

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
September 7, 2012
Action Items



HARDEST-HIT FUND

Action

I. HARDEST-HIT FUND

A. Request Approval to Eliminate the Partial Payment Requirement from the Unemployment Mortgage Assistance Program (UMAP)

1. Background

Since the UMAP Program went statewide in April, 2011, homeowners have been required to make a partial mortgage payment, equal to 25% of their current household income (with a minimum of \$70), towards their monthly mortgage payment. Funds are debited from the homeowner's bank account by our Special Servicer, US Bank Home Mortgage (USBHM), and then transferred to Florida Housing. Florida was one of four HHF states to have this requirement (Ohio, Indiana and Michigan).

2. Present Situation

Over the past six months, both Ohio and Indiana have eliminated partial payment requirements from their HHF Programs. As a result, on August 23, 2012, Program Staff received notification from USBHM ([Exhibit A](#)) that they will no longer provide Special Servicer services. USBHM was the only institution willing to take on this role, as evidenced by the lack of any responses to the RFP issued by Ohio. Florida Housing is unable to assume this task in-house.

3. Recommendation

Staff recommends that the partial payment requirement be eliminated from UMAP.

HARDEST-HIT FUND

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B. Hardest Hit Fund Program – Rulemaking

1. Background/Present Situation

- a) On February 19, 2010, the United States Department of the Treasury (Treasury) announced \$1.5 billion in funding called the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (Hardest Hit Fund) to help families in the five states that have been hit the hardest by the combination of housing price declines and unemployment. There are now 18 states and the District of Columbia participating in this \$7.6 billion program. Florida's share of these funds totals over \$1 billion.
- b) Florida Housing Finance Corporation (Florida Housing) entered into a contract with the Treasury to create and administer foreclosure prevention assistance programs under the Hardest Hit Fund. Treasury has approved the term sheets and subsequent amendments submitted by Florida Housing for both the Unemployment Mortgage Assistance Program (UMAP) and the Mortgage Loan Reinstatement Program (MLRP) to provide assistance to eligible homeowners who have experienced an employment related hardship.
- c) On December 9, 2011, the Board authorized staff to commence the rule promulgation process for the Hardest Hit Fund Program.
- d) Pursuant to Executive Order 11-72, staff submitted the proposed Rule, attached as [Exhibit B](#), on August 10, 2012, for review and consent by the Office of Fiscal Accountability and Regulatory Reform (OFARR).
- e) Staff also submitted the Notice of Proposed Rulemaking (NOPR) for publication in the August 17, 2012, edition of the Florida Administrative Weekly (FAW). The NOPR announced the Rule Hearing which is scheduled to take place September 14, 2012, in Tallahassee. Following review of the public comments received at the Rule Hearing and the comments received from the Joint Administrative Procedures Committee (JAPC) following its review, if no further modification is required, staff will file the Rule for adoption on September 26, 2012.
- f) If the Board approves the request to eliminate the partial payment requirement, which has been presented as another HHF action item on this Board agenda, staff will prepare a Notice of Change (NOC) to incorporate that modification along with any other proposed modifications to the proposed Rule received as a result of the Rule Hearing or from JAPC, and submit the NOC to OFARR for review. Upon receipt of OFARR's consent, the revised document will be submitted to JAPC for review and, if required, staff will also submit the NOC for Board approval. The NOC will then be filed for publication in the FAW. Assuming there is no request for another hearing, staff will file the Rule for adoption no earlier than 21 days following the publication of the NOC in the FAW.

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2. **Recommendation**

Approve the proposed Rule subject to the NOC incorporating the elimination of the partial payment requirement and other changes as may be required by JAPC or after the Rule Hearing, and authorize the Chair to determine whether the NOC makes material, substantive changes to the rule chapter. If he determines that it does not, staff recommends that the Board approve such NOC without the requirement of another Board meeting. In the alternative, if the Chair determines that any NOC does make material, substantive changes to the rule chapter, then such changes will be brought to the Board at the next regularly scheduled meeting.

STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

Action

II. STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

A. Request to Use State Apartment Incentive Loan Program Funding

1. Background

- a) Florida Housing experienced eight claims/foreclosures in the Guarantee Program multifamily portfolio with the first claim in November 2008 and the last claim occurring in April 2010 (see the Guarantee Fund Informational Item for a list of those claims/foreclosures). In 2009, the insurer strength rating of the Guarantee Fund was downgraded to an A- by Fitch – and in June 2012 Fitch affirmed that A- rating and revised the “negative” rating outlook to “stable.” In their report, Fitch stated they view “the SAIL ELI initiative as a positive action by management to assist properties during a period of economic and financial stress on the portfolio.” Fitch further added, “The extent to which the combination of losses from claims and loan repayments will impact the GF’s risk-to-capital ratio partially depends on the number of developments that refinance out of the portfolio.” Affordable units in developments that refinance out of the Guarantee Program portfolio remain in Florida’s affordable housing stock. Florida not only loses affordable housing units in the event of a claim on the Guarantee Fund and subsequent foreclosure of a development, such claims and further potential downgrade of the Fund’s rating put future state housing trust fund resources at risk.
- b) To mitigate against further claims/foreclosures in the Guarantee Fund portfolio, Florida Housing has attempted to (1) halt cannibalization of current Guarantee Fund developments by keeping new units serving similar households from being built in close proximity to existing Guarantee Fund transactions with low occupancy; (2) provide resources through the Subordinate Mortgage Initiative to aid struggling transactions in the Fund’s portfolio for a short term period; and, (3) provide Extremely Low Income (ELI) funding preference to developments in the Guarantee Fund portfolio, to “buy down” the debt on units currently targeted to families earning 60% Area Median Income (AMI) so that those units will be set-aside for ELI households instead (generally meaning households earning 30% to 35% AMI and below).
- c) Florida Housing has many units in its portfolio, including the Guarantee Fund portfolio, that are targeted to households earning up to 60% of AMI that, in many of the softer rental markets throughout the state, are currently empty. Each year, Florida Housing carries out an evaluation of six months of physical occupancy data for Florida Housing’s entire portfolio. This analysis, along with more detailed information about the Guarantee Fund properties and data on new affordable rental units under construction, allows Florida Housing to target financing to areas of the state where housing is most needed. Based on data gathered for the 2013 Universal Application Cycle, staff proposes to increase the number of entire counties or areas of counties considered to be saturated from 24 in 2009 to 38 – more than half of the counties in the state. The statewide rental needs study, however, indicates a great need for units targeted to households earning extremely low incomes.

STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

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2. **Present Situation**

- a) Florida Housing has \$20,000,000 of uncommitted SAIL monies for the SAIL program. The monies resulted from SAIL interest and principal payments on SAIL loans, and earnings from the investment of SAIL funds. Earlier this year, the Legislature passed a bill that the Governor signed into law authorizing SAIL funding to preserve existing Guarantee Program developments that meet the following criteria;
- (1) the Guarantee Program mortgage note was executed and recorded not later than September 30, 2003;
 - (2) the development must commit to provide additional units for extremely-low-income persons; and
 - (3) the shareholders, members, or partners of the project owner must have funded deficits in an amount that is not less than 20 percent of the State Apartment Incentive Loan not later than the closing of any financing under this RFP.
- b) The legislation also provided a funding priority for Guarantee Program developments approved by the Board to provide additional units for extremely-low-income persons in calendar year 2011 and a maximum amount of \$2.5 million in new SAIL ELI funding per development.

3. **Recommendation**

Authorize staff to award the SAIL funding through a Request for Proposals process to existing Florida Housing Guarantee Program developments according to the requirements of 420.5087 (10) F.S.

SPECIAL PROGRAMS

Action

III. SPECIAL PROGRAMS

A. Request Permanent Modification to the Set-Aside Requirements and Resident Eligibility Verification for Casa Cesar Chavez (RFP 2001/06-001FW)

DEVELOPMENT NAME (“Development”):	Casa Cesar Chavez
DEVELOPER/PRINCIPAL (“Developer”):	Everglades Community Association, Inc., a non-profit organization
NUMBER OF UNITS:	28
LOCATION (County):	Miami-Dade County
TYPE:	Rental
SET ASIDE:	Migrant and Seasonal Farmworkers (100% at 60% AMI)
LOAN AMOUNT:	\$1,250,000
ADDITIONAL COMMENTS: 144 total beds in 28 units	

