

Notice of Emergency Rule

FLORIDA HOUSING FINANCE CORPORATION

RULE NO: RULE TITLE

[67ER09-6](#): Purpose and Intent

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SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: These rules are created for the purpose of implementing the action of the Legislature to address the revenue shortfall of the 2008-2009 fiscal year.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Corporation has been granted emergency rulemaking authority under s. 12, Ch. 2009-2, L.O.F., formerly Senate Bill No. 4-A. The rules shall be effective immediately upon filing with the Florida Department of State and said rules are exempt from Section 120.54(4)(c), F.S.

SUMMARY: These rules provide the procedures by which the Corporation shall return unexpended funds held by the Corporation to the State Treasury as directed by Ch. 2009-2, L.O.F. These rules replace Emergency Rules 67ER09-1 through 67ER09-5 which expires September 9, 2009.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Stephen P. Auger, Executive Director, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, (850)488-4197

THE FULL TEXT OF THE EMERGENCY RULE IS:

67ER09-6 Purpose and Intent.

The purpose of this rule chapter is to establish the procedures by which the Corporation shall de-obligate the unexpended balance of funds appropriated by the Legislature in Specific Appropriation 1616 of Chapter 2008-152, Laws of Florida, Chapter 2006-69, section 31, Laws of Florida, and Specific Appropriation 1694 of Chapter 2007-72, Laws of Florida, as directed by Chapter 2009-2, Laws of Florida.

Rulemaking Authority ch. 2009-2, s. 12, L.O.F. Law Implemented ch. 2009-1, s. 5, 44, 45, 46, and 47, L.O.F. History--New 8-19-09.

67ER09-7 Definitions.

(1) "Applicant" means any person or legally formed entity that (i) has received a funding award or (ii) is seeking a loan or funding from the Corporation by submitting an application or responding to a request for proposal for one or more of the Corporation's programs.

(2) "Balance of the Unexpended Funding to be De-obligated" means the remaining amount of Unexpended Funding that must be de-obligated to meet the requirements of Chapter 2009-1, section 47, Laws of Florida.

(3) "Board of Directors" or "Board" means the Board of Directors of the Corporation.

(4) "Calendar Days" means the seven (7) days of the week. For computing any period of time allowed by this rule chapter, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

- (5) “Commercial Fishing Worker” means Commercial fishing worker as defined in Section 420.503, F.S.
- (6) “Corporation” means the Florida Housing Finance Corporation as defined in Section 420.503, F.S.
- (7) “Credit Underwriter” means the independent contractor under contract with the Corporation having the responsibility for providing stated credit underwriting services.
- (8) “CWHIP” or “CWHIP Program” means the Community Workforce Housing Innovation Pilot Program created pursuant to Chapter 2006-69, section 27, Laws of Florida, and as defined in Section 420.5095, F.S.
- (9) “Development” means Project as defined in Section 420.503, F.S.
- (10) “EHCL” or “EHCL Program” means the Elderly Housing Community Loan Program as defined in Section 420.5087, F.S.
- (11) “ELI Supplemental Funds” means supplemental funds awarded through the 2007 and 2008 Universal Application Cycles.
- (12) “Farmworker” means Farmworker as defined in Section 420.503, F.S.
- (13) “FHR/SHAD” or “FHR/SHAD Program” means the Farmworker Housing Recovery and Special Housing Assistance and Development Program authorized by Ch. 2006-69, Laws of Florida.
- (14) “Florida Keys Area” means Florida Keys Area as defined in Rule Chapter 67-48, F.A.C.
- (15) “HAP” or “HAP Program” means the Florida Homeownership Assistance Program as defined in Section 420.5088, F.S.
- (16) “HC” or “Housing Credit Program” means the rental housing program administered by the Corporation pursuant to Section 42 of the IRC, Section 420.5099, F.S., and Rule Chapter 67-48, F.A.C.
- (17) “Homeless” means Homeless as defined in Rule Chapter 67-48, F.A.C.
- (18) “Percentage of 2007 Large County Funding to be De-obligated” means the percentage resulting from the division of the Unexpended 2007 large county amount by the total 2007 Unexpended amount, rounded to four (4) decimal places.
- (19) “Percentage of 2007 Medium County Funding to be De-obligated” means the percentage resulting from the division of the Unexpended 2007 medium county amount by the total 2007 Unexpended amount, rounded to four (4) decimal places.
- (20) “Percentage of 2007 Unexpended Funding to be De-obligated” means the percentage resulting from the division of the total 2007 Unexpended amount by the total 2007/2008 Unexpended amount, rounded to four (4) decimal places.
- (21) “Percentage of 2008 Large County Funding to be De-obligated” means the percentage resulting from the division of the Unexpended 2008 large county amount by the total 2008 Unexpended amount, rounded to four (4) decimal places.
- (22) “Percentage of 2008 Medium County Funding to be De-obligated” means the percentage resulting from the division of the Unexpended 2008 medium county amount by the total 2008 Unexpended amount, rounded to four (4) decimal places.
- (23) “Percentage of 2008 Small County Funding to be De-obligated” means the percentage resulting from the division of the Unexpended 2008 small county amount by the total 2008 Unexpended amount, rounded to four (4) decimal places.
- (24) “Percentage of 2008 Unexpended Funding to be De-obligated” means the percentage resulting from the division of the total 2008 Unexpended amount by the total 2007/2008 Unexpended amount, rounded to four (4) decimal places.

