

FLORIDA HOUSING FINANCE CORPORATION  
CHAPTER 67-38, FLORIDA ADMINISTRATIVE CODE  
PREDEVELOPMENT LOAN PROGRAM

Rule No.: Rule Title

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**67-38.001 Purpose.**

The purpose of the Predevelopment Loan Program is to provide financial and technical assistance to eligible Applicants for predevelopment related activities associated with the development of affordable single family home ownership units and multi-family rental housing.

Rulemaking\_Authority 420.528 FS. Law Implemented 420.523 FS. History–New 2-3-05.

**67-38.002 Definitions.**

- (1) “Act” means the Florida Housing Finance Corporation Act as found in Chapter 420 Part V, F.S.
- (2) “Affiliate” means any person or entity that, (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant, (ii) serves as an officer or director, agent, employee, or any business entity or person associated with the Applicant in the furtherance of a business venture for which the Applicant is applying for one or more of the Corporation’s programs, or (iii) is the spouse, parent, child, sibling, or relative by marriage of a person or entity described in (i) or (ii) above.
- (3) “Applicant” means any person or legally formed entity that is seeking a loan or funding from the Corporation by submitting an Application for one or more of the Corporation’s programs.
- (4) “Application” means the forms and exhibits created by Corporation for the purpose of providing the means to apply for one or more of the Corporation’s programs.
- (5) “Application Package” means the forms and instructions obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 or from the Corporation’s Website, which shall be completed and submitted to the Corporation in order to apply for a specific Florida Housing program. With respect to PLP, Form PLP 1115 (Rev 11/09) is hereby adopted and incorporated herein by reference. Copies of such may be

obtained by contacting the Special Programs Administrator at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(6) “Board of Directors” or “Board” means the Board of Directors of the Corporation.

(7) “Community-Based Organization” or “Not-For-Profit Organization” means any group incorporated under Chapter 617, F.S., to provide housing and other services on a not-for-profit basis, and which is acceptable to federal and state agencies and financial institutions as a provider of affordable housing.

(8) “Compliance Period” means the period of time that the Development shall conform to all set-aside requirements as described in this rule chapter and agreed to by the Applicant in the Application.

(9) “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.

(10) “Corporation” or “Florida Housing” means the Florida Housing Finance Corporation.

(11) “Credit Underwriter” means the independent contractor under contract with the Corporation having the responsibility of providing stated credit underwriting services.

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

(13) “Credit Underwriting Report” means a report that is a product of Credit Underwriting.

(14) “Developer” means an individual, association, corporation, joint venture, or partnership which possesses the requisite skill, experience and credit worthiness to successfully produce affordable housing.

(15) “Development” means any work or improvement located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing houses, together with such related non-housing facilities as the Corporation determines to be necessary convenient and desirable.

(16) “Development Plan” or “Form TAP 1215” (Rev 11/09) means the written description of the proposed Development submitted to the Corporation by the Technical Assistance Provider, with the concurrence of the Applicant in the form created and approved by the Corporation Form TAP 1215 is hereby adopted and incorporated herein by reference. Copies of such may be obtained by contacting the Special Programs Administrator at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(17) “Development Site” means the land for the Development, as defined by the legal description in the Development Plan and the documents evidencing or securing the Loan.

(18) “Farmworker” means a laborer who is employed on a seasonal, temporary, or permanent basis in the planting, cultivating, harvesting, or processing of agricultural or aquacultural products and who derived at least 50% of her or his income in the immediately preceding 12 months from such employment. “Farmworker” also includes a person who is retired as a laborer due to age, disability, or illness. In order to be considered retired as a farmworker due to age under this rule chapter, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker before retirement. In order to be considered retired as a farmworker due to disability or illness, a person must (i) establish medically that she or he is unable to be employed as a farmworker due to that disability or illness and (ii) establish that she or he was previously employed as a farmworker.

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

(20) “Invitation to Participate” means a letter sent to the Applicant indicating the Development has been selected to receive technical assistance which shall be signed and returned with the initial commitment fee prior to receiving technical assistance.

(21) “LURA” or “Land Use Restriction Agreement” means an agreement between the Corporation and the Applicant which sets forth the set-aside requirements and other Development requirements under a Corporation program.

(22) “Maturity Date” means the established date the loan is due for payment.

(23) “Mortgage” means Mortgage as defined in Section 420.503, F.S.

(24) “Outstanding Loan” means a PLP Loan approved by the Board which has not been repaid or de-obligated by the Developer.

(25) “Public Housing Authority” means a public housing authority established pursuant to Chapter 421, F.S.

(26) “PLP” or “Predevelopment Loan Program” means the Predevelopment Loan Program established by the Act and this rule chapter.

(27) “PLP Loan” means a direct loan from the Predevelopment Loan Program.

