

NOTICE OF PROPOSED RULEMAKING

FLORIDA HOUSING FINANCE ~~CORORATION~~CORPORATION

CHAPTER 67-21

MULTIFAMILY MORTGAGE REVENUE ~~BONDS~~BOND (MMRB) PROGRAM

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Issuance of Bonds for Section 501(c)(3) Entities

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, F.S.

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

SUMMARY: Prior to the opening of an Application 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 2011 Application Cycle.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The agency has determined that this rule will not have an adverse impact on small business. A SERC has not been prepared by the agency. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 420.507, 420.508, FS.

LAW IMPLEMENTED: 420.507, 420.508, 420.509 FS.

must include address number, street name and city. For Developments for which the ~~If the~~ address has not yet been assigned, include, at a minimum, street name, ~~and~~ closest designated intersection, and whether or not the Development is located within a ~~and~~ city or in the unincorporated area of the county. If located within a city, include the name of the city.

~~(5)~~(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 or Developer, (ii) serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer, (iii) directly or indirectly receives or will receive a financial benefit from a Development, or (iv) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i), (ii) or (iii) above.

~~(6)~~(5) “ALF” or “Assisted Living Facility” means a Florida licensed living facility that complies with Sections 429.01 through 429.54, F.S., and Rule Chapter 58A-5, F.A.C.

~~(7)~~(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 the Corporation, as of the date of occupancy shown on the Income Certification promulgated by the Corporation.

~~(8)~~(7) “Applicant” means any person or legally formed entity that is seeking a loan or funding from the Corporation by submitting an Application or responding to a request for proposal for one of the Corporation’s programs.

~~(9)~~(8) “Application” means the forms and exhibits created by the Corporation for the purpose of providing the means to apply for one or more of the Corporation’s programs. A completed Application may include additional supporting documentation provided by

an Applicant.

~~(10)(9)~~ “Application Deadline” means 5:00 p.m., Eastern Time, on the final day of the Application Period.

~~(11)(10)~~ “Application Period” means a period during which Applications shall be accepted, as posted on the Corporation’s website and with a deadline no less than 21 Calendar Days from the beginning of the Application Period.

~~(12)(11)~~ “Board” or “Board of Directors” means the Board of Directors of the Corporation.

~~(13)(12)~~ “Bond Counsel” means the attorney or law firm retained by the Corporation to provide the specialized services generally described in the industry as the role of bond counsel.

~~(14)(13)~~ “Bond” or “Bonds” means Bond as defined in Section 420.503, F.S.

~~(15)(14)~~ “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 the Corporation, in enforcing the terms of the Program Documents.

~~(16)(15)~~ “Calendar Days” means the seven (7) days of the week.

~~(17)(16)~~ “Catchment Area” means the geographical area covered under a Local Homeless Assistance Continuum of Care Plan, as designated and revised as necessary by the State Office on Homelessness, in accordance with Section 420.624, F.S.

~~(18)(17)~~ “Commercial Fishing Worker” means Commercial fishing worker as defined in Section 420.503, F.S.

~~(19)(18)~~ “Commercial Fishing Worker Household” means a household of one or more persons wherein at least one member of the household is a Commercial Fishing

Worker at the time of initial occupancy.

~~(20)~~(19) “Contact Person” means the person with whom the Corporation will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

~~(21)~~(20) “Corporation” means the Florida Housing Finance Corporation as defined in Section 420.503, F.S.

~~(22)~~(21) “Cost of Issuance Fee” means the fee charged by the Corporation 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 the Corporation.

~~(23)~~(22) “Credit Enhancement” means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to the Corporation 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 the MMRB Program.

~~(24)~~(23) “Credit Enhancer” means a financial institution, insurer or other third party which provides a Credit Enhancement or Guarantee Instrument acceptable to the Corporation securing repayment of the Mortgage Loan or Bonds issued pursuant to the MMRB Program.

~~(25)~~(24) “Credit Underwriter” means the independent contractor under contract with the Corporation having the responsibility for providing Credit Underwriting services.

~~(26)~~(25) “Credit Underwriting” means an in-depth analysis by the Credit Underwriter of all documents submitted in connection with an Application.

~~(27)~~(26) “Credit Underwriting Report” means the report that is a product of Credit

Underwriting.

~~(28)~~(27) “Cross-collateralization” means the pledging of the security of one Development to the obligations of another Development.

~~(29)~~(28) “DDA” or “Difficult Development Area” means ~~(i) any areas~~ designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with section 42(d)(5)(B) of the ~~IRC~~Internal Revenue Code, and (ii) Developments designated by the Corporation in accordance with the ~~2011~~2012 QAP.

~~(30)~~(29) “Developer” means the individual, association, corporation, joint venturer or partnership, which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable housing as required in the Application.

~~(31)~~(30) “Developer Fee” means the fee earned by the Developer.

~~(32)~~(31) “Development” means Project as defined in Section 420.503, F.S.

~~(33)~~(32) “Development Cost” means the total of all costs incurred in the completion of a Development excluding Developer Fee and total land cost as shown in the Development Cost line item on the development cost pro forma within the Application.

~~(34)~~(34) “Development Location Point” means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on the site with the most units that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

~~(35)~~(33) “Disclosure Counsel” means the Special Counsel designated by the

Corporation to be responsible for the drafting and delivery of the Corporation's disclosure documents such as preliminary official statements, official statements, re-offering memorandums or private placement memorandums and continuing disclosure agreements.

~~(3536)~~(34) "Elderly" means Elderly as defined in Section 420.503, F.S.

~~(3637)~~(35) "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.

~~(3738)~~(36) "Family" describes a household composed of one or more persons.

~~(3839)~~(37) "Farmworker" means Farmworker as defined in Section 420.503, F.S.

