appropriate for financing. The Board shall consider authorizing the execution of the Loan Commitment and shall consider final Board approval reserving State Bond Allocation for a Development. Requests for Taxable Bonds shall be considered by the Board in an amount recommended by the Credit Underwriter. The Board shall also assign a bond underwriter, structuring agent, or Financial Advisor and any other professionals necessary to complete the transaction. Staff shall assign Florida Housing bond and special counsel as needed.

~~(27)~~~~(25)~~ Following receipt of one-half of the Good Faith Deposit, Florida Housing's assigned counsel shall begin preparation of the Loan Commitment.

~~(28)~~~~(26)~~ Upon execution of a Loan Commitment, Applicant shall pay the balance of the Good Faith Deposit and Florida Housing shall authorize bond counsel and special counsel to prepare the Program Documents.

~~(29)~~~~(27)~~ The Corporation may disqualify an Applicant if, after a hearing before the Board, the Board determines that the Applicant or its principal(s):

- (a) Has been convicted of fraud, theft or misappropriation of funds; or

- (b) Has made material misrepresentations to the Corporation; or
- (c) Has been excluded from federal or Florida procurement programs; or
- (d) Has been convicted of a felony.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4), (13), (14), (18), (19), (20), (21), (24), 420.508 FS. History—New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.003, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, _____.

67-21.0035 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-21.003, each Applicant will be provided with its final score and notice of rights, which shall constitute the point of entry to contest any issue related to the Applicant's Application for the Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation on or before the 21st Calendar Day after the date Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and 67-52.002(3), F.A.C., and specify in detail each issue and score sought to be challenged. ~~Submission by facsimile or other electronic means will not be accepted.~~ If the petition does not raise a disputed issue of material fact, the challenge will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered by the designated hearing officer which will then be considered by the Board.

(3) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding concerning its own Application shall be allowed the opportunity to submit written arguments to the Board. Any written argument should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(4) Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with Rule Chapter 67-21, F.A.C., the Corporation shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board, provide the requested allocation from the next available allocation, whether in the

current year or a subsequent year. Nothing contained herein shall affect any applicable credit underwriting requirements.

(5) Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if:

(a) The competing Applicant files a petition on or before the 21st Calendar Day after the receipt of the notice of rights pursuant to this subsection (5). ~~Submission by facsimile or other electronic means will not be accepted.~~ The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and 67-52.002(3), F.A.C., ~~as applicable~~, and specify in detail each issue, score or ranking sought to be challenged.

(b) For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-21.003(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-21.003(6).

(c) The competing Applicant alleges facts in its petition sufficient to demonstrate that, but for the specifically identified threshold, scoring or ranking errors in the challenged Application, its Application would have been in the funding range at the time Florida Housing provided the Applicant with its final ranking.

(d) If the petition does not raise a disputed issue of material fact, the appeal will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered which will then be considered by the Board.

(6) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding as described in subsection (5) above concerning the final ranking of another Application, shall be allowed the opportunity to submit written arguments to the Board. Any written arguments should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(7) For those Applicants that have filed a petition pursuant to subsection (5) above, the Corporation shall, if any such Applicant ultimately obtains a final order that demonstrates that its Application would have been in the funding range of the applicable final ranking, provide the requested allocation from the next available allocation, whether

in the current year or a subsequent year. Nothing contained herein shall affect any applicable credit underwriting requirements. The filing of a petition pursuant to subsection (5) above shall not stay the Corporation's provision of funding to Applicants per the final rankings referenced in subsection (4) above.

Specific Authority 420.507, 420.508 FS. Law Implemented 120.57, 120.569(2)(b), 420.502, 420.507, 420.508 FS. History—New 11-14-99, Amended 2-11-01, 3-17-02, 10-8-02, 12-4-02, 4-6-03, _____.

67-21.004 Federal Set-Aside Requirements.

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

(1) Twenty percent of the residential units in the Development shall be occupied by or reserved for occupancy by one or more persons or a family whose Annual Household Income does not exceed 50 percent of the area median income limits adjusted for Family size (the 20/50 Set-Aside); or

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

(3) For Developments financed solely through the issuance of Taxable Bonds or refundings of Tax-exempt Bonds originally issued under section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended, which is adopted and incorporated herein by reference, 20 percent of the residential units in the Development shall be occupied by

or reserved for occupancy by one or more persons or a family whose Annual Household Income does not exceed 80 percent of the area median income limits adjusted for Family size (the 20/80 Set-Aside).