(28) “Principal” means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

(29) “Rehabilitation” means to bring a Development back to its original state, or to bring back to its original state with added improvements with limitations as specified by the program or programs which provide construction or permanent financing to the Development.

(30) “Servicing and Compliance Monitoring Fees” means fees associated with the review and processing of requests for disbursement of funds, inspections and the monitoring of Developments.

(31) “Set-Aside” means the percentage of units within a Development that shall be reserved as affordable at or below the specified AMI to income qualified persons or households throughout the Compliance Period as outlined herein.

(32) “Technical Assistance Provider” or “TAP” means an independent contractor retained by the Corporation to provide technical assistance services.

(33) “Technical Assistance” means assistance to Applicants via telephone, through on-site visits and by responses to oral and written inquiries from Applicants throughout the entire Predevelopment process and to provide such other services as agreed to by the Technical Assistance Provider and the Corporation.

(34) “Threshold Requirements” means the requirements an Applicant shall meet as identified in the Application Package in order to receive an Invitation to Participate in the Predevelopment Loan Program.

(35) “Website” means the Corporation’s website, the Universal Resource Locator (URL) for which is [www.floridahousing.org](http://www.floridahousing.org).

Rulemaking Authority 420.528 FS. Law Implemented 420.507, 420.521-529 FS. History—New 3-23-93, Amended 1-16-96, Formerly 91-38.002, Amended 3-26-98, 7-17-00, 7-21-03, 2-3-05, 11-21-07, 11-23-09.

**67-38.0026 General Program Requirements and Restrictions.**

- (1) An Applicant may only apply for funding through the Predevelopment Loan Program if it is a legally formed entity that is:
  - (a) Any unit of government,
  - (b) A Public Housing Authority,
  - (c) A Community-Based or Not-For-Profit Organization,
  - (d) A for-profit entity wholly owned by one or more qualified Not-For-Profit Organizations, or
  - (e) A limited liability company or limited partnership if its managing member or general partner is a Community-Based or Not-For-Profit Organization that holds at least 51% of the ownership interest in the Development held by the managing member or general partner entity. The Not-For-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit corporation; and shall materially participate in the development and operation of the Development throughout the Compliance Period as stated in the Land Use Restriction Agreement.
- (2) In order to close on the PLP Loan, the Applicant entity approved by the Board shall have site control and the ability to secure the loan through a mortgage or other collateral.
- (3) PLP Loans shall be limited to eligible predevelopment and site acquisition costs approved for the Development by the TAP and the Corporation and are limited to:
  - (a) \$500,000 for non-site acquisition; and
  - (b) \$500,000 for site acquisition (including good faith deposits applied to the sales price). The total PLP Loan amount shall not exceed \$750,000.
- (4) All funds from the PLP loan shall be expended on the eligible expenses outlined in Rule 67-38.008, F.A.C.
- (5) Site acquisition cost shall be subject to approval of an assigned Credit Underwriter.
- (6) The Corporation shall limit the PLP Loan to an amount which can be secured through a mortgage on the Development Site, the pledging of capital fund finance program funds as approved by HUD or other collateral approved by the Corporation. Such determination shall require written recommendation by the TAP or Credit Underwriter and be based on the following: mortgages, liens, or both currently on the Development Site, and shall be based on the value of the Development Site as determined by appraisal dated within 12 months of receipt of the Application.
- (7) For rental Developments:
  - (a) The Applicant must commit to Set-Aside a minimum of 20% of the completed rental units to be rented to persons or households whose income does not exceed 50% of the area median income, as determined by HUD and adjusted by household size, for the metropolitan statistical area or county in which the Development is located, and
  - (b) Must set-aside the units for the duration of the Compliance Period. If the Development does not obtain construction or permanent financing from the Corporation and no Corporation funds remain in the Development, the Compliance Period shall be fifteen (15) years from the date the PLP Loan is paid off. If the Development obtains construction or permanent financing from other Corporation programs, then the most restrictive compliance requirements of the other Corporation programs shall be in effect and compliance monitoring shall be performed through those programs.
- (8) For home ownership Developments:
  - (a) The Applicant must commit to sell a minimum of 50% of completed housing units to persons or households whose income does not exceed 80% of the area median income, as determined by HUD and adjusted by household size, for the metropolitan statistical area or county in which the individual homes are located, and sell the remaining housing units to persons or households whose income does not exceed 120% of the area median income, and
  - (b) If the Development obtains construction or permanent financing from other Corporation programs, the Set-Aside(s) committed to by the Applicant under the particular Corporation program providing the additional funding shall be in effect.

(9) Applicants are required to work with a Technical Assistance Provider (TAP) as assigned and directed by the Corporation until repayment of the PLP Loan, withdrawal of the Application, de-obligation of the PLP Loan, or termination from the PLP. The Corporation shall pay all fees required by the TAP.

