

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
October 14, 2011
Information Items



AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Information

I. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

A. Changes to Construction Features and Amenities and/or Resident Programs

1. Background/Present Situation

- a) Below is a list of developments that have requested changes to the Construction Features & Amenities and/or Resident Programs in their Application since the last Board meeting which staff has approved:
 - (1) Northwest Gardens III (2009-145C/2010-046X) has swapped “Car care area (for cleaning/washing)” (1 point) for “ Outside recreation facility: Community Garden with 300 square feet of plantable space” (2 point). This exchange is of one point greater value to the amenities originally chosen in the application.
 - (2) Northwest Gardens I (2009-057X) has swapped “New full-size range and oven in all units” (1 point) for “New bathroom cabinet(s), excluding medicine cabinet, in all units” (1 point). This exchange is of equal value to the amenities originally chosen in the application.
 - (3) Madison Vines (2009-053X) has swapped “Motion detectors on all outside lighting that is attached to the units” (1 of 10 green building features) for “Toilets that have dual flush options which include 1.6 gallons of water or less (1 of 10 green building features). This exchange is of equal value to the amenities originally chosen.
- b) Staff will amend the appropriate EUA’s and/or LURA’s for each of the developments, as appropriate.

COMMUNICATIONS

Information

II. COMMUNICATIONS

A. Hardest-Hit Fund

1. Background/Present Situation

a) Since the implementation of the statewide launch, Florida Housing has received press on the program in the following media outlets (including print, broadcast and Internet):

- (1) Bay News 9 Tampa
- (2) Boston Today Newspaper
- (3) Bradenton Herald Newspaper
- (4) CBS 4 in Miami
- (5) Clay Today Newspaper
- (6) CitrusDaily.com Online
- (7) Daytona News-Journal Newspaper
- (8) First Coast News.com Online
- (9) Florida Times Union Newspaper
- (10) Florida Today Newspaper
- (11) Herald Tribune Newspaper
- (12) Highlandstodya.com Online
- (13) Housingwire.com Online
- (14) Miami Herald Newspaper
- (15) Mortgageorb.com Online
- (16) News-Press Newspaper in Fort Myers
- (17) NorthEscambia.com Online
- (18) Ocala.com Online
- (19) Ocala Star Banner Newspaper
- (20) Palm Beach Post
- (21) Pensacola News Journal Newspaper
- (22) RealEstateRama.com Online
- (23) Stateline.org Online
- (24) St. Augustine Record Newspaper
- (25) St. Pete Times Newspaper
- (26) Sun-Sentinel Newspaper
- (27) TCPalm.com Online
- (28) Tomrollins.com Online
- (29) WBBH Channel 2 Charlotte County

COMMUNICATIONS

Information

- (30) WEAR Channel 3 Pensacola
 - (31) WESH 2 News Orlando
 - (32) WFTV News Orlando
 - (33) WJXT Channel 9 Jacksonville
 - (34) WOFL Channel 35 Lake Mary
 - (35) WPTV Channel 5 West Palm Beach
 - (36) WTVT Channel 13 Fox Tampa
 - (37) WUFT 89 FM Radio Gainesville
 - (38) WZVN ABC Channel 7 Fort Myers
 - (39) Florida News Network (statewide)
- b) Follow-up articles continue to be monitored, saved and cataloged. Also, Communications staff is monitoring/overseeing marketing and outreach initiatives of HHF Advisor Agencies that perform the eligibility determination and monthly follow-up for program participants.
- c) Recently, the Communications office launched a one-stop, online “HHF Download Center” that contains professional marketing materials for use by Advisor Agencies. Agency staff can use a secure login/password to access brochures, radio ad scripts, flyers and posters, all of which can be customized by the agency to include their specific contact information. All materials are also available in Spanish and Creole. To date, all active Advisor Agencies have accessed this web-based marketing tool.
- d) The Communications office continues to field reporter, consumer, and stakeholder calls and e-mails at a steady pace. In addition, staff maintains contact with US Treasury officials and National Council of State Housing Agencies (NCSHA) representatives to ensure compliance with federal guidelines for communications efforts, while sharing best practices with other HHF states regarding public relations issues regarding this initiative.