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4), (6), (12), (13), (14), (18), (19), (21), 420.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 9-25-96, 2-6-97, 1-7-98, Formerly 9I-21.004, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02. Repromulgated 4-6-03, _____.

67-21.0041 Public Policy Criteria Requirements and Qualified Resident Programs.

(1) An Applicant may commit to provide Qualified Resident Programs as provided for in the Universal Application Package.

(2) An Applicant may irrevocably commit to Set-Aside units in the Development for a longer period of time than that required by Rule 67-21.004, F.A.C.

(3) All Public Policy Criteria and Qualified Resident Programs and factors selected by the Applicant shall be verified beginning with Credit Underwriting and continuing through the Qualified Project Period. Any proposed changes to the Public Policy Criteria and Qualified Resident Programs selected by the Applicant and identified in its Application may be only changed to other Public Policy Criteria and Qualified Resident Programs set forth in Rule 67-21.0041, F.A.C., and the Universal Application Package and must be submitted to Florida Housing for prior approval. Florida Housing may grant such approval only if it would not alter the Application ranking.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4), (6), (12), (13), (14), (18), (19), (21), 420.508 FS History–New 2-11-01, Amended 3-17-02. Repromulgated 4-6-03, _____.

67-21.0045 Determination of Method of Bond Sale.

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

(2) ~~With the exception of Applicants who are seeking a Private Placement,~~ Following receipt of the Credit Underwriting Report, staff shall provide Florida Housing's Financial Advisor copies of such report for review and preparation of a written recommendation for the method of Bond sale.

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

(a) The cost components of the sale, including interest costs and financing costs. The purpose of the analysis is to determine how these costs are affected by the alternative forms of sale.

(b) The anticipated credit and security structure of the transaction.

(c) The proposed financing structure of the transaction.

(d) The financing experience of the Applicant.

(e) Florida Housing's programmatic objectives.

(f) Market stability.

(g) Other factors identified by staff, counsel, or the Applicant.

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

(5) For those transactions that Florida Housing's Financial Advisor recommends as candidates for a competitive sale, Florida Housing shall engage a structuring agent. The Applicant may, at its sole expense, engage a Financial Advisor for the transaction. Any cost to the Applicant for the Financial Advisor in excess of \$18,000 must be paid out of Developer Fee, in accordance with subsection 67-21.002(31), F.A.C.

(6) For those transactions that Florida Housing's Financial Advisor recommends for a negotiated sale, Florida Housing shall appoint an investment banker. Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (13), (19), (20), 420.508, 420.509(12) FS. History—New 1-7-98, Formerly 9I-21.0045, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01. Amended 3-17-02. Repromulgated 4-6-03. Amended _____.

67-21.005 Selection of Qualified Lending Institutions as Credit Underwriters, Originators or Servicers.

(1) Qualified Lending Institutions shall be selected by Florida Housing to credit underwrite, participate in the origination of and service eligible Mortgage Loans.

(2) The criteria which shall be considered by Florida Housing for selection of Qualified Lending Institutions to participate in the Program shall include:

(a) The statutory requirement that the lending institution be a bank or trust company, mortgage banker, savings banker, savings bank, credit union, national banking association, building and loan association, insurance company, the Florida Housing Development Corporation, or other financial institution or governmental agency that is authorized to transact business in the State of Florida pursuant to statutory authority and

which customarily provides service or otherwise aids in the financing of mortgages on real property located in the State of Florida.

(b) The credit underwriting and loan servicing experience and financial condition of the Qualified Lending Institution.

(c) Marketability of the Bonds using the Qualified Lending Institution as Credit Underwriter and servicer.

(d) Requirements of any rating agency rating the Bonds applicable to a Credit Underwriter and servicer.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502(20), 420.507(4), (6), (13), (18), (19), (20), (21), 420.508 FS. History—New 12-3-86, Amended 9-25-96, 1-7-98, Formerly 9I-21.005, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01, Amended 3-17-02. Repromulgated 4-6-03, _____.

67-21.006 Development Requirements.