(10) If the Applicant is utilizing PLP funds to purchase the PLP Development Site, including good faith deposits applied to the sales price of the land, Credit Underwriting will be required by a Credit Underwriter assigned by the Corporation. The Applicant is responsible for paying all Credit Underwriting fees, which is an eligible PLP expense.

(11) If awarded a PLP Loan, the proceeds of such may only be used for PLP eligible expenses as outlined in Rule 67-38.008, F.A.C.

(12) The Development must be consistent with the purposes of the Predevelopment Loan Program and conform to the requirements specified in the Act or this rule chapter.

Rulemaking Authority 420.528 FS. Law Implemented 420.507, 420.521-.529 FS. History—New 3-23-93, Amended 1-16-96, Formerly 9I-38.002, Amended 3-26-98, 7-17-00, 7-21-03, 2-3-05, 11-21-07, 11-23-09.

### **67-38.003 Application Submission Procedures.**

(1) At any time during the year, Applicants may submit an Application to the Corporation for PLP funding. An Applicant, Affiliate, limited partnership, or general partner thereof shall not have more than two (2) Outstanding Loans at any given time, without the prior written approval of the Corporation. In order for an applicant to be approved to have more than two Outstanding Loans, the Applicant shall submit a written request to the Corporation detailing the experience of all Developers and co-developers involved in the proposed Development(s) in producing affordable housing and a proposed plan for permanent or construction financing on the Development(s).

(2) All Applications delivered by hand shall be presented to Corporation staff to be inscribed with the time and date of receipt. Applications may also be mailed to the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. Applications mailed to the Corporation will be inscribed with the time and date received.

(3) Applications that do not contain the required information and documentation as set forth in the Application Package shall be determined to have not met Threshold Requirements.

(4) An original and two copies of the completed Application and attachments shall be submitted to the Corporation if the Applicant does not intend to utilize the PLP Loan, whole or in part, to acquire the Development Site. In the event, the Applicant does intend to utilize the PLP Loan, whole or in part to acquire the Development Site, then an original and three copies of the completed Application shall be submitted to the Corporation. The original Application shall contain original signatures on pages which specifically request an original signature. Faxed, scanned, photocopied, or otherwise duplicated signatures shall not be considered acceptable within the original Application.

(5) Applications shall be accompanied by the non-refundable Application fee as set forth in the Application Package. Applications shall be submitted on the forms provided in the Application Package and shall be bound in three ring binders and shall have tabs for each form and exhibit. Exhibits shall be placed behind the form to which they refer. Failure to comply with any of the requirements set forth in this rule chapter shall result in the determination that the Application has not met Threshold Requirements.

(6) Applications that propose to develop individual homeownership units shall be submitted separately from those that propose to develop multifamily rental units.

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### **67-38.004 Incomplete Applications and Rejection Criteria.**

(1) Each Application shall be reviewed by the Corporation to determine if the Application meets Threshold Requirements. If the Application fails to meet Threshold Requirements, the Corporation shall notify the Applicant of any additional or revised information or material that is required. The Applicant may continue to submit requested material until the Application is complete and meets Threshold Requirements. The Application shall not be placed in priority order or on a waiting list until such time that all information and documentation has been submitted and the Application is determined to have met Threshold Requirements.

(2) An Application shall be rejected if any of the following occurs:

(a) The Applicant/Application does not meet the requirements specified in the Act or this rule chapter.

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

1. Has engaged in fraudulent actions;

2. Has materially misrepresented information to the Corporation regarding any of its Developments, or within the current Application or in any previous applications for one or more of Corporation's programs;

3. Has been convicted of fraud, theft, or misappropriation of funds;

4. Has been excluded from federal or Florida procurement programs; or

5. Has been convicted of a felony; and that such action substantially increases the likelihood that the Applicant will not be able to produce quality affordable housing. The Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two years, which will begin from the date the Board of Directors makes such a 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.

6. Application is submitted for a Development which an application has previously been submitted and not withdrawn.

7. Application is submitted for an ineligible purpose.

(3) If the Applicant, Principal, Affiliate, or Developer of the Applicant has any existing Developments participating in Corporation programs that are in non-compliance with the Code, this rule chapter or applicable Loan documents, and any applicable cure period has expired at the time of approval of the Development Plan, the requested allocation shall be denied, upon a determination by the Board that the non-compliance increases the likelihood that the Applicant will not be able to satisfy the terms of the Loan. The Applicant and Affiliates of the Applicant or Developer will be prohibited from participation in any Corporation programs for the subsequent cycle and continue until all of the Applicant's Developments are in compliance.

(4) The Applicant fails to meet any Threshold Requirement specified in the Application Package.

Rulemaking Authority 420.528 FS. Law Implemented 420.507, 420.521-.529 420.507, 420.521-.529 FS. History-- New 3-23-93, Amended 1-16-96, Formerly 9I-38.002, Amended 3-26-98, 7-17-00, 7-21-03, 2-3-05, 11-21-07, 11-23-09.