COMMUNICATIONS

Information

B. Corporate Marketing/Outreach

1. Background/Present Situation

- a) In an effort to continue building relationships with affordable housing advocates and providers, in August, Communications staff participated as an exhibitor at the Florida League of Cities (FLC) Annual Conference in Orlando. More than 300 local elected officials attended the conference.
- b) Staff also participated in the Florida Housing Coalition (FHC) on September 26-28, in Orlando.

C. Other Projects

1. Background/Present Situation

The Communications Office continues ongoing work on the following projects:

- (1) Redeveloping Florida Housing's corporate website in accordance with the Strategic Plan;
- (2) Collaboration with Legislative staff to educate stakeholder audiences about Florida Housing and our role in the state and nation's economic recovery/stability, in accordance with the Strategic Plan; and
- (3) Re-evaluating Florida Housing's public relations goals, objectives and strategies given the ever-changing economic and political landscape.

FISCAL
Information

III. FISCAL

A. Operating Budget Analysis for August 2011

- a) The Financial Analysis for August 31, 2011, is attached as [Exhibit A](#).
- b) The Operating Budget for the period ending August 31, 2011, is attached as [Exhibit B](#).

GUARANTEE PROGRAM

Information

IV. GUARANTEE PROGRAM

A. Status of Defaults within the Guarantee Program Portfolio

1. Background/Present Situation

- a) Since the implementation of the Guarantee Program in 1993, it has guaranteed 120 transactions, facilitating the construction of over 28,000 housing units in Florida. In November 1994, the Guarantee Program entered into an agreement with HUD to participate in the Risk-Sharing Program; characterized by a 50/50 sharing of default risk in connection with the mortgage guarantee. Of the 88 multifamily developments in the Guarantee Program portfolio today, 58 are Risk-Sharing transactions.
- b) As of August 31, 2011, there were no developments in the portfolio in monetary default (due to the borrower's failure to make timely payments on the note). There are no developments in foreclosure.
- c) Since November 2008, there have been eight (8) multifamily claims filed on the Guarantee Program, representing the total (and only) multifamily claims incurred in its 18-year history. The chart in Exhibit A reflects the developments that have been foreclosed as of August 31, 2011, listed in chronological order by claim filed date.

B. Guarantee Program Foreclosure Summary ([Exhibit A](#))

C. Guarantee Program Portfolio Summary and Guarantee Fund Capacity ([Exhibit B](#))

LEGAL

Information

V. LEGAL

- A. **In Re: Elmwood Terrace Limited Partnership v. Florida Housing Finance Corporation – 1st DCA Case Nos. 1D10-5930, 1D11-0150; DOAH Case Nos. 10-1975, 10-2799RX; FHFC Case No. 2010-20GA**

Development Name: (“Development”):	Elmwood Terrace
Developer/Principal: (“Developer”):	Elmwood Terrace Limited Partnership
Number of Units: 116	Location: Lee County
Type: Garden Apartments	Set Aside: 10% @ 33% AMI 90% @ 100% AMI
Demographics: Family	ARRA Exchange: \$