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

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

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

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

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

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

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

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

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

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

(b) All of the Public Policy Criteria and Qualified Resident Programs selected in the Application must be met; and

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

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

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

preserve the exemption from federal income taxation of the interest on Tax-exempt Bonds.

(11) The Applicant shall take such action or actions as shall be necessary to comply fully with the Code, F.S., and Florida Housing Rules.

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

(13) In the event that the Applicant has determined that the market no longer supports the Development as Elderly Housing and desires to rent to younger persons or families, the following criteria must be met:

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

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

(c) The Applicant has requested and received Board approval that the Development no longer qualifies as Elderly Housing.

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

(15) The owner of a Development must notify Florida Housing of an intended change in the management company. Florida Housing must approve, pursuant to

subsection 67-21.016(3), F.A.C., the Applicant's selection of a management agent prior to such company assuming responsibility for the Development. A key management company representative must attend a Florida Housing-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

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

(17) The Applicant shall provide annually to the Trustee not later than 120 days after the end of the Applicant's fiscal year, audited financial statements prepared by an independent certified public accounting firm, consolidated or consolidating, on the Development and any other information required by Florida Housing to comply with continuing disclosure requirements imposed by law.

(18) Unless otherwise approved by the Board, Cross-collateralization shall not be allowed.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(9), (11), (14), (18), (19), (20), (21), 420.508 FS. History—New 12-3-86, Amended 2-22-89, 12-4-90, 9-25-96, 1-7-98, Formerly 9I-21.006, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02. Repromulgated 4-6-03. Amended _____.
67-21.007 Fees.

In addition to the fees specified in the Universal Application Package, Florida Housing shall collect the following fees and charges in conjunction with the Program:

(1) TEFRA Fee: Applicants shall submit a non-refundable TEFRA fee to Florida Housing in the amount of \$500 by the Application Deadline. This fee shall be applied to the actual cost of publishing required newspaper advertisements and Florida Administrative Weekly notices of TEFRA Hearings. If the actual cost of the required publishing exceeds \$500.00, Applicant shall be invoiced for the difference. If a Local Public Fact Finding Hearing is requested, the Applicant shall be responsible for payment of any fees incurred by Florida Housing. If the first TEFRA approval period has expired and a second TEFRA notice and hearing are required, Applicant is responsible for all costs associated with the additional TEFRA process.

(2) Credit Underwriting and Appraisal Fee: Applicants shall submit the required non-refundable Credit Underwriting and Appraisal Fee for each Development to the Credit Underwriter designated by Florida Housing within seven Calendar Days of the date of the invitation by Florida Housing to enter the Final Credit Underwriting process and prior to final credit review by the Credit Underwriter. The Final Credit Underwriting fee shall be determined pursuant to a contract between Florida Housing and the Credit Underwriter.

(3) Good Faith Deposit: The Applicant shall pay a total deposit equal to one percent of the aggregate principal amount of proposed Taxable and Tax-Exempt Bonds, or \$75,000 ~~\$50,000~~, whichever is greater, to Florida Housing, which deposit may be applied toward the Cost of Issuance Fee. The maximum Good Faith Deposit required is \$175,000. The Good Faith Deposit is payable in two equal installments: the first installment (one-half of one percent) is due within seven Calendar Days of the date the Board approves the Credit Underwriting Report. The balance is payable no later than the

date when the Applicant executes the Loan Commitment. In the event the Loan does not close, the unused portion of the Good Faith Deposit shall be refunded to the Applicant. Notwithstanding the foregoing, the Applicant is responsible for all expenses incurred in preparation for loan closing. Any and all costs of Florida Housing will be deducted from the Good Faith Deposit prior to refunding any unused funds to the Applicant. In the event that additional invoices are received by Florida Housing subsequent to a determination that the Loan will not close and refunding any unused funds to the Applicant, which invoices related to costs incurred prior to such determination and refunding, Applicant shall be responsible for payment of the balance due as invoiced.