~~(3940)~~(38) "Farmworker Development" means a Development:

(a) Of not greater than 80 units, at least 40 percent of the total residential units of which are occupied or reserved for Farmworker Households; and

(b) For which independent market analysis demonstrates a local need for such housing.

~~(4041)~~(39) "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at the time of initial occupancy.

~~(4142)~~(40) "Financial Advisor" means, with respect to an issue of Bonds, a professional who is either under contract to the Corporation 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.

~~(42)~~⁽⁴¹⁾ “Financial Beneficiary” means any Principal of the Developer or Applicant entity who receives or will receive any direct or indirect financial benefit from a Development.

~~(43)~~⁽⁴²⁾ “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.

~~(44)~~⁽⁴³⁾ “Funding Cycle” means the period of time commencing with the Notice of Funding Availability pursuant to this rule chapter and concluding with the issuance of allocations to Applicants who applied during a given Application Period.

~~(45)~~⁽⁴⁴⁾ “General Contractor” means a person or entity duly licensed in the state of Florida with the requisite skills, experience and credit worthiness to successfully provide the units required in the Application, and which meets the criteria described in Rule 67-21.007, F.A.C.

~~(46)~~⁽⁴⁵⁾ “Geographic Set-Aside” means the amount of allocation that has been designated by the Corporation to be allocated for Developments located in specific geographical regions within the state of Florida.

~~(47)~~⁽⁴⁶⁾ “HC” or “Housing Credit Program” means the rental housing program administered by the Corporation in accordance with section 42 of the ~~IRC~~^{Internal Revenue Code} and Section 420.5099, F.S., under which the Corporation is designated the

Housing Credit agency for the state of Florida within the meaning of section 42(h)(7)(A) of the ~~IRC~~Internal Revenue Code, and Rule Chapter 67-48, F.A.C.

~~(4849)~~(47) “Homeless” means Homeless as defined in Section 420.621, F.S.~~a Family who lacks a fixed, regular, and adequate nighttime residence or a 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.~~

~~(4950)~~(48) “HUD” means the United States Department of Housing and Urban Development.

~~(5051)~~(49) “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.

~~(5152)~~(50) “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.

~~(52)~~(51) “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 and available on the Corporation's Website under the 20112009 Universal Application link labeled Related References and Links.~~

~~(53)~~(52) "Issuer" means the Florida Housing Finance Corporation.

~~(54)~~(53) "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.

~~(55)~~(54) "Local Government" means Local government as defined in Section 420.503, F.S.

~~(56)~~(55) "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.

~~(57)~~(56) "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 the Corporation for the purpose of receiving public comment or input regarding the financing of a proposed Development with Bonds by the Corporation.

~~(58)~~(57) "Lower Income Residents" means 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 ~~IRC~~Internal Revenue Code or if the residents do not comply with the provisions of the ~~IRC~~Internal Revenue Code defining Lower Income Residents. (See section 142 of the ~~IRC~~Internal Revenue Code.)

~~(59)~~(58) “MMRB Funding Cycle” means the period of time established by the Corporation pursuant to this rule chapter and concluding with the issuance of allocations to Applicants who applied during a given Application Period.

~~(60)~~(59) “MMRB LURA” or “MMRB Land Use Restriction Agreement” means an agreement among the Corporation, the Bond Trustee and the Applicant which sets forth certain set-aside requirements and other Development requirements under Rule Chapter 67-21, F.A.C.

~~(61)~~(60) “MMRB Loan” means the loan made by the Corporation to the Applicant from the proceeds of the Bonds issued by the Corporation.

~~(62)~~(61) “MMRB Loan Agreement” means the Program Documents or Loan Documents wherein the Corporation 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.

~~(63)~~(62) “MMRB Loan Commitment” means the Program Documents or Loan Documents executed by the Corporation and the Applicant after the issuance of a favorable Credit Underwriting Report that defines the conditions under which the Corporation agrees to lend the proceeds of the Bonds to the Applicant for the purpose of

financing a Development.

~~(64)(63)~~ “MMRB Program” means the Corporation’s Multifamily Mortgage Revenue Bond Program.

~~(65)(64)~~ “MMRB Rehabilitation Development” means a Development, the Rehabilitation Expenditures with respect to which equal or exceed 15 percent of the portion of the cost of acquiring such Development to be financed with Bond proceeds.

~~(66)(65)~~ “Mortgage” means Mortgage as defined in Section 420.503, F.S.

~~(67)(66)~~ “Mortgage Loan” means Mortgage loan as defined in Section 420.503, F.S.

~~(68)(67)~~ “Non-Profit” means a qualified non-profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the ~~IRC~~Internal Revenue Code and organized under Chapter 617, F.S., if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis, which owns at least 51 percent of the ownership interest in the Development held by the general partner or managing member entity, which shall receive at least 25 percent of the Developer fee and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing.

~~(69)(68)~~ “Note” means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money on a specified date, which provides the interest rate and is secured by a Mortgage.

~~(70)~~ “PBRA” or “Project-Based Rental Assistance” means a rental subsidy through a contract with HUD or RD for a property.

~~(71)~~ “PHA” or “Public Housing Authority” means a housing authority under Chapter 421, F.S.

(72) “Preservation” means Rehabilitation of existing developments that ~~are at least 20 years old~~ were originally built in 1992 or earlier and were originally financed through one or more of the following HUD or RD programs: Sections 202, 236, 514, 515, 516, PBRA, and public housing assisted through ACC. Such developments must not have closed on funding from HUD or RD after 1992 where the budget was at least \$10,000 per unit for substantial rehabilitation or moderate rehabilitation ~~from HUD or RD in the last 20 years.~~

(73)(69) “Principal” means (i) any general partner of an Applicant or Developer, any limited partner of an Applicant or Developer, any manager or member of an Applicant or Developer, any officer, director or shareholder of an Applicant or Developer, (ii) any officer, director, shareholder, manager, member, general partner or limited partner of any general partner or ~~and~~ limited partner of an Applicant or Developer, (iii) any officer, director, shareholder, manager, member, general partner or limited partner of any manager or member of an Applicant or Developer, and (iv) any officer, director, shareholder, manager, member, general partner or limited partner of any shareholder of an Applicant or Developer.