1. Background

- a) Elmwood Terrace Limited Partnership (“Elmwood”) originally filed an application for, and was awarded, an allocation of Housing Credits in the 2007 Universal Cycle. Elmwood was awarded a preliminary allocation of Tax Credits, successfully proceeded through credit underwriting review, and prepared to close on tax credit syndication and financing for the project. Before closing, in 2008, the syndicator informed Elmwood that it would not purchase the tax credits.
- b) Elmwood later submitted an application and sought financing through RFP 2009-04 (the “RFP”) for funds that Florida received through the American Recovery and Reinvestment Act of 2009, PL 111-5 (“ARRA”). Certain provisions in the RFP would have precluded Elmwood from obtaining an allocation of the federal stimulus funds. Elmwood filed a challenge to the terms of the RFP, under DOAH Case No. 09-4682BID (the “RFP case”). On November 12, 2009, Judge Harrell issued a Recommended Order which found that the RFP was contrary to certain provisions of Florida Housing’s existing 2009 Universal Cycle rules, which the RFP incorporated, in three respects: by using Location A to exclude the Elmwood project from consideration for award; by imposing a 92% physical occupancy standard for projects funded under the RFP that was contrary to the 90% requirement in the Universal Cycle Instructions; and that the RFP terms of the selection review process were arbitrary and capricious as they differed from the review process established in section 420.5087, Florida Statutes.
- c) Following issuance of the Final Order in the RFP case, Elmwood was invited into Credit Underwriting process by letter from Florida Housing dated December 4, 2009. Seltzer Company was the credit underwriter assigned by Florida Housing to review Elmwood’s RFP application.
- d) On October 6, 2010, the Administrative Law Judge also issued a Recommended Order in this case. The Recommended Order found and concluded, *inter alia*, that the credit underwriter and the Board correctly applied the applicable rules to the facts of this case; that the initial 2007 decision to award tax credits was appropriate given the economic conditions extant, and that the decision to deny funding in 2010 correctly apprehended the current economic realities.

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Information

- e) Elmwood filed a Petition for Administrative Hearing (the "Petition") challenging the denial of its request for federal stimulus funding and the rescission of the tax credits on March 29, 2010. The Petition alleged the denial was based on incomplete, irrelevant or erroneous facts and assumptions, was inconsistent with the analysis and approval of other applications seeking federal stimulus funding and was based on the incorrect or improper application of Rule 67-48.0072(10), Fla. Admin. Code (the "Credit Underwriting Rule").
- f) Elmwood filed its "Petition for Administrative Determination of Invalidity of Existing Rule," (the "Rule Challenge Petition") at the Division of Administrative Hearings on May 21, 2010. The challenge was filed pursuant to Sections 120.56(1) and (3), 120.569 and 120.57(1), Florida Statutes, and Rule 28-106, Florida Administrative Code. The Rule Challenge Petition challenged the validity of Florida Housing's existing rule, R. 67-48.0072(10), Fla. Admin. Code (2009). More specifically, Elmwood challenged the provision within subsection (10) that provides as follows:

The credit underwriter must review and determine whether there will be a negative impact to the Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater.
- g) By Order dated May 25, 2010, these cases were consolidated for hearing. A formal administrative hearing on the consolidated cases was held on June 14-16, 2010, in Tallahassee before William F. Quattlebaum, Administrative Law Judge ("ALJ"), Division of Administrative Hearings ("DOAH"). The hearing was continued until June 22, 2010, to allow Petitioner to include rebuttal testimony.
- h) On October 6, 2010, the ALJ issued a Final Order on the rule challenge. The ALJ found and concluded that the challenged provision, even though it was adopted as a rule, was not a rule within the meaning of sec. 120.52(16), Florida Statutes. The Final Order went on to say that if the "Impact Rule," were a rule, that it would be a valid rule under any of the six elements contained in sec. 120.52(8), Florida Statutes, the definition of "invalid exercise of delegated legislative authority."
- i) Also on October 6, 2010, the ALJ issued a Recommended Order on the board's decision to rescind funding, finding that the Board acted properly and in compliance with its rules, and recommending that the Petition be dismissed. Elmwood filed exceptions to the Recommended Order. On December 20, 2010, the Board issued its Final Order in Case No. 2010-20GA, rejecting the exceptions and adopting the findings of fact, conclusions of law, and recommendation of the Recommended Order, and rescinded Elmwood's funding.

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Information

2. Present Situation

On March 5, 2010, Elmwood filed a Notice of Appeal with the First District court of Appeal. On May 14, 2010, Elmwood moved the Court to abate the appeal proceedings. On May 20, 2010, the Court issued an order placing the case in abeyance until June 30, 2010. Elmwood filed its Initial Brief on August 23, 2010; Florida Housing Filed its Answer Brief on October 8, 2010; and Elmwood's Reply Brief is due not later than November 4, 2010. The Court has scheduled oral argument for October 11, 2011.