### **67-38.005 Application Evaluation and Award Guidelines.**

(1) PLP funding shall be available to Applicants whose Applications have met Threshold Requirements, on a first-come, first-served basis, pursuant to this rule chapter. Applications which propose to set-aside a minimum of 40% of the Development's units for Farmworker residents shall receive priority over all other Applicants, provided the Applicant has also certified that they shall meet PLP minimum Set-Aside requirements.

(2) After the Application has been reviewed and determined to have met Threshold Requirements, using the factors specified in the Application Package and this rule chapter, staff shall determine whether sufficient funds are available to fund the PLP request.

(3) If the Application fails to meet Threshold Requirements or is missing important information, the Applicant shall be notified of the deficiencies in the Application and provided an opportunity to rectify any outstanding issues.

(4) If the Application is determined to have met Threshold Requirements; and  
    (a) Funds are available, the Corporation shall issue an Invitation to Participate; or  
    (b) If funds are not available, Applicant will be placed on a waiting list, based on the date and time the Application was determined to have met Threshold Requirements until either;  
        1. Funds are available, at which time the Applicant will be issued an Invitation to Participate, or  
        2. Application is withdrawn.

(5) The Invitation to Participate letter shall be signed by the Applicant and returned to the Corporation within 20 calendar days from the date of the Invitation to Participate letter. If the executed Invitation to Participate letter is not received by the Corporation within 20 calendar days, the Invitation to Participate letter shall be withdrawn and the Applicant shall be so notified. The executed Invitation to Participate letter must be accompanied by an initial commitment fee as specified therein.

(6) Upon receipt of the executed Invitation to Participate letter and the Applicant's initial commitment fee, the Corporation shall assign a Technical Assistance Provider. In the event that technical assistance has begun and it is determined that the initial commitment fee has not been paid or is returned for insufficient funds, Technical Assistance shall be discontinued until full payment is received and determined to be sufficient. If payment has not been received within seven days of notification to the Applicant, the Invitation to Participate letter shall be withdrawn and the Applicant shall be so notified.

(7) The Technical Assistance Provider shall work with the Applicant to formulate a Development Plan and PLP budget. The Development Plan and PLP budget shall clearly set forth in detail the Applicant's anticipated predevelopment tasks and activities, timeline, itemized budget, sources to fund all anticipated predevelopment expenses, including those in excess of the amounts to be requested under the Predevelopment Loan Program, and the anticipated sources and uses of construction and permanent financing. The anticipated activities and expenses shall be those necessary prior to closing on construction or permanent financing for the Development. The Development Plan shall also set forth the exact number of units to be set aside, including the number of units set-aside for Farmworkers if priority was given for meeting the Farmworker Set-Aside.

(8) The Applicant shall be given up to six months from the Technical Assistance Provider's date of assignment to complete and submit the Development Plan and PLP budget unless prior written approval of an extension is received from the Corporation. The Invitation to Participate letter shall be canceled if the Development Plan and PLP budget are not submitted within the six-month period. All PLP Loan documents, if any, shall be cancelled. Any commitment fees paid shall be retained by the Corporation. With the prior approval of the TAP, the Applicant may request an extension for submitting the Development Plan and PLP budget in writing to the Corporation at least 30 calendar days prior to the end of the original six-month period.

(9) The Technical Assistance Provider shall submit a written recommendation with the Development Plan to the Corporation. Such recommendation should clearly indicate the Technical Assistance Provider's findings regarding the status of the Development Plan and the requested PLP Loan amount. The Corporation may request additional information and or documentation necessary for the Application to meet Threshold Requirements prior to approval of the Development Plan. If such revisions are requested prior to approval of the Development Plan, the Corporation shall provide a deadline by which the revisions to the Application shall be made and submitted with the approval of the Technical Assistance Provider to the Corporation.

(10) Following the TAP and Corporation staff's approval of the Development Plan and PLP budget, the PLP Loan request shall be submitted to the Board for approval. Amendments to the Development Plan and PLP budget shall be allowed upon a favorable recommendation of the Technical Assistance Provider. Board approval shall not be required on PLP budget line item adjustments that do not exceed 10% of the approved non-site acquisition costs.

(11) If an increase to the PLP Loan is requested Board approval is required. Any increase to the PLP Loan amount must comply with limits set forth in section 67-38.0026(3).

(12) If an Applicant or Developer change is requested after the Board approves a PLP Loan, the change shall be approved by the Board. Development name changes do not require Board approval.

(13) Following approval of the PLP Loan, the Applicant will receive written notice of such approval in the form of a commitment letter issued by the Corporation. The Applicant shall submit the final commitment fee and return the executed acceptance of commitment to the Corporation within 20 calendar days from the date of the commitment letter.

(14) If the Board does not approve the PLP Loan request, no funds shall be disbursed other than for expenses incurred for services of the Technical Assistance Provider. Any commitment fees paid by the Applicant shall be retained by the Corporation.