(74)(70) “Private Placement” or “Limited Offering” means the sale of the Corporation 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.

(75)(71) “Program Documents” or “Loan Documents” means the MMRB Loan Commitment, MMRB Loan Agreement, Note, Mortgage, Credit Enhancement, MMRB 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 the Corporation.

~~(76)(72)~~ “QCT” or “Qualified Census Tract” means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50 percent or more of the households at an income which is less than 60 percent of the area median gross income, or a poverty rate of at least 25 percent, in accordance with section 42(d)(5)(C) of the ~~IRC~~[Internal Revenue Code](#).

~~(77)(73)~~ “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~~
[of 1933](#), which is adopted and incorporated herein by reference;

2. Any investment company registered under the Investment Company Act of 1940 or any business development company as defined in section 80a-2(a)(48) 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 section 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 80b-2(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 ~~IRC~~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 of 1933, 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 of 1934, 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 of 1934, 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 of 1933, 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)~~(74) “Qualified Lending Institution” means any lending institution designated by the Corporation.

~~(79)~~(75) “Qualified Project Period” means Qualified Project Period as defined in Section 142(d) of the ~~IRC~~Internal Revenue Code.

~~(80)~~(76) “Received” as it relates to delivery of a document by a specified deadline means, unless otherwise indicated, delivery by hand, United States 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.

(81) “Redevelopment” means (i) with regard to proposed Developments that involve demolition of existing structures that ~~are at least 30 years old~~ were originally built in 1982 or earlier and originally received financing through one or more of the following HUD or RD programs: Sections 202, 236, 514, 515, 516, PBRA; and new construction of

replacement structures on the same site maintaining at least the same number of PBRA units; ~~and~~ (ii) with regard to proposed Developments that involve a PHA, demolition of existing public housing structures on a site with a Declaration of Trust that were originally built in 1982 or earlier and that are assisted through ACC ~~and are at least 30 years old~~; and new construction on the same site, providing at least 25 percent of the total new units with PBRA, ACC, or both, after Redevelopment.

(82)(77) “Rehabilitation Expenditures” has the meaning set forth in section 147(d)(3) of the ~~IRC~~ Internal Revenue Code.

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

(84)(79) “Scattered Sites,” as applied to for a single Development, means a Development site that, when taken as a whole, is comprised ~~consisting~~ of real property that in the same county (i) any part of which is not contiguous (each such “non-contiguous parts”) site within a Scattered Site Development, a “Scattered Site”) ~~or (ii) any part of which is divided by a street or easement (“divided parts”) and (iii) it is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, chain of title, or other information available to the Corporation that the non-contiguous parts or the divided parts of the real property are part of a common or related scheme of development. For purposes of this definition “contiguous” means touching at a point or along a boundary. Real property is contiguous if the only intervening real property interest is an easement provided the easement is not a roadway or street.~~

(85)(80) “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.

~~(86)~~(81) “Special Counsel” means any attorney or law firm retained by the Corporation, pursuant to an RFQ, to serve as counsel to the Corporation, including Disclosure Counsel.

~~(87)~~(82) “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 the Corporation for the issuance of Tax-exempt Bonds by either the SFMRB or MMRB Programs.

~~(88)~~(83) “State Office on Homelessness” means the office created within the Department of Children and Family Services under Section 420.622, F.S.

~~(89)~~(84) “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 ~~IRC~~[Internal Revenue Code](#).

~~(90)~~(85) “Tax Exempt Bond-Financed Development” means a Development which has been financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to section 42(h)(4) of the ~~IRC~~[Internal Revenue Code](#).

~~(91)~~(86) “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 ~~IRC~~[Internal Revenue Code](#).

~~(92)~~(87) “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 a single point on the site

with the most units ~~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 four (4) units.~~

~~(93)~~(88) “TEFRA Hearing” means a public hearing held pursuant to the requirements of the ~~IRC~~Internal Revenue Code and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), section 147(f) of the ~~IRC~~Internal Revenue 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 Bond financing of a Development by the Corporation.

~~(94)~~(89) “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 review and approval by the Credit Underwriter and the Corporation pursuant to this rule chapter.

~~(95)~~(90) “Universal Cycle” means any funding cycle provided for in this or previous versions of this rule chapter.

~~(96)~~(91) “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.

~~(97)(92)~~ “Website” means the Florida Housing Finance Corporation’s website, the Universal Resource Locator (URL) of which is www.floridahousing.org.

Rulemaking Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.503, 420.503(4), 420.507, 420.508, 420.5099 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, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, _____.

67-21.003 Application and Selection Process for Developments.

(1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA1016 (Rev. ~~2-11 5-09~~) is adopted and incorporated herein by reference and consists of the forms and instructions, ~~obtained from the Corporation, for a fee, at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or~~ available, without charge, on the Corporation’s Website under the ~~20112009~~ Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the MMRB Program.

(b) 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 the failure to meet threshold, rejection of the Application, a score less than the maximum available, or a combination of these results 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 will be provided a time period for filing a written Notice of Possible Scoring Error (NOPSE). Such time period will be no fewer than three (3) Calendar Days from the date the preliminary scores are sent by overnight delivery by the Corporation. The deadline for filing a NOPSE will be provided at the time the preliminary scores are issued. Each NOPSE must specify the assigned Application number of the Applicant submitting the NOPSE, the assigned Application number of the Application in question 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 Received timely. To be considered Received timely, the Applicant must submit one (1) original hard copy and three (3) photocopies of each NOPSE. The Corporation will not

consider any NOPSE submitted via facsimile or other electronic transmission.