1. Background

- a) Everglades Community Housing, Inc. (ECA) was awarded a \$1,250,000 demonstration loan under RFP 2001/06 for a Farmworker Development located in Miami-Dade County.
- b) The Development has been providing 144 beds grouped in two and four bedroom units with two adults per room in 28 total units to migrant and seasonal farmworkers unaccompanied by their families. The set-aside is for 100% of the units reserved for individuals at or below 60% of the area median income.
- c) As part of this demonstration, Florida Housing was interested in understanding how financing could be used to support the development of housing targeted to a particularly difficult population to serve-workers migrating in and out of an area seasonally to do farm work, typically with extremely low incomes. The dormitory style housing would allow farmworkers unaccompanied by their families to pay a much smaller amount for housing, while being provided the amenities of apartment living.
- d) From the time the development was placed in service in May 2008 through November 2009, the occupancy never reached the anticipated demand for this type of housing. In fact, the peak occupancy for 2008 and 2009 was less than 40%. This low occupancy was due to several factors: local economic downturn in nursery operations, Florida Housing’s occupational eligibility requirements that a “Farmworker” must earn 50% or more of their income from farm work, difficulty of prospective tenants providing proof of income prior to occupancy, and poor marketing decisions by the developer.
- e) In December 2009, the Developer requested that Florida Housing allow the following changes to the set-aside requirements for the development for one year in order to attempt to increase the occupancy rate of the development:

SPECIAL PROGRAMS

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- (1) Reduce the number of beds set aside for Farmworkers to 72 beds (50% of project capacity). Farmworkers would still have prioritized admittance to the remaining 72 beds. In consideration of the requested change in the demographic set-aside, ECA proposed reducing the income set-aside to 50% of the area median income (AMI) for 72 beds (50% of project capacity) with an additional 15 beds (10% of project capacity) reserved for individuals earning 33% or less of the AMI. The remaining 40% (57 beds) would remain at the original 60% AMI level;
- (2) Units not set aside for farmworkers would be leased to “Day Laborers,” defined as “unaccompanied persons, most of whom are traditionally employed in farm work, but as a result of a depressed farm labor market, have taken work in other job fields on a temporary basis;” and

Allow a change in the verification of income eligibility procedure to:

- (3) Allow verification of income eligibility for potential residents within a 10 day period from move-in to provide such documentation, rather than requiring it at time of move-in.
- f) The Board approved these modifications to the land use restriction agreement (LURA) on December 4, 2009, for a one-year period which ran from May 31, 2010, to May 31, 2011. This modification period lapsed and the original LURA requirements were again in effect. However, the developer mistakenly believed the LURA modifications were in effect until May 31, 2012, and certified that the development was in compliance on the required self-certification form submitted December 31, 2011. When the developer realized the mistake in June 2012, ECA contacted Florida Housing and submitted a request ([Exhibit A](#)) to make the modifications to the LURA and the verification of income procedure permanent from the date of the expiration of the LURA modification through the remainder of the affordability period which ends December 16, 2019.

2. Present Situation

- a) In order to evaluate the success of the LURA modifications on the property’s occupancy and to evaluate the effect of making the changes permanent, Florida Housing staff assigned a credit underwriter to evaluate the request.
- b) The credit underwriter evaluated the effect of the previous LURA modifications, described above, on the success of the development and found that there was a reduction in vacancy and collection losses due to the modifications. The underwriter also notes that making the modifications to the LURA permanent will increase the economic viability of the development while still providing 72 beds for farmworkers. The credit underwriter has submitted a report ([Exhibit B](#)) which recommends approval of the developer’s request to modify the LURA and the income verification procedure for the remainder of the affordability period.

SPECIAL PROGRAMS

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3. **Recommendation**

Approve the following modifications to the Casa Cesar Chavez LURA for the remainder of the affordability period and allow staff to amend loan documents accordingly:

- (1) Reduce the number of beds set aside for Farmworkers to 72 beds (50% of project capacity) with Farmworkers having prioritized admittance to the remaining 72 beds and reduce the income set-aside to 50% of AMI for 72 beds (50% of project capacity) and to 33% of AMI for 15 beds (10% of project capacity). The remaining 40% (57 beds) will remain at the existing 60% AMI level.
- (2) Require units not set aside for Farmworkers to be leased to “Day Laborers,” defined as “unaccompanied persons, most of whom are traditionally employed in farm work, who have taken work in other job fields on a temporary basis.”
- (3) Allow verification of income eligibility for potential residents within a 10 day period from move-in to provide such documentation rather than requiring it at time of move-in.