(25) “RRLP” or “RRLP Program” means the Rental Recovery Loan Program which was created pursuant to Chapter 2005-92, section 3, and Chapter 2006-69, section 31, Laws of Florida, to facilitate the allocation of RRLP loans.

(26) “SAIL” or “SAIL Program” means the State Apartment Incentive Loan Program as defined in Sections 420.507(22) and 420.5087, F.S. and as provided in Rule Chapter 67-48, F.A.C.

(27) “SAIL Special Needs Program” means the SAIL funds redirected by the Board and awarded in response to Request for Proposal No. 2008-01.

(28) “SHIP” or “SHIP Program” means the State Housing Initiatives Partnership Program as defined in Section 420.9072, F.S.

(29) “Unexpended,” “Unexpended Funds” or “Unexpended Funding” shall mean (i) funds, other than ELI Supplemental Funds awarded in conjunction with an HC allocation, that were awarded by the Corporation through an application or request for proposal process and, as of January 27, 2009, have not been previously withdrawn or de-obligated by the Board and the Applicant does not have a Valid Firm Commitment and loan closing has not yet occurred or, (ii) funds that were appropriated but, as of January 27, 2009, have not been awarded through any of the Corporation’s programs.

(30) “Unexpended 2007 List” means the Unexpended Developments funded between March 12, 2007 (the opening of the 2007 Universal Application Cycle) and March 7, 2008 (the opening of the 2008 Universal Application Cycle), except for Developments funded in the 2007 Universal Application Cycle in the HC Florida Keys Area special set-aside or Developments that committed to the SAIL Farmworker/Commercial Fishing Worker demographic category or the Homeless demographic category.

(31) “Unexpended 2008 List” means the Unexpended Developments funded between March 7, 2008 (the opening of the 2008 Universal Application Cycle) and January 27, 2009, except for Developments funded in the 2008 Universal Application Cycle in the HC Florida Keys Area special set-aside or Developments that committed to the SAIL Farmworker/Commercial Fishing Worker demographic category or the Homeless demographic category.

(32) “Universal Application Cycle” means any funding cycle provided for in Rule Chapter 67-48, F.A.C.

(33) “Valid Firm Commitment” means a commitment issued by the Corporation to an Applicant following the Board’s approval of the credit underwriting report for the Applicant’s proposed Development which has been accepted by the Applicant and subsequent to such acceptance there have been no material, adverse changes in the financing, condition, structure or ownership of the Applicant or the proposed Development, or in any information provided to the Corporation or its Credit Underwriter with respect to the Applicant or the proposed Development. Rulemaking Authority ch. 2009-2, s. 12, L.O.F. Law Implemented ch. 2009-1, s. 5, 44, 45, 46, and 47, L.O.F. History–New 8-19-09.

67ER09-8 Implementation.

To facilitate the transfer and return of the appropriated funding, as required by Chapter 2009-1, section 5 (Specific Appropriation 685) and sections 44 through 47, Laws of Florida, the Corporation shall:

(1) Reduce \$5,027,511 of the Unexpended SAIL funding from Specific Appropriation 1616 of Chapter 2008-152, Laws of Florida, as required by Chapter 2009-1, section 5 (Specific Appropriation 685).

(2) Transfer \$10,000,000 of the Unexpended homeownership funding from Specific Appropriation 1616 of Chapter 2008-152, Laws of Florida, to the SHIP Program, as required by Chapter 2009-1, section 44 of Laws of Florida.