(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, which may include financial obligations for which the Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation as of the due date for NOPSE filing as set forth in subsection (4) above.

(6) Each Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems appropriate ("cures") to address the issues raised pursuant to subsections (3) and (5) above that could result in failure to meet threshold or a score less than the maximum available. The time period for submitting the "cures" will be no fewer than three (3) Calendar Days from the date the notice set forth in subsection (5) above is sent by overnight delivery by the Corporation. Such notice will provide the deadline for submitting the "cures." A new form, page or exhibit provided to the Corporation during this period shall be considered a replacement of that form, page or exhibit if such form, page or exhibit was previously submitted in the Applicant's Application. 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, including all attachments and exhibits referenced therein, 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. To be considered by the Corporation, the Applicant must submit one (1) original hard copy and three (3) photocopies of all additional documentation and revisions and such revisions, changes and other information must be Received by the deadline set forth herein. 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) All Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. The time period for submitting each NOAD will be no fewer than three (3) Calendar Days from the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above. The notice set forth in subsection (5) above will provide the deadline for submitting the NOAD. Each NOAD is limited only to issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (6) above. Each NOAD must specify the assigned Application number of the Applicant submitting the NOAD, the assigned Application number of the Application in question, 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 Received timely. To be considered Received timely, the Applicant must submit one (1) original hard copy and three (3) photocopies of each NOAD. The Corporation will not consider any NOAD submitted via facsimile or other

electronic transmission.

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

(9) Following the receipt and review by the Corporation of the documentation described in subsections (5), (6) and (7) above, the Corporation shall then prepare final scores. In determining such final scores, no Application shall fail threshold 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 of the Application, threshold failure, 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 of Directors for multifamily housing, the Board of Directors 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 of Directors 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 of Directors 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 percent 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 of Directors, be carried over and applied to the next calendar year allocation or applied to single family housing. The Corporation 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 of Directors, shall be removed from the ranked list.

(11) Except for ~~Local Government issued Tax Exempt Bond Financed Developments~~ that have non-Corporation-issued tax-exempt bonds that submit a separate Application for non-competitive Housing Credits, Applications shall be limited to one submission per subject property. Two or more Applications, submitted in the same Funding Cycle, that have the same demographic commitment and one or more of the same Financial Beneficiaries will be considered submissions for the same Development if any of the

following is true: (i) any part of any of the property sites is contiguous with any part of any of the other property sites, or (ii) any of the property sites are divided by a street or easement, or (iii) it is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development. If two or more Applications are considered to be submissions for the same Development, the Corporation will reject all such Applications except the Application with the highest (worst) lottery number. The Application(s) with the lowest lottery number(s) will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Financial Beneficiary, as defined in Rule 67-21.002, F.A.C., 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 contractors whose total fees are within the limit described in Rule 67-21.007, F.A.C.

(12) If the Board of Directors 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 past or present Application or Development;
- (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;

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 (2)

years, which will begin from the date the Board of Directors makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S., 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 is inconsistent with the purpose of the MMRB Program or 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) The Applicant fails to satisfy any arrearages described in subsection (5) above.

(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 Applicant entity; notwithstanding the foregoing, the name of the Applicant entity may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit

underwriting;

(b) Identity of each Developer, including all co-Developers; notwithstanding the foregoing, the identity of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

(c) Program(s) applied for;

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

(e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter credit underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased, provided the ~~Tie~~Development Location Point~~Breaker~~ ~~Measurement Point~~ is on the site and the total proximity points awarded during scoring are not reduced;

(f) Development Category;

(g) Development Type;

(h) Demographic Commitment~~Designation selection~~;

(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;

(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 Set-Aside Commitment section of the Application;

(l) Submission of the Application online and 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.

(n) The Application labeled “Original Hard Copy” must include a properly completed Applicant Certification and Acknowledgement form reflecting original signatures.

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

With regard to paragraphs (a) and (b) above, the Board shall consider the facts and circumstances of each Applicant’s request and any credit underwriting report, if available, prior to determining whether to grant the requested change.

(15) A Development will be withdrawn from funding and any outstanding commitments for funds will be rescinded if at any time the Board of Directors 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 Developer or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer has any existing Developments participating in any Corporation programs that remain in non-compliance with the ~~IRC~~Internal Revenue Code, Title 67, F.A.C., or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the

Application or at the time of issuance of a Credit Underwriting Report, the requested allocation will, upon a determination by the Board of Directors that such non-compliance substantially increases the likelihood that such Applicant or Developer will not be able to produce quality affordable housing, be denied and the Applicant or Developer and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Corporation's programs 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 members of the Board of Directors 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 member of the Board of Directors in violation of this section, the Board of Directors 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, the Corporation shall disregard any withdrawal that is submitted after 5:00 p.m., Eastern

Time, 14 Calendar Days prior to the date the Board of Directors is scheduled to convene to consider 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 of Directors has approved the final ranking, any notice of withdrawal submitted during the time period prohibited above and before the Board of Directors approves the final ranking, shall be deemed withdrawn immediately after Board approval of the final ranking. If an Applicant has applied for or been awarded funding from two or more programs, the withdrawal by the Applicant from any one program will be deemed by the Corporation 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 requested in writing and approved in writing by the Corporation. The Corporation shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant such request.

(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 of Directors approval of the ranking, the Corporation shall reject the Application and any other Application submitted by the same Applicant and any Affiliate of the Applicant. If discovered after the Board of Directors 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 of Directors issues a final order on such matter in a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S.

(22) The Corporation 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 the Corporation to finance the proposed Development in any way.

