




we make housing affordable

**MEMORANDUM**

**TO:** INTERESTED PARTIES

**FROM:** STEPHEN P. AUGER, EXECUTIVE DIRECTOR 

**DATE:** October 1, 2010

**RE:** STATEMENT OF EXISTENCE OF VALID EMERGENCY  
NECESSITATING THE WAIVER OF THE TIME REQUIREMENTS  
OF RULE 67-49.002(3), F.A.C., AS APPLIED TO RFP 2010-14

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On Thursday, September 16, 2010, the Board of Directors of Florida Housing Finance Corporation adopted staff's recommendation to issue a Request for Proposal ("RFP") to award funds available from the Tax Credit Exchange Program ("Exchange Program"), which were created by the American Recovery and Reinvestment Act of 2009 , PL 111-5 ("ARRA"). This RFP is subject to available funding and further restrictions as outlined in RFP 2010-14.

The RFP process is governed by Rule Chapter 67-49, Fla. Admin. Code, and specifically by Rule 67-49.002(3), Fla. Admin. Code, which requires that the Corporation post any Request for Proposal on its website on or prior to the publication of a notice of the RFP in the Florida Administrative Weekly ("FAW"). It further requires that there will be a minimum of fourteen (14) days between the publication date of the notice in the FAW and the due date of the responses. Due to unexpected turn of events beyond the control of the Corporation, I am waiving the 14 day time requirements under Rule 67-49.002(3), Fla. Admin. Code.<sup>12</sup>

I am directing Florida Housing's staff to commence the RFP process by placing a Notice in the FAW for RFP 2010-14, to be published on October 8, 2010. The responses for RFP 2010-14 shall be due seven days later on October 15, 2010. As explained more completely below, that action is justified to avoid immediate and serious danger to the public welfare by the risk of Florida losing substantial federal resources due to the timetables imposed by the ARRA.

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<sup>1</sup> Rule 67-49.0031, Fla. Admin. Code, Emergency Purchases, states: The Corporation's Executive Director may waive any requirement of this rule and permit emergency purchases of commodities and contractual services where a Valid Emergency exists and is documented in writing.

<sup>2</sup> Rule 67-49.001(20), Fla. Admin. Code, Valid Emergency, states: "Valid Emergency" means a circumstance caused by an unexpected turn of events beyond the control of the Corporation involving the security, integrity or the financial status of the Corporation; or involving public health, welfare, safety, injury or loss.

The Low Income Housing Tax Credit (“LIHTC”), a dollar-for-dollar credit against federal income tax liability, was created in 1986 to induce private sector development of affordable multifamily rental units by providing a source of equity capital. Developers sell the award of LIHTC to investors, who are able to utilize the tax credit. LIHTCs typically sold in the range of 85-95 cents on the dollar in recent years. Market forces have substantially degraded the value of the tax credits in the last two years; sales, when a buyer can be found, are in the low sixty-cent range. Respondents to RFP 2010-14 are the same respondents who sought and received funding through RFP 2010-04. RFP 2010-04 was for those respondents who have previously been awarded LIHTC under the 2009 Universal Cycle, but have returned or forfeited credits because they are unable to find an investor willing to buy at a price that will make a project feasible--or unable to find an investor at any price. The ARRA Exchange programs are intended to supplement and/or replace the LIHTC value lost due to the current market conditions, thus to restore the viability of as many projects as feasible.

RFP 2010-14 is available to those recipients of funding under RFP 2010-04 to buy down a portion of the Development’s units, which are currently restricted to families earning up to 60% of Area Median Income (AMI), so that instead, the units will be restricted to those families earning an income equal to or less than that area’s designated Extremely Low Income (“ELI”) in the 2009 Universal Cycle for up to a total of 20% of the Development’s total units to be restricted as ELI units. The newly created ELI units would be restricted for the initial 15 years of the Compliance Period and would revert back to the original 60% AMI restriction. The buy down will be offered at up to \$85,000 per unit for each unit that is transferred from a 60% AMI restriction to an ELI restriction.

**The Exchange Program is related to the LIHTC Program and is under the guidance of the U.S. Treasury Department (Treasury) This program must follow Section 42 of the Internal Revenue Code along with additional written guidance from each provider.** The Exchange Program does not specifically provide for award deadlines, but if 30% of the funds allocated to the developer of the project under RFP 2010-14 have not been expended by December 31, 2010, the allocation will be forfeited. (Exchange funds may not be placed in escrow.)

The abbreviated schedule developments must meet in order to draw down the Exchange funds by December 31, 2010, is out of Florida Housing’s control. The ultimate timetables are imposed not by Florida Housing, but by the federal government through the ARRA. Additionally, Florida Housing did not anticipate the litigation arising from the 2009 Universal Cycle to be unresolved at this late date, encumbering approximately \$22.34 million dollars that cannot be allocated until the completion of the litigation process. Further, there is insufficient time to meet the deadlines imposed by Treasury to continue to pursue the Multifamily Mortgage Revenue Bond process, as approved by the Board of Directors at the April 30, 2010 Board meeting.

In order to prevent the loss of substantial federal resources, with the concomitant injury to the welfare of the State, it is necessary to proceed with RFP 2009-14 without delay. Waiver of the 14 day time period and imposition of a seven day time period to submit responses to RFP 2010-14 will allow the qualified developers applying for funding under RFP 2010-14 the maximum amount of time by which they can expend 30% of their allocation by December 31, 2010.