(4) Cost of Issuance Fee: Florida Housing shall require Applicants or participating Qualified Lending Institutions selected for participation in the Program, to deliver to Florida Housing, or, at the request of Florida Housing, directly to the Trustee, before the date of delivery of the Bonds, a Cost of Issuance Fee in an amount determined by Florida Housing to be sufficient to pay the costs and expenses relating to issuance of the Bonds, which amount shall be deposited into an account to be held by the Trustee. Florida Housing shall provide the Applicant with a good faith estimate of the Cost of Issuance Fee prior to closing. The Applicant shall pay all costs and expenses incurred by Florida Housing in connection with the issuance of the Bonds, the expenditure of the Loan proceeds, and provision of Credit Enhancement, if any, even if such costs and expenses exceed the Cost of Issuance Fee. Any amounts remaining in this account at the time the balance is transferred and the account closed pursuant to the Trust Indenture shall be returned to the Applicant.

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

(a) Format II Environmental Review Fee – The fee the Applicant shall pay will be determined by contract between Florida Housing and the environmental professional.

(b) Subsidy Layering Review Fee – The fee the Applicant shall pay will be determined by the contract between Florida Housing and the Credit Underwriter.

(c) Fees of the Florida Housing Finance Corporation Affordable Housing Guarantee Program pursuant to Rule Chapter 67-39, F.A.C.

(6) Compliance Monitoring Fees: The annual monitoring fee the Applicant shall pay will be determined by contract between Florida Housing and the monitoring agent.

(7) Permanent Loan Servicing Fees: The annual servicing fee the Applicant shall pay will be determined by contract between Florida Housing and the servicer.

(8) Financial Monitoring Fees: The annual financial monitoring fee the Applicant shall pay will be determined by contract between Florida Housing and the monitoring agent.

(9) Other Florida Housing Program Fees:

(a) Housing Credit Fees – If Housing Credits are used for the Development, the Compliance Monitoring Fee for that program shall be collected from the Applicant in conjunction with the Compliance Monitoring Fee for the Program.

(b) Florida Affordable Housing Guarantee Program Fees – If the Guarantee Program is used in the Development, the same fee schedule described in Rule Chapter 67-39, F.A.C., shall apply and be paid by the Applicant to Florida Housing.

(10) Development Cost Pro Forma: All of the fees set forth above with respect to the Program and other Florida Housing programs are part of the Total Development Cost. These costs must be included in the Development cost pro forma.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (19) FS. History—New 12-3-86, Amended 1-7-98, Formerly 9I-21.007, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, _____.

67-21.008 Terms and Conditions of Loans.

(1) Each Mortgage Loan for a Development made by Florida Housing shall:

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

(b) Provide for a fully amortized payment of the Mortgage Loan in full beginning on the earlier of 36 months after closing, or stabilized occupancy, or conversion to permanent financing under the loan documents and ending no later than the expiration of the useful life of the property, and in any event, no later than 45 years from the date of the Mortgage Loan;

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

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

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

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

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

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

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

(4) The Applicant shall also establish and maintain escrow deposits sufficient to pay any insurance premiums and applicable taxes.

(5) Florida Housing shall charge such Program administration fees as are required to pay the cost of administering the Program during the life of the Bonds and Loan.

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

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

(8) Florida Housing shall appoint a trustee and servicing agent when necessary to administer the Program and service the Loan.

(9) All Florida Housing Loans are contingent upon:

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

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

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

(d) The Applicant providing to Florida Housing, Bond Counsel and Special Counsel the Note, Mortgage, financing statements, survey, hazard insurance policies, liability insurance policies, escrow agreement, investment agreements, opinions of counsel including preference opinions, if required, and such other documents as are necessary to ensure that Florida Housing has a properly secured Mortgage as required under the Act and to protect the holders of the Bonds.

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

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

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

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

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

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

(b) A fully completed, executed and sealed surveyors' certification to Florida Housing.

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

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

(e) Policies of insurance and evidence of payment of premiums.

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

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

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

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

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

(13) The Borrower shall not sell, transfer, nor otherwise assign any of its interest in the Development without the prior written consent of Florida Housing.

(14) Florida Housing shall require all Loans to be secured to the extent necessary to protect Florida Housing and Bond holders.

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

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(4), (6), (9), (11), (21), 420.508 FS. History—New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.008, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, _____.

67-21.009 Interest Rate on Mortgage Loans.

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

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented Chapter 75, 420.507, 420.508 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.009, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, 4-6-03, _____.
67-21.010 Issuance of Revenue Bonds.

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

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(6), 420.508, 420.509 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.010, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02. Repromulgated 4-6-03, _____.
67-21.011 No Discrimination.