(23) Upon receipt of the Credit Underwriting Report, the Corporation 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) Proposed Developments that are ranked, but not selected by the Board of Directors 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 of Directors for the MMRB Program 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) The Corporation shall notify the Applicant, in writing, of the Board of Directors 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.

(26) Upon favorable recommendation of the Credit Underwriting Report and

preliminary recommendation of the method of bond sale from the Corporation's Financial Advisor, the Board of Directors shall designate by resolution the method of bond sale considered appropriate for financing. The Board of Directors shall consider authorizing the execution of the Loan Commitment and shall consider final Board of Directors approval reserving State Bond Allocation for a Development. Requests for Taxable Bonds shall be considered by the Board of Directors in an amount recommended by the Credit Underwriter. The Board of Directors shall also assign a bond underwriter, structuring agent, or Financial Advisor and any other professionals necessary to complete the transaction. Staff shall assign the Corporation Bond Counsel and Special Counsel and Trustee as needed.

(27) Following receipt of one-half of the Good Faith Deposit, the Corporation's assigned Special Counsel shall begin preparation of the Loan Commitment.

(28) Upon execution of a Loan Commitment, Applicant shall pay the balance of the Good Faith Deposit and the Corporation shall authorize Bond Counsel and Special Counsel to prepare the Program Documents.

(29) For 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.

Rulemaking 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, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, _____.

67-21.0035 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-21.003, F.A.C., 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 MMRB Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation within 21 Calendar Days after the date the Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3), F.A.C., and specify in detail each issue and score sought to be challenged. 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 of Directors.

(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 of Directors. 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 (5) pages, excluding the caption and certificate of service. 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, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board of Directors. Parties will not be permitted to make oral presentations to the Board in response to recommended 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 of Directors, 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 of Directors, 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 MMRB 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). The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3),

F.A.C., 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), F.A.C.

(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 the Corporation 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 of Directors.

(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 of Directors. 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 (5) pages, excluding the caption and certificate of service. 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, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board of Directors. Parties will not be permitted to make oral presentations to the Board of Directors in response to recommended 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.

Rulemaking Authority 420.507, 420.508 FS. Law Implemented 120.569(2)(b), 120.57, 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, 3-21-04, 2-7-05, 1-29-06, 4-1-07, Repromulgated 3-30-08, 8-6-09,_____.

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 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 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 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).

Rulemaking 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, 3-21-04, Amended 2-7-05, 1-29-06, Repromulgated 4-1-07, 3-30-08, 8-6-09,_____.

67-21.0045 Determination of Method of Bond Sale.

(1) The Corporation 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 of Directors shall authorize a resolution specifying the method of sale.

(2) Following receipt of the Credit Underwriting Report, staff shall provide the Corporation'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 of Directors, 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) The Corporation'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 the Corporation's Financial Advisor recommends as

candidates for a competitive sale, the Corporation 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.

(6) For those transactions that the Corporation's Financial Advisor recommends for a negotiated sale, the Corporation shall appoint a bond underwriter.

Rulemaking 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 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09,_____.

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 two or more dwelling units and functionally related facilities, in accordance with section 142(d) of the ~~IRC~~[Internal Revenue 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 the Corporation 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 ~~IRC~~Internal Revenue 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 ~~IRC~~[Internal Revenue 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 ~~IRC~~ Internal Revenue Code, Florida Statutes, and the Corporation's 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 the Corporation 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 of Directors' 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 the Corporation of an intended change in the management company. The Corporation must approve, pursuant to subsection 67-53.003(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 Corporation-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~~120151 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 the Corporation to comply with continuing disclosure requirements imposed by law.

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

Rulemaking 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 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09,_____.

67-21.007 Fees.

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

(1) TEFRA Fee: Applicants shall submit a non-refundable TEFRA fee to the Corporation in the amount of \$500 by the Application Deadline, or, for refundings or 501(c)(3) Applicants, upon submission of the Application or request for refunding. 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, 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 the Corporation. 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 the Corporation within seven Calendar Days of the date the Applicant accepts the invitation by the Corporation to enter the Credit Underwriting process and prior to final credit review by the Credit Underwriter. The Credit Underwriting fee shall be determined pursuant to a contract between the Corporation and the Credit Underwriter.

(3) 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. 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, whichever is greater, to the Corporation, 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 of Directors approves the Credit Underwriting Report. The balance is payable no later than the date when the Applicant executes the Loan Commitment. 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. In the event the MMRB 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 the Corporation 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 the Corporation subsequent to a determination that the MMRB 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: the Corporation shall require Applicants or participating Qualified Lending Institutions selected for participation in the program, to deliver to the Corporation, or, at the request of the Corporation, directly to the Trustee, before the date of delivery of the Bonds, a Cost of Issuance Fee in an amount determined by the Corporation 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. The Corporation 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 the Corporation in connection with the issuance of the Bonds, the expenditure of the MMRB 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 the Corporation and the environmental professional.

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

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

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

(8) Financial Monitoring Fees: The annual financial monitoring fee the Applicant shall pay will be determined as outlined in the fees section of the Universal Application instructions~~by contract between the Corporation and the monitoring agent.~~

(9) Other Corporation 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 the Corporation.

(10) Developer Fee shall be limited to 18 percent of Development Cost excluding land. Consulting fees, if any, must be paid out of the Developer Fee. If the required Home Energy Rating System (HERS) Index is not achieved for all eligible new construction units, the Developer fee shall be reduced as outlined in the Application instructions. If the green certification program committed to by the Applicant during credit underwriting is not achieved, the Developer fee shall be reduced as outlined in the Application instructions. 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 the Corporation 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 cap on Financial Advisor fees. The Corporation shall not authorize fees to be paid for duplicative services or duplicative overhead.