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Information

B. In Re: Allapattah Housing Partners, LLC v. Florida Housing Finance Corporation – DOAH Case No. 11-03971RP

1. Background

- a) Petitioners seek an administrative determination of the invalidity of a proposed rule amendment contained in a document, the 2012 Qualified Allocation Plan (“QAP”), which is adopted by and incorporated into R. 67-48.002(94), Fla. Admin. Code. Petitioners specifically challenge only the validity of the proposed amendment to Paragraph 16 of the proposed 2012 QAP that allows Florida Housing to allocate certain tax credits by means of Request for Proposal (“RFP”): “Any available 2011 Housing Credit Allocation Authority may be awarded by the FHFC Board by means of Request for Proposal based upon criteria approved by the FHFC Board.” Petitioners contend that this proposed amendment granting the authority to allocate Housing Credits through a Request for Proposals is an invalid delegation of legislative authority under Section 120.52(8), Fla. Statutes.
- b) On August 9, 2011, Petitioners filed their “Amended Petition for Administrative Determination of Invalidity of Proposed Rule” (the “Petition”). On August 11, 2011, Florida Housing filed their Amended Motion to Dismiss. On August 16, 2011, Petitioners filed their Amended Motion for Consolidation of Related Cases. On August 16, 2011, Florida Housing filed their Response to Amended Motion for Consolidation of Related Cases. On August 23, 2011, Florida Housing filed their Memorandum in Opposition to Amended Motion to Dismiss and a Request for Hearing on Amended Motion to Dismiss. On August 26, 2011, a Motion Hearing was conducted. On August 29, 2011, an Order Denying Dismissal was entered. On September 2, 2011, a Pre-Hearing Conference was held. On September 8, 2011, Florida Housing filed its Motion for Summary Final Order and a Joint Pre-Hearing Stipulation was filed. On September 9, 2011, an Order Cancelling Hearing was entered.
- c) A final hearing was scheduled for September 8, 2011. The Parties have agreed that there is no dispute of material fact, and the sole issue to be resolved in this proceeding is whether the proposed rule amendment at issue is invalid as a matter of law. The parties have agreed that the hearing scheduled for September 8, 2011, is therefore not necessary. Petitioners will file their Motion for Final Summary Order not later than September 8, 2011. The Parties’ Proposed Final Orders also serve as the Parties’ response to each other’s motions for final summary order.

2. Present Situation

The Parties filed their Proposed Final Orders on September 19, 2011. According to the timeline for rule challenges in sec. 120.56, Florida Statutes, the Final Order should be filed by October 10, 2011.

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Information

C. **Milton Jones Development Corporation v. Florida Housing Finance Corporation – DOAH Case No. 11-3962RP**

1. **Background**

- a) On July 1, 2011, Florida Housing published a Notice of Proposed Rulemaking in the Volume 37, Number 26, edition of the Florida Administrative Weekly, giving notice of its intent to adopt amendments to its rules in Rule Chapter 67-48, *Fla. Admin. Code*, the Rule Chapter governing the anticipated 2011 Universal Cycle. These amendments also made changes to the 2011 Universal Cycle Instructions, Application and associated forms and exhibits, which are adopted and incorporated by Rule 67-48.004(1)(a), *Fla. Admin. Code*.¹ On July 26, 2011, Florida Housing held a public hearing in Tallahassee, Florida regarding these proposed amendments.
- b) On August 4, 2011, Petitioner Milton Jones Development Corporation (“MJDC”) timely filed a Petition for Administrative Determination of Invalidity of Proposed Rule (“Petition”) with the Division of Administrative Hearings (DOAH), seeking to invalidate a portion of the 2011 Universal Cycle regarding threshold experience requirements for Developer entities involved with any application for funding. A hearing on this challenge to Florida Housing’s proposed rules was scheduled for September 13-14, 2011 at DOAH in Tallahassee, Florida.