(3) Transfer \$9,846,695 of the Unexpended FHR/SHAD Program funds appropriated in Chapter 2006-69, section 31, Laws of Florida, to the SHIP Program, as required by Chapter 2009-1, section 45, Laws of Florida. The

Corporation shall de-obligate Unexpended Funds awarded to Developments funded under the provisions of Emergency Rules 67ER06-49 through 67ER06-57, and Emergency Rules 67ER07-01 through 67ER07-10, as follows:

(a) FHR/SHAD Developments shall be listed according to the FHR/SHAD application instructions.

(b) Funding reductions shall be made by de-obligating Unexpended Funds from the lowest ranked FHR/SHAD Development to the highest ranked FHR/SHAD Development. FHR/SHAD Developments which proposed new construction shall have funds de-obligated before FHR/SHAD Developments which proposed rehabilitation.

(c) Funding shall be de-obligated in this manner until the required reduction of \$9,846,695 in funds from these programs is met.

(d) Applicants with remaining program funds shall have all funding de-obligated if the amount remaining is not at least 75 percent of the funded amount.

(4) Transfer \$23,000,000 of Unexpended SAIL funds appropriated in Specific Appropriation 1694 of Chapter 2007-72, Laws of Florida, and Specific Appropriation 1616 of Chapter 2008-152, Laws of Florida, to the SHIP Program, as required by Chapter 2009-1, section 46, Laws of Florida. For purposes of this rule, the following Corporation funding is excluded from consideration for de-obligation: SAIL Special Needs Program and EHCL. The Corporation shall de-obligate Unexpended SAIL funding awarded to Developments on the Unexpended 2007 List and the Unexpended 2008 List, as set out below. If a Development that has its total SAIL funds de-obligated also received ELI Supplemental Funds, such ELI Supplemental Funds will also be de-obligated. However, the de-obligated ELI Supplemental Funds will not be used for the purposes of transferring the Unexpended SAIL funds.

(a) The total 2007 Unexpended amount will be added to the total 2008 Unexpended amount, resulting in the total 2007/2008 Unexpended amount.

(b) The \$23,000,000 amount to be transferred will then be multiplied by the Percentage of 2007 Unexpended Funding to be De-obligated, resulting in the 2007 Unexpended amount to be de-obligated.

(c) The \$23,000,000 amount to be transferred will then be multiplied by the Percentage of 2008 Unexpended Funding to be De-obligated, resulting in the 2008 Unexpended amount to be de-obligated.

(d) The 2007 Unexpended medium county amount and the 2007 Unexpended large county amount will be determined by listing the Developments on the Unexpended 2007 List within each geographic category (medium county and large county) in the order selected for funding. There is no small county Unexpended Funding on the Unexpended 2007 List. To determine the amount of 2007 Unexpended medium and large county funding to be de-obligated, the Corporation shall:

1. Multiply the 2007 Unexpended amount to be de-obligated by the Percentage of 2007 Medium County Funding to be De-obligated, resulting in the 2007 Unexpended medium county amount to be de-obligated.

2. Multiply the 2007 Unexpended amount to be de-obligated by the Percentage of 2007 Large County Funding to be De-obligated, resulting in the 2007 Unexpended large county amount to be de-obligated.

(e) The 2008 Unexpended small county amount, the 2008 Unexpended medium county amount, and the 2008 Unexpended large county amount will be determined by listing the Developments on the Unexpended 2008 List within each geographic category (small county, medium county and large county) in the order selected for funding. To determine the amount of 2008 Unexpended small, medium and large county funding to be de-obligated, the Corporation shall:

1. Multiply the 2008 Unexpended amount to be de-obligated by the Percentage of 2008 Small County Funding to be De-obligated, resulting in the 2008 Unexpended small county amount to be de-obligated.

2. Multiply the 2008 Unexpended amount to be de-obligated by the Percentage of 2008 Medium County Funding to be De-obligated, resulting in the 2008 Unexpended medium county amount to be de-obligated.

3. Multiply the 2008 Unexpended amount to be de-obligated by the Percentage of 2008 Large County Funding to be De-obligated, resulting in the 2008 Unexpended large county amount to be de-obligated.

(f) Working in reverse order of funding within each geographic category, the Corporation will de-obligate Developments as follows:

1. Developments on the Unexpended 2008 List will be de-obligated until the total 2008 Unexpended amount is reached, by first de-obligating Developments in the 2008 large county category until the 2008 Unexpended large county amount to be de-obligated is reached, and then de-obligating Developments in the 2008 medium county category until the 2008 Unexpended medium county amount to be de-obligated is reached, and finally de-obligating Developments in the 2008 small county category until the 2008 Unexpended small county amount to be de-obligated is reached.