LEGAL

Action Supplement

I. LEGAL

A. In Re: Kensington Place Partners, LP v. Florida Housing Finance Corporation - FHFC Case No. 2012-042UC

Development Name: (“Development”):	Kensington Place
Developer/Principal: (“Developer”):	Kensington Place Partners, LP
Number of Units: 105	Location: Orange County
Type: Garden Apartments	Set Aside: 94% @ or below 60% AMI 10% @ or below 33% AMI
Demographics: Elderly	Housing Credits: \$1,862,655

1. Background

Kensington Place Partners, LP (“Petitioner” or “Kensington”) applied for funding, under Application No. 2011-225C, during the 2011 Universal Application Cycle, seeking Low Income Housing Tax Credits. Petitioner was notified by Florida Housing Finance Corporation (“Florida Housing”) of its final ranking on or about September 26, 2008. Petitioner was not funded; another applicant, Uptown Maitland Partners, Ltd, Application No. 2011-234C was funded instead, as there was insufficient housing credit allocation to fund both applicants. Petitioner timely filed a Petition for an Informal Administrative Hearing under Sections 120.569 and 120.57(2), Florida Statutes, challenging Florida Housing’s final ranking of its 2011 Universal Cycle Application, No. 2011-225C.

2. Present Situation

A hearing was conducted on February 16, 2009, before Florida Housing’s appointed Hearing Officer, Diane D. Tremor. Kensington requested, and was granted permission, to amend its Petition at hearing; adding another challenge, alleging that Florida Housing erred in accepting an equity commitment let that did not contain documentation of ability to fund by the tax credit purchaser. The parties filed Proposed Recommended Orders. On September 4, 2012, Hearing Officer Diane D. Tremor filed a Recommended Order, finding that Florida Housing correctly scored Uptown as to four issues raised in the Amended Petition, but incorrectly awarded Uptown Maitland tiebreaker points for proximity to a medical facility, and recommending that Florida Housing adopt a Final Order funding Kensington’s application. A copy of the Recommended Order is attached as [Exhibit A](#).

3. Recommendation

Staff recommends that the Board: Adopt the Findings of Fact of the Recommended Order, the Conclusions of Law of the Recommended Order, and the Recommendation of the Recommended Order, and issue a Final Order in accord with same.

LEGAL

Action Supplement

B. In Re: Ability Oakland II, LLC – FHFC Case No. 2012-041UC

Development Name: (“Development”):	Oakland Terrace Apartments App. No. 2011-046C
Developer/Principal: (“Developer”):	Ability Oakland II, LLC
Number of Units: 60	Location: Duval County
Type: Garden Apartments	Set Asides: 40% of units at 60% AMI or lower
Demographics: Family	Housing Credits: \$717,500

1. Background

- a) Ability Oakland II, LLC, (“Ability” or “Petition”) successfully applied for funding pursuant to the Low Income Housing Tax Credit Program (LIHTC) during Florida Housing Finance Corporation’s (“Florida Housing”) 2012 funding period to supplement the rehabilitation of Oakland Terrace Apartments, a 60 unit affordable housing apartment complex in Jacksonville, Florida.
- b) Based on Florida Housing’s Final Ranking dated June 8, 2012, Petitioner received a final score of 79 out of a possible 79 points for its application, including 6 Ability-to-Proceed and 29.5 Proximity Tie-Breaker points, and was deemed to have passed threshold. This score would have placed Petitioner in the funding range, but for Florida Housing’s scoring of another Application Number 2011-145C (“University Plaza”).
- c) Ability timely filed a Petition for Administrative Hearing alleging that for Florida Housing’s scoring of University Plaza’s application at Part III, Section (A)(2)(c), “whether the proposed development will consist of ‘Scattered Sites,’” University Plaza would have been funded.
- d) Pursuant to Section 120.569 and .57, Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, Petitioner requested an administrative hearing challenging Florida Housing’s scoring of University Plaza’s Application No. 2011-145C.

2. Present Situation

A hearing was conducted on August 21, 2012, before Florida Housing’s designated Hearing Officer, Diane D. Tremor. The parties filed Proposed Recommended Orders. On September 4, 2012, Hearing Officer Diane D. Tremor filed a Recommended Order, finding that Florida Housing incorrectly scored University Plaza, and recommending that Florida Housing adopt a Final Order funding Ability Oakland II’s application. A copy of the Recommended Order is attached as [Exhibit B](#).

3. Recommendation

Staff recommends that the Board adopt the Findings of Fact of the Recommended Order, Conclusions of Law of the Recommended Order, and the Recommendation of the Recommended Order, and issue a Final Order in accord with same.