(11) General Contractor's Fees are inclusive of general requirements, profit and overhead and 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 Identity of Interest as defined herein between the Applicant or Developer 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. The Corporation shall not allow fees for duplicative services or duplicative overhead. The General Contractor must meet the following conditions:

(a) Employ a Development superintendent and charge the costs of such employment to the general requirements line item of the General Contractor's budget;

(b) Charge the costs of the Development construction trailer, if needed, and other overhead to the general requirements line item of the General Contractor's budget;

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

(d) Secure a payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit), issued in the name of the General Contractor, from a company rated at least "A-" by AMBest & Co.;

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

(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity unless otherwise approved by the Board for a specific Development.

Rulemaking 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, 3-21-04, 2-7-05, 1-29-06, Repromulgated 4-1-07, Amended 3-30-08, Repromulgated 8-6-09, Amended

67-21.008 Terms and Conditions of MMRB Loans.

(1) Each Mortgage Loan for a Development made by the Corporation 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 no later than the 37th month after closing 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 the Corporation 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 the Corporation shall approve; and

(g) Require the submission to the Corporation 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.

(h) Unless and until a guarantor's obligations for a MMRB Loan are terminated as approved in writing by the Corporation or its servicer, each guarantor shall furnish to the

Corporation or its servicer financial statements as provided in paragraphs (a) through (c) below as the Corporation or its servicer may reasonably request.

(a) The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

1. Comparative Balance Sheet with prior year and current year balances;
2. Statement of revenue and expenses;
3. Statement of changes in fund balances or equity;
4. Statement of cash flows; and
5. Notes.

The financial statements referenced above should also be accompanied by a certification of the guarantor(s) as to the accuracy of such financial statements; or

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

(c) For individual guarantors, if an audited financial statement is not available a financial statement certified as true and complete without qualification by such guarantor and a copy of the most recently filed individual federal income tax return.

(i)(h) If Credit Enhancement is used, a Credit Enhancement instrument of less than ten years must be approved by the Board of Directors.

(2) Upon approval, execution, and satisfaction of the terms of the Program Documents by the Applicant and the Corporation, the Bond sale and the MMRB 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 ~~IRC~~Internal Revenue 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) The Corporation shall charge such program administration fees as are required to pay the cost of administering the program during the life of the Bonds and MMRB Loan.

(6) The interest rate on the MMRB Loan shall be determined by the Corporation 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) The Corporation shall appoint a Trustee and servicing agent when necessary to administer the program and service the MMRB Loan.

(9) All MMRB 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 the Corporation, 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 the Corporation 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 the Corporation, 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 MMRB Loans shall be reviewed and originated by a servicer designated by the Corporation, in conformance with the Act.

(11) The Applicant shall agree to execute or cause to be executed all of the MMRB Program Loan Documents required by the Corporation to secure the unconditional payment of the MMRB 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 the Corporation the following documents with respect to the Development being financed, together with any other documents required by the MMRB 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 the Corporation.

(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 the Corporation 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 the Corporation. Such policy shall be in an amount not less than the MMRB Loan amount plus an amount sufficient to cover any debt service reserve required by the Corporation.

(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 the Corporation to allow any liens to remain recorded against the land or the Development.

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

(13) The Borrower shall not sell, transfer, or otherwise assign any of its interest in the Development without the prior written consent of the Corporation.

(14) The Corporation shall require all MMRB Loans to be secured to the extent necessary to protect the Corporation and Bond holders.

(15) Any MMRB 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 the Tax-exempt Bonds shall not exceed six months of debt service on the Bonds.

(16) Annually, within 151 Calendar Days following the Applicant's fiscal year end, the Applicant shall provide the Corporation with an audited financial statement and an executed Financial Reporting Form SR-1, Rev. 01-11, which is incorporated by reference and available on the Corporation's Website under the 2011 Universal Application link labeled Related References and Links. The audited financial statement and a copy of the signed Form SR-1, with Parts 1, 2 and 5 completed, shall be submitted in both PDF format and in electronic form as a Microsoft Excel spreadsheet to the Corporation at the following web address: financial.reporting@floridahousing.org. The initial submission will be due following the fiscal year within which the first unit is occupied. In the case where the Development contained occupied units at the time of acquisition, the initial submission will be due following the fiscal year within which the 12 month anniversary of the MMRB loan closing is observed. The audited financial statement is to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- a. Comparative Balance Sheet with prior year and current year balances;
- b. Statement of revenue and expenses;
- c. Statement of changes in fund balances or equity;
- d. Statement of cash flows; and
- e. Notes.

The financial statements referenced above should also be accompanied by a certification of the Applicant as to the accuracy of such financial statements. A late fee of \$500 will be assessed by the Corporation for failure to submit the above documents by the stated deadline.

Rulemaking 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, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, Amended 3-30-08, Repromulgated 8-6-09, Amended _____.

~~67-21.009~~ Interest Rate on Mortgage Loans.

The Corporation 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.

Rulemaking 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, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, Amended _____.

67-21.010 Issuance of Revenue Bonds.

The Corporation shall fund Mortgage Loans with the proceeds from the sale of Bonds. The issuance and sale of the Bonds shall be governed by resolutions adopted by the Corporation 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, the Corporation shall terminate its MMRB Loan

Commitment and such other agreements as were executed in conjunction with the proposed MMRB Loan.

Rulemaking 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, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09

_____.

67-21.013 Non-Credit Enhanced Multifamily Mortgage Revenue Bonds.

Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. Such non-Credit Enhanced revenue Bonds may only be utilized for financings where the Applicant has demonstrated that the issuance 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 the Corporation 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 the Corporation’s Financial Advisor, and again prior to the pricing of the Bonds, showing any changes affecting the original estimated substantial benefit. The Corporation shall designate the bond underwriter or placement agent with respect to such Bonds, who shall be on the Corporation’s approved bond underwriters list. The Corporation, 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 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 subsection (2) or (3) below are met, shall certify to the Corporation 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 the Corporation 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 the Corporation 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.

