

Florida Housing Finance Corporation  
Rule Development Workshop  
Rules 67-21.0025, .003, .014, and .026, F.A.C.  
Rules 67-48.004, .0072, and .0075, F.A.C.  
Rule Chapter 67-60, F.A.C.

May 29, 2024, beginning at 2:00 p.m.

1. **Rule Chapter 67-60, F.A.C.**

67-60.010 Funding Preferences.

(3) The Corporation may establish other funding priorities as deemed appropriate for a competitive program or solicitation. However, for any competitive solicitation the Corporation must establish eligibility requirements designed to encourage Applicants with a broad range of development, financing, and management experience to respond to the competitive solicitation and compete for the funding being made available. Therefore, in any competitive solicitation the Corporation shall establish eligibility requirements that:

(a) Demonstrate the Applicant and Principals have experience with development financing of comparable complexity to that outlined in the competitive solicitation, but not limit experience to a specific financing program.

(b) Demonstrate that the statutory and regulatory requirements for all funding sources can be met, regardless of whether or not an Applicant seeks low-income housing tax credits or private activity bond allocation.

(c) Demonstrate successful completion of at least one development of similar type and size for which the Applicant is requesting funding.

2. **Rules 67-48.0072(6), 67-21.014(2), and 67-21.026(5)**

**67-48.0072(6)** In determining whether or not to provide a positive recommendation in connection with a proposed Development, the Credit Underwriter will consider the prior and recent performance history of the Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other ~~affordable housing~~ development. The performance history shall consider instances involving a foreclosure, deed in lieu of foreclosure, financial arrearage, or other event of material default in connection with any ~~affordable housing~~ development or the documents governing financing or operation of any such development.

(a) Unless the Credit Underwriter determines that mitigating factors exist, or that underwriting conditions can be imposed, sufficient to mitigate or offset the risk, the existence of the following shall result in a negative recommendation of the proposed Development by the Credit Underwriter:

1. Considering all ~~affordable housing~~ developments in which any party named above has been involved, if:

a. During the period prior to August 1, 2010, 5 percent or more of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default remained uncured for a period of 60 days or more, or

b. During the period beginning on or after August 1, 2010, any of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default is uncured at the present or, if cured, remained uncured for a period of 60 days or more.

2. Mitigating factors to be considered by the Credit Underwriter, to the extent such information is reasonably

available and verifiable, shall include the extent to which the party funded the operations of the development from that party's own funds in an attempt to keep the development afloat, the election by a party to forego financial participation in a development in an attempt to keep the development afloat, the party's satisfactory performance history over the last 10 years in connection with that party's ~~affordable housing~~ developments, and any other extenuating circumstances deemed relevant by the Credit Underwriter in connection with the party's involvement in a development.

(b) A negative recommendation may also result from the review of:

1. Financial capacity of an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, the General Contractor, and, for SAIL and HOME Applicants that have Housing Credits, the Housing Credit Syndicator, or
2. Any other relevant matters relating to an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor if, in the Credit Underwriter's opinion, one or more members of the Development team do not possess the ability to proceed.

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**67-21.014(2)** The Credit Underwriter shall in Credit Underwriting analyze and review all information in the Application, or any proposed changes made subsequent thereto, in order to make a recommendation to the Board of Directors on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement. Credit Underwriting services shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, and the evidence of need for affordable housing in order to determine that the Development meets the MMRB Program requirements. The Credit Underwriter shall determine a recommended Bond amount that should be made to a Development, whether an initial loan or a refunding.

(a) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of normal underwriting procedures, the cost of such expertise shall be borne by the Applicant.

(b) The Credit Underwriter shall review the proposed financing structure to determine whether the MMRB Loan is feasible. The Credit Underwriter shall also request and review such other information as it deems appropriate to determine whether or not to provide a positive recommendation in connection with a proposed Development. In making that determination the Credit Underwriter will consider the prior and recent performance history of the Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other ~~affordable housing~~ development. The performance history shall consider instances involving a foreclosure, deed in lieu of foreclosure, financial arrearage, or other event of material default in connection with any ~~affordable housing~~ development or the documents governing financing or operation of any such development.

(c) Unless the Credit Underwriter determines that mitigating factors exist, or that underwriting conditions can be imposed, sufficient to mitigate or offset the risk, the existence of the following shall result in a negative recommendation of the proposed Development by the Credit Underwriter:

1. Considering all ~~affordable housing~~ developments in which any party named above has been involved, if:
  - a. During the period prior to August 1, 2010, 5 percent or more of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default remained uncured for a period of 60 days or more, or
  - b. During the period beginning on or after August 1, 2010, any of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default is uncured at the present or, if cured, remained uncured for a period of 60

days or more.