(15) In the event the Development Plan receives approval and the Applicant is unable to proceed to completion of Predevelopment Loan Program activities or obtain permanent or construction financing, any commitment fees paid shall be retained by the Corporation.

(16) Following receipt of the final commitment fee, the Applicant shall be given up to six months from the date of the Commitment letter to execute such loan documents, as appropriate for such circumstances, including a mortgage, loan agreement, promissory note, LURA and any other customary loan documentation as may be required by the Corporation and provided to the Applicant. With the prior written approval of the Technical Assistance Provider, the Applicant may request a written extension on the loan closing to the Corporation at least 30 calendar days prior to the end of the original six-month period. The loan must close in the name of the entity that has site control of the Development. Upon execution of all loan documents by both the Applicant and the Corporation, funds will be available for disbursement for eligible predevelopment activities as specified in this rule chapter.

(17) A positive Credit Underwriting Report is required for closing on any portion of the PLP Loan that has been approved by the Board for site acquisition costs including good faith deposits applied to the sales price. The Applicant shall be given up to six months from the date of the second Commitment letter to execute a mortgage, loan agreement, promissory note, LURA and any other customary loan documentation provided to the Applicant. With the prior written approval of the Technical Assistance Provider, the Applicant may request a written extension on the site acquisition closing to the Corporation at least 30 calendar days prior to the end of the original six-month period. Upon execution of all loan documents by both the Applicant and the Corporation, funds will be available for disbursement for site acquisition activities as specified in this rule chapter.

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#### **67-38.007 Terms of the PLP Loan.**

(1) The PLP Loan shall bear an interest rate of 1%.

(2) The PLP Loan shall be secured by such customary documents and collateral as are necessary to ensure repayment in accordance with the terms and conditions approved by the Corporation.

(3) The PLP Loan shall be non-amortizing with principal and interest deferred until the Maturity Date. The Corporation is authorized to forgive such loan and thereby make a grant to the Applicant for any monies that are unable to be repaid due to the Applicant's inability to obtain construction or permanent financing for the Development. The Corporation shall not forgive the portion of the PLP Loan, which is collateralized by a mortgage, pledged capital funds or other collateral approved to the Corporation to the extent such loan could be repaid from the sale of the mortgaged property or from other collateral securing the loan.

(4) The mortgage securing the PLP Loan shall be in a first or second lien position and shall not share priority with any other liens unless approved by the Board.



- (5) With respect to rental Developments, the PLP Loan's Maturity Date shall be on the earlier of:
- (a) The date of closing on the first source of permanent or construction loan for the Development; or
  - (b) The date of closing on the tax credit partnership and receipt of the initial disbursement; or
  - (c) Three years from the date of execution of the loan documents by the Corporation or other such extended loan Maturity Date approved by the Board.
- (6) With respect to homeownership Developments, the PLP Loan's Maturity Date shall be on the earlier of:
- (a) On a prorated basis upon the sale of each home, upon the recommendation of the Credit Underwriter or Technical Assistance Provider and a partial release payment in an amount acceptable to the Credit Underwriter or Technical Assistance Provider and the Corporation; or
  - (b) Three years from the date of execution of the loan documents by the Corporation or other such extended loan Maturity Date approved by the Board.
- (7) The Corporation shall extend the term of the PLP Loan for an additional period if circumstances exist and if such extension would not jeopardize the Corporation's security interest. Submission and approval of a request for an extension of the term of a PLP Loan shall be subject to the following:
- (a) For an extension up to one year, the Developer shall submit, along with the TAP a written request detailing the progress of the Development, barriers to the Development's progress and a revised timeline.
  - (b) An additional extension of up to one year requested at the conclusion of the initial approved one year extension shall require the recommendation of the Credit Underwriter or the Technical Assistance Provider as directed by the Corporation that an extension of the PLP Loan is likely to result in the successful completion of the Development; and
  - (c) Submission of:
    - 1. A revised Development Plan, approved by the Technical Assistance Provider, reflecting the reasons for the extension and the tasks and activities to be completed during the extension period;
    - 2. Evidence of the Applicant's ability to complete the Development, and
    - 3. An alternate financing plan in the event the original financing source(s) withdraws.
- (8) Prepayment of the PLP Loan shall be permitted without penalty.
- (9) The Corporation may renegotiate and extend the PLP Loan. Such renegotiations shall be based upon:
- (a) Documentation and certification by the Applicant that funds are not available to repay the Note upon maturity;
  - (b) A plan for the repayment of the loan at the new Maturity Date;
  - (c) Assurance that the security interest of the Corporation will not be jeopardized by the new term(s); and
  - (d) Industry standard terms which may include amortizing loans requiring regularly scheduled payments of principal and interest.
- All loan renegotiation requests, including requests for extension, must be submitted in writing to the Director of Special Assets and contain the specific details of the renegotiation.
- (10) Upon determination by the Board that other remedies are ineffectual or non-existent and that the best interest of the Corporation is served by acceleration of the PLP Loan. The PLP Loan shall be accelerated if any of the following occurs:
- (a) Proceeds of the PLP Loan are used for any purpose not specified in the Development Plan, the documents evidencing or securing the PLP Loan, the Act or this rule chapter; or
  - (b) Sale, transfer, or conveyance of the Development without the prior written approval of the Corporation, as set forth in Rule 67-38.012, F.A.C.
- (11) The Applicant shall submit electronic progress reports evidencing successful completion of the requisite tasks and activities set forth in the Development Plan to the Technical Assistance Provider twice annually as determined by the Corporation. The Technical Assistance Provider shall submit the reports to the Corporation. Reports are due to the Corporation by the 15th day of July and January for so long as funds are outstanding.