Rulemaking 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, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07,

3-30-08, 8-6-09,_____.

67-21.014 Credit Underwriting Procedures.

Credit underwriting is a de novo review of all information supplied, received or discovered during or after any application cycle scoring and ranking process, prior to the closing on funding. The success of an Applicant in being selected for funding at final ranking is not an indication that the Applicant will receive a positive recommendation from the Credit Underwriter or that the Development team's experience, past performance or financial capacity is satisfactory.

(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 the Corporation 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 ~~review~~^{verify} all information in the Application, or any proposed changes made subsequent thereto, in order to make a recommendation to the Board of Directors on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement. Credit Underwriting 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 MMRB 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.

(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 MMRB Loan is feasible. The Credit Underwriter shall also request and review such other information as it deems appropriate to determine whether or not to provide a positive recommendation in connection with a proposed Development. In making that determination the Credit Underwriter will consider the prior and recent performance history of the Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other affordable housing development. The performance history shall consider instances involving a foreclosure, deed in lieu of foreclosure, financial arrearage, or other event of material default in connection with any affordable housing development or the documents governing financing or operation of any such development. Unless the Credit Underwriter determines that mitigating factors exist, or that underwriting conditions can be imposed, sufficient to mitigate or offset the risk, the existence of the following shall result in a negative recommendation of the proposed Development by the Credit Underwriter: Considering all affordable housing developments in which any party named above has been involved, if (i) during the period prior to August 1, 2010, five (5) percent or more of that party's developments have been the subject of a foreclosure or deed in

lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default remained uncured for a period of 60 days or more, or (ii) during the period beginning on or after August 1, 2010, any of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default is uncured at the present or, if cured, remained uncured for a period of 60 days or more. Mitigating factors to be considered by the Credit Underwriter, to the extent such information is reasonably available and verifiable, shall include the extent to which the party funded the operations of the development from that party's own funds in an attempt to keep the development afloat, the election by a party to forego financial participation in a development in an attempt to keep the development afloat, the party's satisfactory performance history over the last 10 years in connection with that party's affordable housing developments, and any other extenuating circumstances deemed relevant by the Credit Underwriter in connection with the party's involvement in a development. A negative recommendation may also result from the review of (a) an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other affordable housing development, (b) financial capacity of an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor, or (c) any other relevant matters relating to an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor if, in the Credit Underwriter's opinion, one or more members of the Development team do not possess the ability to proceed.

(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 ~~\$300~~\$250 per unit per annum must be deposited annually in the replacement reserve account for all Developments. The initial replacement reserve will have limitations on the ability to be drawn upon during the following time periods: (i) new construction or Redevelopment Developments shall not be allowed to draw during the first five (5) years or until the establishment of a minimum balance equal to the accumulation of five (5) years of replacement reserves per unit, or (ii) Preservation or Rehabilitation Developments (with or without acquisition) ~~Developments~~ shall not be allowed to draw until the start of the scheduled replacement activities as outlined in the pre-construction capital needs assessment report ('CNA') subject to the activities completed in the scope of rehabilitation, but not sooner than the third (3rd) year. The amount established as a replacement reserve shall be adjusted based on a CNA to be received by the Corporation or its servicers, prepared by an independent third party and acceptable to the Corporation and its servicers at the time the CNA is required, beginning no later than the 10th year after the first residential building in the development receives a certificate of occupancy, a temporary certificate of occupancy, or is placed in service, whichever is earlier ('Initial Replacement Reserve Date'). A subsequent CNA is required no later than the 15th year after the Initial Replacement Reserve Date and subsequently every five (5) years thereafter. If the Applicant does not provide a copy of a CNA to the Corporation or its servicers, prepared by an independent third party and acceptable to the Corporation and its servicers within the stated time frames, then one shall be ordered by the Corporation or its servicers at the Applicant's expense. The only events allowed to drop the balance below the minimum are items

related to life safety, structural and systems as approved by the Corporation and its servicers. In the event the first mortgage lender or a Housing Credit Syndicator requires replacement reserves with replacement reserve deposit requirements that include the same or higher deposits, the Corporation's rights to hold replacement reserves and to disburse such funds shall be subject to the first mortgage lender or the Housing Credit Syndicator, as applicable. The replacement reserve funds are not to be used by the Applicant for normal maintenance and repairs but shall be used for structural building repairs, major building systems replacements and other items included on the Eligible Reserve for Replacement Items list, effective October 15, 2010, which is incorporated by reference and available on the Corporation's Website under the 2011 Universal Application link labeled Related References and Links. 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 the Corporation's approval.

(d) The Corporation 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 the Corporation or its predecessor, including, by way of example and not limitation, nonpayment of fees and noncompliance with program requirements. 4. Percentage of the Corporation's 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 the Corporation 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 the Corporation 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 Corporation 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 the Corporation. The Credit Underwriter must review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater.

(g) Any Development that has rehabilitation with or without acquisition, a capital needs assessment prepared in accordance with generally accepted industry investment grade standards shall be ordered by the Credit Underwriter, and its findings shall be used to determine rehabilitation that will be carried out, including energy, green, universal design and visitability features, and to set replacement reserves.

~~(h)~~(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 the Corporation 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.

~~(i)~~(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 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 are not available, unaudited financial statements prepared by an independent licensed Certified Public Accountant 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 November 6, 2003, which is incorporated by reference and available on the Corporation's Website under the 20112009 Universal Application link labeled Related References and Links, and the two most recent years tax returns. 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.

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 percent 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.