2. Next, Developments on the Unexpended 2007 List will be de-obligated until the total 2007 Unexpended amount is reached, by first de-obligating Developments in the large county category until the 2007 Unexpended large county amount to be de-obligated is reached, and then de-obligating Developments in the 2007 medium county category until the 2007 Unexpended medium county amount to be de-obligated is reached.

(5) Return \$190,000,000 to the Treasury of the State of Florida, as required by Chapter 2009-1, section 47, Laws of Florida. For purposes of this rule, the following Corporation funding is excluded from consideration for de-obligation: SAIL Special Needs Program, EHCL, HAP, SHIP and SHIP compliance monitoring. The Corporation shall de-obligate Unexpended Funding from the following Corporation programs, in the following order, until such dollar amount is reached:

(a) All Developments awarded CWHIP Program funding, except for the following:

1. Developments that selected "Rehabilitation" in Part III.A.3. of the 2007 CWHIP application;

2. The highest ranked 2006 CWHIP Development, based on the January 26, 2007 final ranking approved by the Board, that has not closed on its CWHIP loan, withdrawn or been de-obligated by the Board and has timely paid the extension fee required by subsection 67-58.020(6) or 67-58.070(6), F.A.C.; and

3. The highest ranked, eligible 2007 CWHIP Development, based on the May 2, 2008 final ranking approved by the Board, that has not withdrawn or been de-obligated by the Board.

A CWHIP Development that is not de-obligated because it met the above criteria will be required to meet specific program requirements as outlined in Rule 67ER09-9.

(b) All Developments awarded RRLP Program funding that have not closed on the RRLP loan or were not previously withdrawn or de-obligated by the Board.

(c) All Developments awarded SAIL Program funding prior to the 2007 Universal Application Cycle that have not closed on the SAIL loan or were not previously withdrawn or de-obligated by the Board, except for Developments funded in said Universal Applications in the HC Florida Keys Area special set-aside or Developments that committed to the SAIL Farmworker/Commercial Fishing Worker or Homeless demographic categories.

(d) All Developments on the Unexpended 2008 List with funds remaining that have not been previously de-obligated under this rule. If a Development that has its total SAIL funds de-obligated also received ELI Supplemental Funds, such ELI Supplemental Funds will also be de-obligated. However, the de-obligated ELI Supplemental Funds will not be used for the purposes of transferring the Unexpended SAIL funds.

(e) The Balance of the Unexpended Funding to be De-obligated will be met by de-obligating funds from the remaining Developments on the Unexpended 2007 List, as set out below. If a Development that has its total SAIL funds de-obligated also received ELI Supplemental Funds, such ELI Supplemental Funds will also be de-obligated.

However, the de-obligated ELI Supplemental Funds will not be used for the purposes of transferring the Unexpended SAIL funds.

1. The Balance of the Unexpended Funding to be De-obligated will be multiplied by the Percentage of 2007 Medium County Funds to be De-obligated, resulting in the balance of Unexpended 2007 medium county amount to be de-obligated. Next, the Balance of the Unexpended Funding to be De-obligated will be multiplied by the Percentage of 2007 Large County Funds to be De-obligated, resulting in the balance of Unexpended 2007 large county amount to be de-obligated.

2. Working in reverse order of funding within each geographic category, the Corporation will de-obligate Developments on the Unexpended 2007 List that have not been previously withdrawn or de-obligated, as follows:

a. Beginning with the large county category, Developments will be de-obligated until the balance of Unexpended 2007 large county amount to be de-obligated is reached; and

b. Next, Developments in the medium county category will be de-obligated until the balance of Unexpended 2007 medium county amount to be de-obligated is reached.

A SAIL Development funded prior to the 2007 Universal Application Cycle that is not de-obligated will be required to meet specific program requirements as set out in Rule 67ER09-10, below.

A SAIL Development that is not de-obligated because it was excluded from the Unexpended 2007 List or the Unexpended 2008 List will be required to meet specific program requirements as set out in Rule Chapter 67-48, F.A.C.

Rulemaking Authority ch. 2009-2, s. 12, L.O.F. Law Implemented ch. 2009-1, s. 5, 44, 45, 46, and 47, L.O.F. History--New 8-19-09.