(12) The Corporation reserves the right to require an audit of Applicant's accounts and records relating to the PLP Loan funds. If the Applicant is required to perform an audit of its accounts and records, a copy of the same shall be delivered to the Corporation within ten (10) days of receipt of thereof by the Applicant.

(13) The Applicant shall maintain all documents related to the Development, including copies of all contracts and performance bonds, during the term of the Loan and for three years following the maturity of the PLP Loan as the same may be extended pursuant to this rule chapter.

(14) With respect to home ownership Developments, in order to assure that such Developments serve the target population, the Credit Underwriter or the Corporation shall, prior to release of an individual lot within the Development Site, review appropriate documentation as necessary to determine the unit is being sold to an eligible purchaser.

(15) With respect to rental Developments, in order to assure that such Developments serve the target population and maintain the minimum Set-Aside requirements, in addition to the execution and recordation of the Land Use Restriction Agreement (LURA), all deeds conveying title to real estate that is improved with rental units shall contain restrictive covenants that encompass all of the units in the Development and that provide for the continued rental of the units to persons within the target population for the Compliance Period. For those Developments which have occupied units, or will have occupied units, prior to closing of the construction or permanent financing, the Servicer or the Corporation shall conduct a review and physical inspection prior to closing of the construction or permanent financing to assure that the Development meets the minimum Set-Aside requirements and provides the intended benefit to the target population pursuant to the Act. The Corporation reserves the right to monitor each Development funded under the Predevelopment Loan Program at any time after completion of the Development to assure continued compliance with the applicable provisions of this rule chapter.

(16) The loan shall not be assumable upon the sale, transfer or refinancing of the Development without the prior approval from the Board, which approval shall be conditioned upon a positive recommendation by the Technical Assistance Provider or Credit Underwriter.

Rulemaking Authority 420.528 FS. Law Implemented 420.507, 420.521-.529 FS. History—New 3-23-93, Amended 1-16-96, Formerly 9I-38.002, Amended 3-26-98, 7-17-00, 7-21-03, 2-3-05, 11-21-07, 11-23-09.

#### **67-38.008 Eligible Uses for the Loan.**

(1) The proceeds of the Loan shall only be used for eligible expenses specified in the approved Development Plan.

(2) The Corporation shall monitor all predevelopment activity expenditures through the designated Technical Assistance Provider and shall deny disbursements which have not been approved by the Technical Assistance Provider prior to submission to the Corporation. Draw requests shall not be processed without the Technical Assistance Provider's written approval. All draw requests are submitted by the TAP to the Corporation.

(3) Eligible predevelopment expenses shall include the following if such expenses or services were required to be incurred or rendered prior to closing of construction or permanent financing:

(a) Market and feasibility analysis;

(b) Rezoning;

(c) Title search;

(d) Legal fees, except those associated with application preparation and submissions;

(e) Boundary survey;

(f) Administrative expenses such as phone charges, travel related to the Development, copying, printing, and postage fees. Other expenses requested under this subsection shall be pre-approved by the Corporation. Salaries are not an eligible expense.

(g) Development consultant fees. Consultant fees incurred in connection with the submission or preparation of the PLP Application or for any other activities which can be provided by the Technical Assistance Provider shall not be eligible predevelopment expenses. The consultant shall demonstrate appropriate experience in affordable housing Development projects and shall be approved by the TAP. No person, corporation, partnership,

or entity having an identity of interest in the Development, or the Applicant, or any employee of such may act as a third party consultant;

- (h) Fees of the PLP Credit Underwriter;
- (i) Customary, good faith or earnest money deposit for the acquisition of the Development Site;
- (j) Commitment fees to secure construction or permanent financing;
- (k) Biological and environmental assessments;
- (l) Soil tests;
- (m) Appraisals;
- (n) Approved acquisition expenses in connection with the Development Site;
- (o) Marketing expenses;
- (p) Permitting/impact fees;
- (q) Architectural/engineering fees;
- (r) Fees in connection with a completion audit;
- (s) Insurance fees; and
- (t) Connection fees;
- (u) Capital needs assessment;
- (v) Other fees as approved by Florida Housing.