~~(j)~~(i) The Credit Underwriter shall require an operating deficit guarantee. The operating deficit guarantee will be released when the Development achieves an average 1.15 debt service coverage ratio on the MMRB Loan and 90 percent occupancy and 90 percent of the gross potential rental income, all for twelve (12) consecutive months as certified by an independent Certified Public Accountant, and verified by the Credit

Underwriter. The calculation of the debt service coverage ratio shall be made by the Corporation or its agent. Notwithstanding the above, the operating deficit guarantee shall not terminate earlier than three (3) years following the final certificate of occupancy.

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

~~(l)(k)~~ Required appraisals, market studies, pre-construction analyses, physical needs assessments, capital needs assessments and environmental studies (other than Phase I Environmental Site Assessments) shall be completed by professionals approved by the Credit Underwriter. 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.

~~(m)(l)~~ 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 MMRB Loan request in relation to the property value.

~~(n)(m)~~ 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.

~~(o)(n)~~ The Credit Underwriting Report shall include a thorough analysis of the proposed Development and a statement as to whether a MMRB Loan is recommended,

and if so, the amount recommended. The Credit Underwriter or the Corporation may request such additional information as is necessary to properly analyze the credit risk being presented to the Corporation and the Bond holders. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have (i) an average physical occupancy rate of 9290% or greater, and (ii) an average market rental rate, based on unit mix and annualized rent concessions, of 110% or greater of the applicable maximum Housing Credit rental rate.

(3) The Applicant shall review and provide written comments on the draft Credit Underwriting Report to the Corporation and the Credit Underwriter within the time frame established by the Corporation. The Corporation 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 the Corporation's and, if deemed appropriate, the Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within the established time frame. Then, the Credit Underwriter shall provide a final report, which shall address comments made by the Applicant to the Corporation.

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

(5) At a minimum, a 10 percent retainage will be held by the Trustee or the servicer administering the construction loan funds until the Development is 50 percent complete.

At 50 percent 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.

Rulemaking 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, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09,_____.

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

(1) Applicants may submit one Application for the MMRB Program, SAIL, HOME Rental, 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.

Rulemaking 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, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09,_____.

67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of this section, provided that transfers of the limited partnership interest or limited liability company interest in the owner 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 MMRB Land Use Restriction Agreement and other Program Documents for such Development. Owners shall advise the Corporation 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 the Corporation in writing and include evidence that the current owner has agreed to the proposed sale. A detailed opinion letter from the legal counsel for the current owner or prospective purchaser describing the scope of the proposed transaction must also be provided. The Corporation shall review the letter and, if acceptable, assign a Credit Underwriter. The Credit Underwriter will notify the current owner and prospective purchaser of any additional information necessary to complete its Credit Underwriting Report.

(3) Upon demonstration of compliance with the provisions of this section, and favorable consideration by the Board of Directors of the Credit Underwriting Report, the Corporation shall assign a Bond Counsel, Special Counsel, and other professionals as needed to effect the transfer.

(4) Prior to the transfer of ownership:

(a) The Credit Underwriter shall conduct a Credit Underwriting of the prospective purchaser upon any transfer of ownership. Additionally, the prospective purchaser shall be notified that any refunding of Bonds associated with such Development shall require a full Credit Underwriting of the Development. 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 the Corporation

as meeting the stated purposes of the Corporation,

(b) All outstanding fees owing to the Corporation or any of its assigned professionals shall be paid,

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

(d) If the set-aside requirements in the MMRB 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. All transfer of ownership transactions shall be subject to all conditions of the Credit Underwriting Report including the requirements for 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.

Rulemaking 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 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09,_____.

67-21.018 Refundings and Troubled Development Review.

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

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

(3) Approval by the Corporation 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 owner or Credit Enhancer;
- (c) Submission of sworn certificate from the owner 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 owner or Credit Enhancer;
- (e) Independent evidence of market conditions in the Development location;
- (f) Evidence of effort by the owner or Credit Enhancer to procure other sources of capital infusion;
- (g) Statement by the owner or Credit Enhancer of the continued public purpose to be achieved by refunding;
- (h) Agreement by the owner or Credit Enhancer to update the MMRB Land Use Restriction Agreement, including retention of state and federal income limits;
- (i) New Credit Underwriting by the Corporation, with new Bond amount determined by the Corporation based upon real estate underwriting criteria and equal to the lesser of the amount determined by the Corporation 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 the Corporation; with consideration given to personal indemnification from the owner if sufficient financial strength can be demonstrated;

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

(l) Retention of annual fees by the Corporation;

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

(n) Retention of the Credit Enhancement, or an acceptable non-Credit Enhancement structure; and

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

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

(a) All outstanding fees of the Corporation and any of its assigned professionals shall be paid in connection with the refunding;

(b) The set-asides required by the original MMRB Land Use Restriction Agreement shall be increased by an amount and extended for a period determined by the Corporation;

(c) A Credit Underwriting 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 MMRB 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 it exceed the economic remaining life of the property, provided that, in the case of a refunding relating to a pending financial 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.

Rulemaking 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, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09,_____.

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

(1) The Corporation shall entertain requests, on a non-competitive basis, for it to serve as the issuer of Tax-exempt 501(c)(3) 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 ~~IRC~~[Internal Revenue Code](#).

(2) In connection with all Bonds issued pursuant to this section, Applicants shall be required to comply with the applicable provisions of Rules 67-21.0045 through 67-21.018, F.A.C., Florida Statutes, and the ~~IRC~~[Internal Revenue Code](#), including all safe harbor provisions.

(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) The completed Universal Application in effect at the time the Applicant submits the Application. Applicants must meet all threshold requirements of the Application as well as achieve 50 percent of all points (excluding tie-breaker points) available in the Application.

Rulemaking 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, 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, 8-6-09,_____.

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

~~12-1-10 Draft~~

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULES: Len Tylka, Chairman of the Board, 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: June 10, 2010

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