2. Mitigating factors to be considered by the Credit Underwriter, to the extent such information is reasonably available and verifiable, shall include the extent to which the party funded the operations of the development from that party's own funds in an attempt to keep the development afloat, the election by a party to forego financial participation in a development in an attempt to keep the development afloat, the party's satisfactory performance history over the last ten (10) years in connection with that party's ~~affordable housing~~ developments, and any other extenuating circumstances deemed relevant by the Credit Underwriter in connection with the party's involvement in a development.

3. A negative recommendation may also result from the review of:

a. An Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other ~~affordable housing~~ development,

b. Financial capacity of an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor, and for Housing Credits, the Housing Credit Syndicator, or

c. Any other relevant matters relating to an Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor if, in the Credit Underwriter's opinion, one or more members of the Development team do not possess the ability to proceed.

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**67-21.026(5)** In determining whether or not to provide a positive recommendation in connection with a proposed Development, the Credit Underwriter will consider the prior and recent performance history of the Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer in connection with any other ~~affordable housing~~ development. The performance history shall consider instances involving a foreclosure, deed in lieu of foreclosure, financial arrearage, or other event of material default in connection with any ~~affordable housing~~ development or the documents governing financing or operation of any such development.

(a) Unless the Credit Underwriter determines that mitigating factors exist, or that underwriting conditions can be imposed, sufficient to mitigate or offset the risk, the existence of the following shall result in a negative recommendation of the proposed Development by the Credit Underwriter:

1. Considering all ~~affordable housing~~ developments in which any party named above has been involved, if:

a. During the period prior to August 1, 2010, 5 percent or more of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default remained uncured for a period of 60 days or more, or

b. During the period beginning on or after August 1, 2010, any of that party's developments have been the subject of a foreclosure or deed in lieu of foreclosure, or in financial arrearage or other material default and such arrearage or material default is uncured at the present or, if cured, remained uncured for a period of 60 days or more.

2. Mitigating factors to be considered by the Credit Underwriter, to the extent such information is reasonably available and verifiable, shall include the extent to which the party funded the operations of the development from that party's own funds in an attempt to keep the development afloat, the election by a party to forego financial participation in a development in an attempt to keep the development afloat, the party's satisfactory performance history over the last 10 years in connection with that party's ~~affordable housing~~ developments, and any other extenuating circumstances deemed relevant by the Credit Underwriter in connection with the party's involvement in a development.

(b) A negative recommendation may also result from the review of:

1. An Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer in connection with any other ~~affordable housing~~ development,
2. Financial capacity of an Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer, or
3. Any other relevant matters relating to an Applicant, Developer, and any Financial Beneficiary of the Applicant or Developer if, in the Credit Underwriter's opinion, one or more members of the Development team do not possess the ability to proceed.

3. **Rules 67-48.0072(15) and 67-21.014(2)(e)**

**67-48.0072(15)** For SAIL and HOME, each general partner (whether individual or entity) or each manager/managing member (whether individual or entity), as applicable, of the Applicant shall provide a guarantee for completion of construction. In addition, one or more entities or individuals (other than a general partner or manager/managing member) having an ownership interest, either directly or indirectly, in the Applicant or in the general partner or managing member of the Applicant shall be required to provide guarantees or personal guarantees, as applicable, for completion of construction as recommended by the Credit Underwriter or as otherwise required by the Corporation. The Corporation shall consider the following when determining the need for additional construction completion guarantees based on the recommendations of the Credit underwriter:

- (a) Liquidity of any guarantee provider.
- (b) If applicable, Applicant's, Developer's and General Contractor's history in successfully completing Developments ~~of similar nature~~.
- (c) If applicable, ~~t~~The past performance of the Applicant, Developer, General Contractor or any other guarantee provider in developing or constructing Developments financed by the Corporation or its predecessor.
- (d) Percentage of the Corporation's funds utilized compared to Total Development Costs.

If, after evaluation of paragraphs (a)-(d), above, by the Corporation and the Credit Underwriter, it is determined that additional surety is needed, the Applicant will be required to provide a letter of credit or payment and performance bond.