(4) The Applicant shall be required to work with the Technical Assistance Provider to complete the predevelopment activities in a timely and satisfactory manner.

(5) Applicants may request use of PLP Loan funds for Development Site acquisition by providing to Florida Housing:

- (a) Evidence that all other predevelopment expenses have been paid or appropriate funding for outstanding expenses have been reserved. If PLP funds are requested for eligible uses other than Development Site acquisition, those funds shall be made available after customary closing documents are executed. PLP funds for acquisition shall not be released until such time as this and the following requirements have been provided;
- (b) A detailed explanation as to the necessity to acquire title;
- (c) A recommendation from the Technical Assistance Provider that funding be provided for Development Site acquisition; and
- (d) A Credit Underwriting Report, which includes a recommendation from the Credit Underwriter that funds be disbursed for Development Site acquisition.

(6) An applicant that applies for a PLP Loan for the acquisition and preservation of an affordable housing development shall:

- (a) Be allowed to access PLP funding, not to exceed \$20,000 per Development, for the purpose of conducting a capital needs assessment (CNA) to determine the feasibility of preserving the Development after the Board has approved the Development plan and PLP budget. The CNA funding shall be secured by a loan agreement.
- (b) Be required to repay the funds, according to this Rule chapter, if the CNA determines that the Development is feasible for preservation. If the Applicant pursues the remainder of the approved PLP loan, the funding for the CNA shall be included in the Loan agreement for the non site acquisition portion of the loan and be secured by a mortgage or other collateral.
- (c) Be eligible to have the CNA funds forgiven if the results of the CNA determine that the Development is not feasible for preservation. If this occurs, no additional PLP funds will be made available for the Development.

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#### **67-38.010 Credit Underwriting Procedures.**

(1) If an Applicant requests funds for site acquisition or if the Corporation deems Credit Underwriting necessary to determine the feasibility of a development or the eligibility of the Applicant or its' Affiliates on a Development that does not include a request for acquisition funds, the Corporation will assign a Credit Underwriter to perform the Credit Underwriting Report.

(2) The assigned Credit Underwriter shall review the Application and Development Plan and perform the Credit Underwriting Report. In this Credit Underwriting Report, the Credit Underwriter shall:

- (a) Analyze the Applicant's Development costs, sources of funds and pro forma operating statement to ensure the Development's feasibility,
- (b) Prioritize tasks which must be accomplished prior to obtaining construction and permanent financing,
- (c) Advise the Corporation as to the appropriateness of plans, and specifications and the budget for the predevelopment tasks and activities related to the Development, and
- (d) Make a determination as to the feasibility of the Development.
- (e) Make a determination as to the eligibility and competence of the Applicant entity and all Principals of the Applicant.

(3) An appraisal of the proposed Development Site shall be required during the Credit Underwriting Report process. The Credit Underwriter shall choose an appraiser from the Credit Underwriter's approved list of appraisers and order the appraisal of the Development.

(4) The Credit Underwriter shall consider the appraisal of the Development and other market data to determine if the market exists to support both the demographic and income restriction Set-Asides committed to within the Application.

(5) The Credit Underwriter may require additional information as is necessary to evaluate the Development Plan and make a determination as to the feasibility of the Development. If the Credit Underwriter requires additional clarifying materials in the course of the Credit Underwriting Report process, the Credit Underwriter shall request the materials from the Applicant and shall specify deadlines for submission of each such material. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation, shall result in the request for disbursement for site acquisition being denied.

(6) The Credit Underwriter shall complete and submit a written draft Credit Underwriting Report and recommendation to the Corporation within 80 calendar days from the date of assignment by the Corporation. The Technical Assistance Provider and the Applicant shall review the draft Report and provide written comments to the Corporation and Credit Underwriter within 72 hours of receipt. After the 72-hour review period, the Corporation shall provide comments on the draft Credit Underwriting Report and, as applicable, on the Applicant's and Technical Assistance Provider's comments, to the Credit Underwriter. The Credit Underwriter shall then review and consider the comments thereto and release the revised Report to the Corporation, the Technical Assistance Provider, and the Applicant. Any additional comments from the Applicant and Technical Assistance Provider shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of the revised Report. The Credit Underwriter shall provide to the Corporation a final Credit Underwriting Report which will address all comments made by the Applicant and the Technical Assistance Provider.

(7) It is the responsibility of the Applicant with the assistance of the Technical Assistance Provider to comply with each part of this rule chapter and to request in writing and provide evidence acceptable to the Corporation of extenuating circumstances for any requested waiver or extension. A failure to comply with any part of this rule chapter without the prior written approval of the TAP and written permission of the Corporation shall result in the disqualification of the Development, loan de-obligated or application withdrawn by the Corporation.