2. **Present Situation**

On August 19, 2011, MJDC filed a Notice of Voluntary Dismissal of its rule challenge. Administrative Law Judge Cathy M. Sellers issued an Order Closing File on August 23, 2011, canceling the hearing and closing the case.

STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

Information

VI. STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

A. Changes to Construction Features and Amenities and/or Resident Programs

1. Background/Present Situation

a) Below is a list of developments that have requested changes to the Construction Features & Amenities and/or Resident Programs in their Application since the last Board meeting which staff has approved:

(1) Pensacola Veteran Housing (2008-01-02) has exchanged “Six foot (6’) wide concrete walkways with not more than 1.20 slope” for “Four foot (4’) and five foot (5’) wide concrete walkways with not more than 1.20 slope”. Additionally, “storm shutters” has been exchanged for “high impact windows” in the following amenity, which now reads “Community building with manager’s office, kitchenette, laundry room, two bathrooms, high impact windows, emergency generator, storage for hurricane relief, and space for residents to meet for activities and hurricane shelter”. These changes are of equal value to the amenities originally chosen in the RFP response.

(2) Esperanza Place (2007-10-01) will provide the following resident programs at the Carl J. Kuehner Community Center at Timber Ridge until a community center is built at Esperanza Place:

- (a) Residents’ Council
- (b) Teen Council
- (c) Household and Financial Education
- (d) Adult Literacy
- (e) Children’s After-School Enrichment Program

Computer Education will continue to be provided onsite at Esperanza Place.

b) Staff will amend the Land Use Restriction Agreement for each development as appropriate.

SINGLE FAMILY BONDS

Information

VII. SINGLE FAMILY BONDS

A. Single Family Professional Development and Outreach

1. Background/Present Situation

- a) Florida Housing continues to honor our commitment to have funds continuously available for qualifying homebuyers through our First Time Homebuyer Program. Florida Housing's Program provides assistance to eligible homebuyers by offering low cost, 30-year, fixed-rate mortgages together with down payment and closing cost assistance. Current allowable mortgage loan products include: Federal Housing Administration (FHA), Department of Veterans Affairs (VA), United States Department of Agriculture - Rural Development (USDA-RD), as well as conventional loan products offered through Fannie Mae and Freddie Mac. These loan products are 100% guaranteed. Borrowers must have a 620 FICO score or higher and must complete a 6-8 hour face-to-face homebuyer education class in order to qualify for assistance through our First Time Homebuyer Program. Our increase from a minimum 600 to a 620 FICO score was a result of closely monitoring Program delinquency data and making the necessary Program changes to ensure that we are helping borrowers not only obtain homeownership but more importantly sustain homeownership. Florida Housing offers qualified homebuyers two down payment and closing cost assistance programs in the form of second mortgage loans. Florida Assist is a 0% deferred payment \$7,500 second mortgage that serves homebuyers with an area median income (AMI) of up to 100%, adjusted for family size. Homeowner Assistance for Moderate Incomes (HAMI) serves households above 100% AMI, up to Program first mortgage income limits. This product provides a qualified buyer with up to \$5,000 of assistance in the form of a 10-year, amortizing second mortgage, currently at a 5% fixed rate. These second mortgage products may only be used in conjunction with Florida Housing's first mortgage products.
- b) Since 2003, Single Family Program Staff has taught a three hour, Department of Business and Professional Regulation (DBPR) approved continuing education ("CE") course for Realtors which is coordinated through local Realtor boards throughout the state. Our 2011 Realtor training calendar currently has 2 additional classes scheduled. In the past, our travel costs have been partially offset by charging a nominal fee to the sponsoring Realtor board based upon the number of participants in attendance. For 2011 we have had a number of classes cancel the class due to lack of pre-registrations by their members. While class evaluations indicate that Realtors continue to find the course information useful for their prospective homebuyers, we are being told that our fee is to blame for the cancellations. We have discovered that many other CE classes held by these organizations are free of charge. As a result, we have agreed to waive our fee in cases where the Realtor board can guarantee increased attendance. This should not only increase attendance by Realtors, it should translate into more qualified families becoming homeowners while increasing loan production for the program. We will monitor results and make adjustments as needed.