**67-21.014(2)(e)** At a minimum, each general partner (whether individual or entity) or each manager/managing member (whether individual or entity), as applicable, of the Applicant shall provide a guarantee for completion of construction. In addition, one or more entities or individuals (other than a general partner or manager/managing member) having an ownership interest, either directly or indirectly, in the Applicant or in the general partner or managing member of the Applicant shall be required to provide guarantees or personal guarantees, as applicable, for completion of construction as recommended by the Credit Underwriter or as otherwise required by the Corporation. The Corporation shall consider the following when determining the need for additional construction completion guarantees based on the recommendations of the Credit Underwriter:

1. Liquidity of any guarantee provider.
2. If applicable, Applicant's, Developer's and General Contractor's history in successfully completing Developments ~~of similar nature~~.
3. If applicable, ~~t~~The past performance of the Applicant, Developer, General Contractor, or any other guarantee provider, in developing or constructing Developments financed by the Corporation or its

predecessor.

4. Percentage of the Corporation's funds utilized compared to Total Development Costs. If, after evaluation of subparagraphs 1. through 4. above, by the Corporation and the Credit Underwriter, it is determined that additional surety is needed, the Applicant will be required to provide a letter of credit or payment and performance bond.

**4. 67-21.0025(7) – Principal Disclosure (there are no proposed changes to this topic in Rule 67-48.0075)**

For all Applications, disclosure of the Principals of the Applicant must comply with paragraphs (a) and (b) below, and unless otherwise approved by the Corporation for Applicants requesting Non-Competitive Housing Credits only, all Applicants must also comply with paragraphs (c) and (d) below.

(a) The Applicant must disclose all of the Principals of the Applicant (first principal disclosure level). For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required;

(b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level);

(c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust or a non-profit as defined in Section 42(h)(5)(C), subsection 501(c)(3) or subsection 501(c)(4) of the IRC, all of the Principals must be natural persons. A non-profit entity may be identified at the third principal disclosure level if the non-profit wholly owns a real estate development subsidiary identified at the second principal disclosure level; and

(d) If any of the entities identified in paragraph (c) above are a trust or a non-profit, the Applicant must disclose all of the Principals of the trust or a non-profit (fourth principal disclosure level), all of whom must be natural persons.

(e) Applicants requesting Non-Competitive Housing Credits only that request approval from the Corporation to allow for disclosure of natural person Principals below the third disclosure level must send written request to the Corporation which details the reason for the request, including any substantial hardship which prevents the Applicant from complying with paragraphs (c) and (d) of this subsection.

(f) Prospective Applicants requesting Non-Competitive Housing Credits are relieved of the principal disclosures required in paragraphs (c) through (e) of this subsection if the following criteria are met:

1. The Applicant has no entities at any principal disclosure level where any natural person Principal owns more than a 10% interest in the entity;

2. The Applicant or its disclosed Principals collectively have a net worth of at least \$250 million;

3. The Applicant or its disclosed Principals collectively own or have owned a controlling interest in at least 25 affordable housing projects where:

a. At least 50% of the total units are Low Income units and financed utilizing tax-exempt bonds or Housing Credits; or

b. At least 50% of the total units receive federal, state, or local rental subsidies; and

4. The Applicant discloses all non-natural person Principals of all entities at all Principal disclosure levels and:

a. All natural person board members or executive officers of each entity;

b. All natural person(s) who control day-to-day management of each entity; and

c. A natural person who possesses the authority to legally bind each entity.

5. **Non-Competitive Application - incorporated in Rule 67-21.003(1)(b)**

- The Green Building Certification program selections added to the excel file (“Features and Amenities” tab); and
- Clarification of the MMRB Set-Aside (Page 10 of the draft Non-Competitive Application Package and the “Set-Aside and Compliance” tab of the Excel Application form)

6. **Rule 67-48.004(1)**

(1) Unless otherwise provided in a competitive solicitation process, SAIL, HOME and Housing Credit Applications shall be limited to one submission per subject property. Two or more Applications, submitted in the same competitive solicitation process, that have the same demographic commitment and one or more of the same Financial Beneficiaries, will be considered submissions for the same Development site if any of the following is true:

(a) Any part of any of the property sites is contiguous with any part of any of the other property sites, or

(b) Any of the property sites are divided by a street or easement, or

(c) It is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.

If two or more Applications are considered to be submissions for the same Development site, the Corporation will reject all such Applications.

7. **Timeline**

a.	Notice of Proposed Rule presented to Board	6/28/2024
b.	Rule Hearings	7/23/2024
c.	File proposed rules for adoption	8/7/2024
d.	Rules effective	8/27/2024