Florida Housing, its staff or agents, Applicants, or participants under the Program shall not discriminate against any person or family, on the basis of race, creed, national origin, age, religion, handicap, familial status or sex, against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a

Developer from discrimination based on age in renting Elderly Housing, from compliance with the provisions hereof with respect to a Farmworker Development, Commercial Fishing Worker or Homeless Development, or to preclude a Developer from discrimination based on income in renting units Set-Aside for Lower Income Residents in compliance with the requirements of the Code or with the requirements of Section 420.509(19), F.S., for Tax-exempt Bonds.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(14) FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 1-7-98, Formerly 9I-21.011, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02. Repromulgated 4-6-03,_____.
67-21.012 Advertisements.

Florida Housing shall require the Applicant to withdraw from circulation advertisements with respect to the Development determined by Florida Housing to violate or be inconsistent with its policy of providing safe and sanitary affordable housing for low, moderate and middle income persons, families or persons or families with minor children.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(9), (14) FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.012, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, 4-6-03,_____.
67-21.013 Non-Credit Enhanced ~~Private Placements~~ of Multifamily Mortgage Revenue

Bonds.

Any issuance of non-Credit Enhanced ~~r~~Revenue Bbonds ~~by means of a negotiated Private Placement~~ shall be sold only to a Qualified Institutional Buyer. Such non-Credit Enhanced revenue Bonds ~~Private Placements~~ may only be utilized for financings where

the Applicant has demonstrated that the issuance ~~utilization of a Private Placement~~ produces a substantial benefit to the Development not otherwise available from Credit Enhancement structures. The analysis of the substantial benefit must be provided in a format acceptable to Florida Housing and shall include the initial issuer cost of issuance, underwriter's discount or placement agent fee, annual debt service, total debt service and any other factors necessary and appropriate to demonstrate that the issuance produces a substantial benefit to the Development. This analysis must be provided both prior to the review of the method of bond sale conducted by Florida Housing's financial advisor, and again prior to the pricing of the bonds, showing any changes affecting the original estimated substantial benefit. Florida Housing shall designate the underwriter or placement agent with respect to such Bonds, who shall be on Florida Housing's approved bond underwriters list. A Qualified Institutional Buyer who is an underwriter may contract to immediately resell such Bonds to other Qualified Institutional Buyers, which transaction shall continue to constitute an underwriting a Private Placement. The amount of any placement agent fee and any amounts paid by any third party to an initial Qualified Institutional Buyer which is an underwriter shall be subject to the approval of Florida Housing or its designee. Florida Housing, in its discretion, will allow only an underwriting discount or a placement agent fee, but not both. Unless such Bonds are rated in one of the four ~~three~~ highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be DTC-Eligible) and shall comply with at least one of the following criteria:

(1) The Bonds shall be issued in minimum denominations of \$100,000 (subject to reduction by means of redemption) and each purchaser of such Bond, including

subsequent purchasers unless the requirements of (2) or (3) below are met, shall certify to Florida Housing prior to any purchase or transfer of any Bond that such purchaser is a Qualified Institutional Buyer; or

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

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

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(4), (5), (6), (9), (11), (14), (16), (18), (19), (20), (21) FS. History— New 11-23-94, Amended 1-7-98, Formerly 9I-21.013, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03,

_____.
67-21.014 Credit Underwriting Procedures.

(1) An invitation into Credit Underwriting shall require that the Applicant submit the Credit Underwriting and Appraisal Fee and information required to complete the Credit Underwriting, to the Credit Underwriter in accordance with the schedule established by Florida Housing upon the recommendation of the Credit Underwriter. Failure to submit the Credit Underwriting and Appraisal Fee or meet the deadlines as set forth in the schedule shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list.

(2) The Credit Underwriter shall in Credit Underwriting analyze and verify all information in the Application, or any proposed changes made subsequent thereto, in order to make a recommendation to the Board on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement.

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

(b) The Credit Underwriter shall review the proposed financing structure to determine whether the Loan is feasible.

(c) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of \$200 per unit must be deposited annually in the replacement reserve account for all Developments. An Applicant may choose to fund a portion of the replacement reserves at closing from moneys other than

the proceeds of the Bonds. This partial funding cannot exceed 50 percent of the required replacement reserves for two years and must be placed in escrow with the Bond Trustee at closing. Applicants with Credit Enhancement may employ a different replacement reserve structure with Florida Housing's approval.