67ER09-9 Community Workforce Housing Innovation Pilot Program.

CWHIP Developments that are not de-obligated under the provisions of paragraph 67ER09-8(5)(a) to meet the requirements of Chapter 2009-1, section 47, Laws of Florida, will be required to meet the following specific program requirements:

(1) Upon approval of the de-obligation by the Board, the Corporation will issue a notice to such Developments. Within 90 Calendar Days of the date of the notice, the Applicant must have received Board approval of a final credit underwriting report; and

(2) The CWHIP loan must close within 60 Calendar Days of the issuance of the firm commitment, with the option of one (1) 60 Calendar Day extension. All extension requests must be submitted in writing to the program administrator and contain the specific reason for requesting the extension. The Corporation shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a fee of 1 percent of the CWHIP loan amount if the loan is extended.

(3) If a 2006 CWHIP Development that is not de-obligated is unable to meet the specific program requirements in subsections (1) and (2) above, then those CWHIP funds will be offered to the highest ranking unfunded eligible 2006 CWHIP Development, including those Developments that have been de-obligated, based on the final ranking approved by the Board at its January 26, 2007 meeting, provided the Applicant has not (i) withdrawn its request for funding, or (ii) closed on its CWHIP loan, or (iii) failed to pay the extension fee required by subsection 67-58.020(6) or 67-58.070(6), F.A.C.

(4) If a 2007 CWHIP Development that is not de-obligated is unable to meet the specific program requirements in subsections (1) and (2) above, then those CWHIP funds will be offered to the highest ranking unfunded eligible 2007 CWHIP Development, including those Developments that have been de-obligated, based on the final ranking

approved by the Board at its May 2, 2008 meeting, provided the Applicant has not withdrawn its request for funding.

(5) CWHIP Developments funded under the provisions of subsection (3) or (4) above, will be required to meet the following specific program requirements.

(a) If the CWHIP funds that become available are less than the amount requested by an Applicant for an eligible Development, the Applicant may choose to accept the lesser amount or have the funds offered to the next highest ranked eligible unfunded application. In the event that there are no Developments that choose to accept the lesser amount, then the funds will be held until a time that additional funds may become available as a result of a funded Development being unable to proceed or until they are allocated as the Board deems appropriate.

(b) Within 90 Calendar Days from the award of funding, the Applicant must have received Board approval of a final credit underwriting report.

(c) The CWHIP loan must close within 60 Calendar Days of the issuance of the firm commitment, with the option of one (1) 60 Calendar Day extension. All extension requests must be submitted in writing to the program administrator and contain the specific reason for requesting the extension. The Corporation shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a fee of 1 percent of the CWHIP loan amount if the loan is extended.

Failure to meet the requirements in paragraphs (b) and (c) above shall result in de-obligation of the funding.

Except as provided above, the Applicant shall be governed by the provisions of Rule Chapter 67-58, F.A.C.

Rulemaking Authority ch. 2009-2, s. 12, L.O.F. Law Implemented ch. 2009-1, s. 44, 45, 46, and 47, L.O.F. History—New 8-19-09.

67ER09-10 State Apartment Incentive Loan Program.

SAIL Developments that were funded prior to the 2007 Universal Application Cycle that are not de-obligated under the provisions of paragraph 67ER09-8(5)(c) above to meet the requirements of Chapter 2009-1, section 47, Laws of Florida, will be required to meet the following specific program requirements. Failure to meet these requirements shall result in de-obligation of the funding.

(1) Upon approval of the de-obligation by the Board, the Corporation will issue a notice to such Developments. Within 90 Calendar Days of the date of the notice, the Applicant must have received Board approval of a final credit underwriting report; and

(2) The SAIL loan must close within 60 Calendar Days of the issuance of the firm commitment, with the option of one (1) 60 Calendar Day extension. All extension requests must be submitted in writing to the program administrator and contain the specific reason for requesting the extension. The Corporation shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a fee of 1 percent of the SAIL loan amount if the loan is extended.

Except as provided above, the Applicant shall be governed by the provisions of Rule Chapter 67-48, F.A.C.

If there is a conflict between this rule chapter and Rule Chapter 67-48, F.A.C., this rule chapter will govern.

Rulemaking Authority ch. 2009-2, s. 12, L.O.F. Law Implemented ch. 2009-1, s. 44, 45, 46, and 47, L.O.F. History—New 8-19-09.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: August 19, 2009