

NOTICE OF PROPOSED RULEMAKING

FLORIDA HOUSING FINANCE CORPORATION

CHAPTER 67-60

MULTIFAMILY COMPETITIVE SOLICITATION FUNDING PROCESS

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PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the competitive solicitation funding process to make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) and Elderly Housing Community Loan (EHCL) Programs authorized by Section 420.5087, F.S., and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, F.S.;

(2) Administer the competitive solicitation processes to implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, F.S.; and

(3) Unless otherwise provided in the competitive solicitation, administer the competitive solicitation funding process for any other Corporation program.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the state of Florida.

SUMMARY: The proposed Rule creates a formulated process for administering the competitive solicitation funding process for the Corporation's programs.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE

RATIFICATION: The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The rule is not likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The rule is not likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. In addition, the rule is not likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 420.507(12) FS.

LAW IMPLEMENTED: 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: July 20, 2016, 9:30 a.m., Eastern Time

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6<sup>th</sup> Floor Seltzer Room, Tallahassee, Florida 32301. The hearing will also be accessible by telephone and the call-in information will be posted on the Corporation's website

<http://www.floridahousing.org/Developers/MultiFamilyPrograms/Competitive/2016RuleDev/>.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ken Reecy, Director of Multifamily Programs, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850) 488-4197.

THE FULL TEXT OF THE PROPOSED RULE IS:

**67-60.001 Purpose and Intent.**

The purpose of this rule chapter is to establish the procedures by which the Corporation shall:

(1) Administer the competitive solicitation funding process to make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program and the Elderly Housing Community Loan (EHCL) Program authorized by Section 420.5087, F.S., and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, F.S.;

(2) Administer the competitive solicitation processes to implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, F.S.; and

(3) Administer the competitive solicitation funding process for any other Corporation program.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Amended 10-8-14, Repromulgated \_\_\_\_\_.*

**67-60.002 Definitions.**

(1) "Applicant" means any person or ~~legal~~ legally formed entity of the type and with the management and ownership structure described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to this rule chapter for one or more of the Corporation's programs. As used herein, a 'legal entity' means a legally formed corporation, limited partnership or

limited liability company with a management and ownership structure that consists exclusively of all natural persons by the third principal disclosure level. The term ‘third principal disclosure level’ has the meaning attributed to it in the definition of “Principal” in Rule Chapters 67-21 and 67-48, F.A.C.

(2) “Application” means the sealed response submitted to the Corporation to participate in a competitive solicitation for funding pursuant to this rule chapter.

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

(4) “Corporation” means the Florida Housing Finance Corporation as defined in Section 420.503, F.S.

(5) “FAR” means the Florida Administrative Register.

(6) “Minor Irregularity” means a variation in a term or condition of an Application pursuant to this rule chapter that does not provide a competitive advantage or benefit not enjoyed by other Applicants, and does not adversely impact the interests of the Corporation or the public.

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

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Repromulgated 10-8-14, Amended \_\_\_\_\_.*

**67-60.003 Notice and Posting of Competitive Solicitations.**

(1) Public notice of any competitive solicitation pursuant to this rule chapter shall be given as provided herein and in advance of the due date of the Applications, to permit Applicants to prepare and submit Applications in a timely fashion. Notice shall include publication in the FAR.

(2) The Corporation shall post any competitive solicitation pursuant to this rule chapter on its Website on or prior to the publication of the FAR notice. There will be a minimum of fourteen (14) days between the publication date of the notice in FAR and the due date of the Applications. The competitive solicitation document shall describe the criteria utilized by the review committee in recommending developments for funding to the Board.

(3) Any notice or solicitation issued by the Corporation pursuant to this rule chapter shall be considered published at the date and time indicated on the Corporation Website.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.504, 420.5087, 420.5089(2), 420.5099*

*FS. History—New 8-20-13, Repromulgated 10-8-14, \_\_\_\_\_*

**67-60.004 Withdrawal of Competitive Solicitation or Application.**

(1) The Corporation may withdraw any competitive solicitation pursuant to this rule chapter at any time prior to the due date of the Applications when the withdrawal is determined by the Executive Director to be in the best interest of the Corporation or the public. Notice of such determination shall be posted on the Corporation's Website and published in the next available volume of the FAR.

(2) Any Applicant may request withdrawal of its Application from a competitive solicitation by filing a written notice of withdrawal with the Corporation Clerk. For purposes of the funding selection process, the Corporation shall not accept any Application withdrawal request that is submitted between 5:00 p.m., Eastern Time, on the last business day before the date the scoring committee meets to make its recommendations until after the Board has taken action on the scoring committee's recommendations, and such Application shall be included in the funding selection process as if no withdrawal request had been submitted. Any funding or allocation that becomes available after such withdrawal is accepted shall be treated as returned funds and disposed of according to the terms of that competitive solicitation.