(d) Florida Housing shall consider the following when determining the need for construction completion guarantees based on the recommendations of the Credit Underwriter:

1. Liquidity of any guarantee provider.
2. Applicant's, Developer's and General Contractor's history in successfully completing Developments of similar type.
3. The past performance of the Applicant, Developer, General Contractor, or management agent, in developing, constructing or managing Developments financed by Florida Housing or its predecessor, including, by way of example and not limitation, nonpayment of fees and noncompliance with program requirements.
4. Percentage of Florida Housing funds utilized compared to Total Development Costs. At a minimum, the corporate general partner of the borrowing entity shall provide a personal guarantee for completion of construction. In addition, a letter of credit or payment and performance bond shall be required if Florida Housing determines upon recommendation of the Credit Underwriter after evaluation of conditions in subparagraphs 1. through 3., above, that additional surety is needed.

(e) The Credit Underwriter shall review and make a recommendation to Florida Housing whether the number of existing loans and construction commitments of the

Applicant and its principals will impede its ability to proceed with the successful development of each proposed Florida Housing Development.

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

(g) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process to complete the Credit Underwriting Report, the Credit Underwriter shall notify Florida Housing and request the information from the Applicant. Such requested information shall be submitted within ten business days of receipt of the request therefor. Failure for any reason to submit required information on or before the specified deadline shall result in the Application being moved to the bottom of the ranked list.

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

1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or Credit Underwriting is complete.

2. For Principals and Guarantors, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most

recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1 are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter in accordance with Part III, Sections 604 through 607, of the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective January 7, 2002, which is adopted and incorporated herein by reference, and the two most recent years tax returns.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and General Partner, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that Credit Underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(i) The Credit Underwriter shall require an operating deficit guarantee. The operating deficit guarantee will be released when the Development achieves a minimum 1.10 debt service coverage ratio on the MMRB loan and 90% occupancy and 90% of the

gross potential rental income, all for six consecutive months as certified by an independent certified public accountant.

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

(k)(i) Required appraisals, market studies, pre-construction analyses, and environmental studies (other than Phase I Environmental Site Assessments) shall be completed by professionals approved by Florida Housing's Credit Underwriters. Approval of appraisers and contractors to complete market and environmental studies shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(l)(i) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice, which is adopted and incorporated herein by reference, and a separate market study shall be ordered by the Credit Underwriter from an appraiser qualified for the geographic area and product type not later than when an Application enters Credit Underwriting. The Credit Underwriter shall review the appraisals to properly evaluate the loan request in relation to the property value.

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

(3) The Applicant shall review and provide written comments on the draft Credit Underwriting Report to Florida Housing and the Credit Underwriter within the time frame established by Florida Housing. Florida Housing shall provide comments on the

draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. The Credit Underwriter shall then review and incorporate Florida Housing's and, if deemed appropriate, the Applicant's comments and release the revised report to Florida Housing and the Applicant. Any additional comments from the Applicant shall be received by Florida Housing and the Credit Underwriter within the established time frame. Then, the Credit Underwriter shall provide a final report, which shall address comments made by the Applicant to Florida Housing.

(4) After approval by the Board following presentation of the Credit Underwriting Report and payment of one-half of the Good Faith Deposit, the Board of Directors, Florida Housing staff and Florida Housing Counsel shall begin negotiations of the Loan Commitment.

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

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508, 420.508(3)(b)3., 420.509 FS. History—New 1-7-98, Formerly 9I-21.014, Amended 1-26-99, 11-14-99, 1-26-00, 2-11-01, 3-17-02, 4-6-03,_____.

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

(1) Applicants may submit one Application for the MMRB Program, SAIL, competitive housing credits and non-competitive housing credits, subject to the restrictions set forth in the Universal Application Package.

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

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508 FS. History—New 1-7-98, Formerly 9I-21.015, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02. Repromulgated 4-6-03, _____.

67-21.016 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-21.018, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03. Repromulgated.
67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of Rule 67-21.017, F.A.C., provided that transfers of the limited partnership interest or limited liability company interest in the owner Developer to a tax credit syndicator, or the transfer of ownership to a creditor by means of foreclosure or deed in lieu of foreclosure, need not comply with this provision. The determination of whether a transfer of ownership of a Development shall be deemed to take place for purposes of this rule shall be made in accordance with the provisions of the Land Use Restriction Agreement and other Program Documents for such Development. Owners shall advise Florida Housing in writing of any change of ownership of the owner aggregating 50 percent or more of ownership interests in the owner within any six-month period.