Rulemaking Authority 420.528 FS. Law Implemented 420.507, 420.521-.529 FS. History--New 3-23-93, Amended 1-16-96, Formerly 9I-38.002, Amended 3-26-98, 7-17-00, 7-21-03, 2-3-05, 11-21-07, 11-23-09.

#### **67-38.011 Fees.**

(1) The following fees and charges pertaining to each Application shall be paid by the Applicant:

- (a) A nonrefundable application fee as identified in the Application Package;
- (b) If PLP funds are to be used for site acquisition and the Applicant requests an extension of the PLP Loan Maturity Date, a credit underwriting fee pursuant to the contract between the Corporation and the Credit

Underwriter shall be paid. If a Development involves scattered sites, a single credit underwriting fee shall be charged for the first site. This fee may be paid from the PLP Loan proceeds;

(c) An initial commitment fee as identified in the Application Package shall be paid to the Corporation;

(d) Following approval an additional commitment fee shall be paid within 20 calendar days of written notice to the Applicant that the Development Plan has been approved. In the event the Development Plan does not receive approval, the commitment fee paid at the time of acceptance of the Invitation to Participate letter shall be retained by the Corporation. In the event the Applicant successfully completes the Predevelopment Loan Program activities and obtains permanent or construction financing, the Applicant's PLP Loan repayment amount will be reduced by the full commitment fees paid provided the Applicant is in compliance with the PLP Rule;

(e) Servicing and Compliance Monitoring Fees shall be paid for multifamily rental Developments that obtain construction or permanent financing from sources other than Corporation programs. The total Servicing and Monitoring fee to be paid by the Applicant shall be submitted to the Corporation at the time of closing on the construction or permanent financing. The total Servicing and Monitoring fee is listed in the Application Package. For those Developments which obtain their construction or permanent financing from Corporation Programs, the Compliance Monitoring Fees shall be determined by the requirements of the particular program providing the financing in accordance with the rule chapter governing that particular program; and

(f) All Credit Underwriting, Technical Assistance, Servicing and Compliance Monitoring Fees, extraordinary services and late fees shall be determined by contracts between the Corporation and the provider.

(2) Fees associated with the PLP Loan are part of Development costs and shall be included in the Development cost pro forma, if approved by the Technical Assistance Provider and Florida Housing.

(3) Failure to remit any of the required fees when due shall cause the Application to be disqualified from the PLP.

Rulemaking Authority 420.528 FS. Law Implemented 420.507, 420.521-.529 FS. History—New 3-23-93, Amended 1-16-96, Formerly 9I-38.002, Amended 3-26-98, 7-17-00, 7-21-03, 2-3-05, 11-21-07, 11-23-09.

#### **67-38.014 Disbursement Procedures.**

After the PLP Loan has successfully closed, the PLP Loan shall be disbursed in partial payments by the Corporation to the Applicant, title company or third party contractors subsequent to compliance with the following conditions for either home ownership or rental Developments:

(1) Ten business days prior to each anticipated disbursement request under the Loan, including any disbursements anticipated at closing, the Applicant shall deliver to the Technical Assistance Provider all documentation required as set forth below;

(2) All draw requests shall set forth the Predevelopment activities and expenses which have been paid or will be paid to the contractors, sub-contractors, professionals, and consultants. Draw requests shall be accompanied by invoices, cancelled checks or other such documentation to evidence the amount of the draw request and eligible Predevelopment activities. Additional draw requests shall not be processed until all required documentation on previous draw disbursements is received by the Corporation;

(3) Disbursements for eligible activities, conducted prior to being awarded predevelopment financing, qualify for reimbursement from PLP funds provided that the eligible Predevelopment activities were performed or completed no earlier than twelve months prior to the submission of the Application. Consideration of expenditures that pre-date more than twelve months prior to the Application submission date will be reviewed by Corporation staff on a case by case basis and will require approval by the TAP and the Corporation. Reimbursement for site acquisition which was completed prior to closing on the PLP loan shall not be allowed as a PLP expense unless otherwise recommended by the TAP and approved by Corporation staff and the Board.

(4) Before requests for disbursements under the loan are processed, the Applicant shall provide verification to the Technical Assistance Provider and the Corporation that the work for which payment is being requested has been performed satisfactorily and on schedule or that the expenses to be reimbursed have actually been incurred or will be incurred.

(5) In the event that the Applicant receives PLP funding, the Applicant shall provide a Mortgage on the Development Site as collateral for the loan subject only to such encumbrances approved by the Corporation; however, if the Applicant is offering a subordinate Mortgage or other collateral for the PLP Loan, the same shall be subject to a favorable recommendation of the Credit Underwriter and the approval of the Corporation.

Rulemaking Authority 420.528 FS. Law Implemented 420.507, 420.521-.529 FS. History—New 3-23-93, Amended 1-16-96, Formerly 9I-38.002, Amended 3-26-98, 7-17-00, 7-21-03, 2-3-05, 11-21-07, 11-23-09.