(3) Fees submitted by Applicants as required by any competitive solicitation pursuant to this rule chapter are non-refundable.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Amended 10-8-14, Repromulgated \_\_\_\_\_.*

**67-60.005 Modification of Terms of Competitive Solicitations.**

The Corporation may modify the terms of any competitive solicitation pursuant to this rule chapter at any point prior to the due date of the Applications. A notice of modification will be posted on the Corporation's Website. Any Applicant shall have at least seven (7) days from the date of the posting of the notice of the modification to submit or modify its Application.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Repromulgated 10-8-14, \_\_\_\_\_.*

**67-60.006 Responsibility of Applicants.**

(1) The failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of nonresponsiveness with respect to its Application. If a determination of nonresponsiveness is made by the Corporation, the Application shall not be considered.

(2) At no time during the review and evaluation of any competitive solicitation issued under this rule chapter, commencing with the due date for submission of Applications and continuing until the Board renders a final decision on the competitive solicitation, may Applicants or their representatives contact Board members or Corporation staff, except Corporation Legal staff, concerning their own or any other Applicant's Application. If an Applicant or its representative does contact a Board or staff member in violation of this section, the Board shall, upon a determination that such contact was made in an attempt to influence the selection process, disqualify the Application.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Amended 10-8-14, Repromulgated \_\_\_\_\_.*

**67-60.007 Evaluation of Applications.**

(1) For each competitive solicitation issued pursuant to this rule chapter the Corporation shall establish a scoring committee composed only of employees of the Corporation to evaluate Applications, which scoring committee shall provide findings, recommendations, or both to the Board.

(2) Scoring committee members shall independently evaluate Applications, and shall not communicate with members of the same scoring committee regarding such evaluation, except during meetings noticed and open to the public.

(3) The scoring committee shall conduct one or more public meetings at which the scoring committee members may discuss their evaluation, or present their findings, make recommendations to the Board, or any combination thereof.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Repromulgated 10-8-14, \_\_\_\_\_.*

**67-60.008 Right to Waive Minor Irregularities.**

The Corporation may waive Minor Irregularities in an otherwise valid Application. Mistakes clearly evident to the Corporation on the face of the Application, such as computation and typographical errors, may be corrected by the Corporation; however, the Corporation shall have no duty or obligation to correct any such mistakes.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Repromulgated 10-8-14, \_\_\_\_\_.*

**67-60.009 Applicant Administrative Appeal Procedures.**

(1) Interested parties that wish to protest the terms of any competitive solicitation issued pursuant to this rule chapter may only do so pursuant to the procedures set forth in Section 120.57(3), F.S. and Chapter 28-110, F.A.C.

(2) Applicants not selected for funding under any competitive solicitation issued pursuant to this rule chapter may only protest the results of the competitive solicitation process pursuant to the procedures set forth in Section 120.57(3), F.S. and Chapter 28-110, F.A.C.

(3) In any informal administrative proceeding under this rule and Chapter 28-106, Part III, F.A.C.:

(a) Intervention shall be governed by Rule 28-106.205, F.A.C.; and

(b) Any party may file objections to a recommended order and a response to any other party's objections.

Objections and responses to objections shall be filed with the Corporation Clerk, and copies served upon all parties at the time of filing. Except as agreed otherwise by all parties, objections shall be filed not later than five (5) days from the date the recommended order was filed with the Corporation Clerk, and any response to such objections shall be filed not later than five (5) days from the date the objections were filed with the Corporation Clerk.

Objections and responses to objections shall be filed and served exclusively by electronic mail.

(4) For the purposes of Section 120.57(3), F.S., any competitive solicitation issued under this rule chapter shall be considered a "request for proposal."

(5) Applicants initiating administrative proceedings under this rule chapter shall not be required to post a bond.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(48), 420.5087, 420.5089(2), 420.5099 FS.*

*History—New 8-20-13, Amended 10-8-14, Repromulgated\_\_\_\_\_.*

**67-60.010 Funding Preferences.**

(1) In connection with any competitive solicitation, where all other competitive elements are equal, the Corporation may establish a preference for developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.

(2) In any competitive solicitation, the Corporation may prescribe a priority to fund affordable housing projects in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern where, due to challenging environmental, land use, transportation, workforce, and economic factors, it is extremely difficult to successfully finance, develop, and construct affordable housing.

(3) The Corporation may establish other funding priorities as deemed appropriate for a competitive program or solicitation.

*Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(47), (48), (49), 420.5087, 420.5089(2), 420.5099 FS. History—New 10-8-14, Repromulgated\_\_\_\_\_*

NAME OF PERSON ORIGINATING PROPOSED RULE: Ken Reecy, Director of Multifamily Programs, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850) 488-4197

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Bernard Smith, Chairman of the Board, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850) 488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 24, 2016

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 42, Number 30, February 15, 2016