(2) A request for transfer of ownership shall be submitted to Florida Housing in writing and include evidence that the current owner has agreed to the proposed sale. A detailed opinion letter from the Applicant's legal counsel describing the scope of the proposed transaction must also be provided. Florida Housing shall notify the current

owner and potential purchaser of any additional information necessary for the Board to make an informed decision.

(3) Upon demonstration of compliance with the provisions of Rule 67-21.017, F.A.C., and favorable consideration by the Board to a request for transfer, Florida Housing shall assign a Credit Underwriter, Bond Counsel, Special Counsel, and other professionals as needed to effect the transfer.

(4) Prior to the transfer of ownership:

(a) The prospective purchaser and the conditions of the assumption of the Program Documents must be approved by the Credit Underwriter as meeting the terms of its Credit Underwriting Report, Bond Counsel and Special Counsel as complying with all applicable legal requirements, and Florida Housing as meeting the stated purposes of Florida Housing,

(b) All outstanding fees owing to Florida Housing shall be paid,

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

(d) If the Set-Aside requirements in the Land Use Restriction Agreement are expired or have less than 12 months remaining, such agreement shall be extended for a minimum of two years from the date of closing. The Credit Underwriter shall conduct a credit underwriting of the new owner upon any transfer of ownership. Additionally, the new owner shall be notified that any refunding of bonds associated with such Development shall require a full Credit Underwriting of the Development. All transfer of ownership transactions shall require a guarantee of recourse obligations and an environmental indemnity from the assuming owner.

(5) The prospective purchaser or current owner shall be responsible for payment of all fees for professional services rendered in association with the transfer of ownership. Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508, 420.508(3)(a) FS. History—New 1-7-98, Formerly 9I-21.017, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02. Repromulgated 4-6-03. Amended _____.
67-21.018 Refundings and Troubled Development Review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Retention of annual fees by Florida Housing;

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

(n) Retention of the Credit Enhancement; and

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

(p) The Set-Aside of an additional 10 percent of units for Lower Income Residents beyond the requirements of subsection 67-21.0041(1), F.A.C.

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

(a) All outstanding fees of Florida Housing shall be paid in connection with the refunding;

(b) The Set-Asides required by the original Land Use Restriction Agreement shall be extended for a period determined by Florida Housing;

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

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

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

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

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

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

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

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508 FS. History—New 1-7-98, Formerly 9I-21.018, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02. Repromulgated 4-6-03, _____.

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

(1) Florida Housing shall entertain requests for it to serve as the issuer of Tax-exempt Bonds for the acquisition or construction of multifamily housing to be owned by a not-for-profit entity organized under section 501(c)(3) of the Code.

(2) In connection with all Bonds issued pursuant to Rule 67-21.019, F.A.C., Applicants shall be required to comply with the provisions of Rules 67-21.003, 67-21.0041 and 67-21.0045 through 67-21.018, F.A.C., as if the section 501(c)(3). Bonds are being issued as Tax-exempt Bonds under section 141 of the Code, except that at least one Qualified Resident Program shall be committed to in addition to the minimum federal Set-Aside.

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

(a) An initial bond counsel fee of \$1,000 along with IRS Form 1023, which is adopted and incorporated herein by reference, and all attachments and correspondence to and from the IRS relative to section 501(c)(3) status of the Applicant. A copy of IRS Form 1023 is available on the IRS web site at www.irs.gov; and

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

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

(d) Specific information otherwise required to be submitted in an Application as requested by Florida Housing.

Specific Authority 420.507(12) FS. Law Implemented 420.502, 420.507(14), (24), 420.508 FS. History—New 11-14-99, Amended 2-11-01, 3-17-02. Repromulgated 4-6-03,

NAME OF PERSON ORIGINATING PROPOSED RULES: Wayne Conner, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850) 488-4197.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULES: Orlando Cabrera, Executive Director, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850) 488-4197.

DATE PROPOSED RULE CHAPTER APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 29, Number 39, September 26, 2003