SINGLE FAMILY BONDS

Information

- c) The Single Family Program Staff, in conjunction with our Master Servicer, US Bank, and the program compliance team at eHousing, conducts quarterly lender training webinars. The morning session is held for loan officers and processors, with the afternoon session directed to underwriters, closers, shippers, and post-closing staff. By splitting the training into two webinars, we are better able to target the specific needs of each group. Our most recent training webinar was conducted on August 26th. We had 177 participants take part in the call. Working with US Bank, we are working to convert this training into a 24/7 online educational platform. Although we accept new lender applications once per year (January), the need for training remains constant throughout the year as new loan officers join approved lending institutions.
- d) Single Family staff recently launched a new, in-person advanced training format designed to enhance the efforts of loan officers already originating Program loans. Our second class was conducted for EverBank in Jacksonville, Florida. The class was attended by over 40 bond trained loan officers, processors, underwriters, closers, and managers. The class teaches processes and Program details targeted specifically to each organization. We expect to see both increased loan production and an increase in loan file quality as a result of these trainings.
- e) Florida Housing continues to sponsor a toll-free telephone line (800-814-HOME), for first time homebuyers to call for information about our program. For the month of July, we received 488 total calls; of which 207 were transferred to the Single Family Staff. The remaining callers that were not transferred to the Single Family Staff were able to receive information by accessing our First Time Homebuyer Wizard tool, which is located on our website. We continue to closely monitor these calls to evaluate the best way to efficiently handle the call volume in the long term.

B. Single Family Bonds Information ([Exhibit A](#))

SUBORDINATED MORTGAGE INITIATIVE (SMI)

Information

VIII. SUBORDINATED MORTGAGE INITIATIVE (SMI)

A. Program Update

1. Background/Present Situation

- a) As of this date the Board has approved funding for a total of thirty-two (32) Subordinated Mortgage Initiative (SMI) loans. The purpose of these loans is to provide subordinate financing on these developments which are credit enhanced by the Guarantee Program, and determined to be in financial distress, in order to provide temporary assistance in funding their mortgage debt service obligations for a period of up to twenty-four (24) months. Florida Housing provided funding for up to one mortgage payment per each three month period. The developer is required to make the remaining payments. This process is to be repeated for up to twenty-four (24) months, with Florida Housing potentially making up to a total of eight mortgage payments and the developer making a total of sixteen mortgage payments during this period.
- b) Attached as [Exhibit A](#) is a spreadsheet of the status of the SMI loans approved to date. Highlights of the data are as follows:
 - (1) The Board has approved a total of thirty-two (32) SMI loans in the amount of \$19,120,000.
 - (2) Thirty (30) of these SMI loans have been closed to date in the principal amount of \$17,834,309.01.
 - (3) \$15,925,996.30 has been disbursed to date.
 - (4) Two (2) loans, representing two different developers, approved in the total amount of \$675,000, have yet to be closed.
 - (5) It does not appear, at this time, that these two loans will be closed due to an inability to obtain the required consent of the investment limited partner.
 - (6) As of September 15, 2011, the final disbursement has been made on twenty-three (23) of the thirty (30) loans closed to date. All accrued interest will be due on these loans twenty four months after the final disbursement. The loan will then be amortized based on a twenty year amortization with a balloon payment due at the end of year six.
 - (7) One loan, Villas at Lake Smart, was paid in full on April 11, 2011. There was \$151,730.22 in undisbursed SMI funds at the time.
 - (8) Since the inception of the Subordinated Mortgage Initiative only one developer, involving two SMI loans, has failed to make a required payment under their obligations as outlined in the SMI loan. However, the required payments were ultimately made and, as a result, there have been no claims made on the Guarantee Fund Program for any development receiving SMI funding.

SUBORDINATED MORTGAGE INITIATIVE (SMI)

Information

ⁱ Florida Housing also made corresponding amendments to Rule Chapter 67-21, Fla. Admin. Code, the rules governing the Multifamily Mortgage Revenue Bond Program.