

NOTICE OF PROPOSED RULEMAKING
FLORIDA HOUSING FINANCE CORPORATION
CHAPTER 67-58, FLORIDA ADMINISTRATIVE CODE
COMMUNITY WORKFORCE HOUSING INNOVATION PILOT PROGRAM (CWHIP)

67-58.001 Purpose and Intent

PART I ADMINISTRATION

67-58.002 Definitions

67-58.005 Fees

67-58.010 Miscellaneous Criteria

PART II MULTIFAMILY RENTAL PROJECTS

67-58.020 Credit Underwriting and Loan Procedures

67-58.030 Terms and Conditions of Loans

67-58.040 Sale or Transfer of a Project

67-58.050 Construction Disbursements

67-58.060 Loan Servicing

PART III HOMEOWNERSHIP PROJECTS

67-58.070 Credit Underwriting

67-58.080 Terms of the Loan to Public-Private Partnerships

67-58.090 Disbursement of Funds, Draw Requests, and Construction Loan Servicing

67-58.100 Terms of the Loan to Eligible Persons

67-58.110 Permanent Loan Servicing - Annual Review

PURPOSE, EFFECT AND SUMMARY: The purpose of this rule chapter is to establish the procedures by which the Corporation shall administer the credit underwriting and loan servicing of the Community Workforce Housing Innovation Pilot Program (CWHIP) pursuant to Chapter 2006-69, Section 27, Laws of Florida.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs was prepared. Any person who wishes to provide information regarding this 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.

SPECIFIC AUTHORITY: Ch. 2006-69, s. 27, LOF.

LAW IMPLEMENTED: Ch. 2006-69, s. 27, LOF, History-New _____.

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

DATE AND TIME: Monday, October 16, 2006; 10:00 a.m. to 12:00 p.m.
Florida Housing Finance Corporation
Seltzer Conference Room, 6th Floor
227 North Bronough Street
Tallahassee, FL 32301

THE PERSON TO CONTACT REGARDING THE PROPOSED RULE AMENDMENTS IS:

Bridget Warring, Homeownership Programs Manager
Florida Housing Finance Corporation
227 North Bronough Street, Tallahassee, Florida 32301
(850) 488-4197

THE FULL TEXT OF THE PROPOSED RULE IS:

67-58.001 Purpose and Intent

The purpose of this rule chapter is to establish the procedures by which the Corporation shall administer the credit underwriting and loan servicing of the Community Workforce Housing Innovation Pilot Program (CWHIP) pursuant to Chapter 2006-69, Section 27, Laws of Florida (LOF).

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

PART I ADMINISTRATION

67-58.002 Definitions

- (1) "Affordability Period" means the period of time the unit must remain affordable.
- (2) "Applicant" means any Public-Private Partnership seeking a loan from Florida Housing for the new construction or Rehabilitation of housing under CWHIP.
- (3) "Application" means the response to the Request for Proposals to Provide Affordable Rental and Homeownership Community Workforce Housing for Essential Services Personnel (RFP 2006-05) and the documents submitted by the Applicant to Florida Housing requesting CWHIP funds.
- (4) "Area Median Income" or "AMI" means the median income for an area, with adjustments made for household size, as determined by the United States Department of Housing and Urban Development (HUD).
- (5) "Area(s) of Critical State Concern" means the Florida Keys area of critical state concern, pursuant to Ch. 2006-69, s. 27, LOF.
- (6) "Board of Directors" or "Board" means the Board of Directors of the Corporation.
- (7) "Borrower" means an Applicant that has obtained a CWHIP loan.
- (8) "Compliance Period" means a period of time that the Project shall conform to all set-aside requirements as described further in the rule chapter and agreed to by the Applicant in the Application.
- (9) "Corporation" or "Florida Housing" means the Florida Housing Finance Corporation as defined in Section 420.503, FS.
- (10) "Credit Underwriter" means the independent contractor under contract with the Corporation having the responsibility for providing stated credit underwriting services.
- (11) "CWHIP" or "CWHIP Program" means the Community Workforce Housing Innovation Pilot Program as defined in Ch. 2006-69, s.27, LOF.
- (12) "Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce Workforce Housing as required in the Application.
- (13) "Document" means electronic media, written or graphic matter, of any kind whatsoever, however produced or reproduced, including records, reports, memoranda, minutes, notes, graphs, maps, charts, contracts, opinions, studies, analysis, photographs, financial statements and correspondence as well as any other tangible thing on which information is recorded.
- (14) "Draw" means the disbursement of funds to a Project.
- (15) "Eligible Persons" mean persons or families qualified under this Rule Chapter to live in Workforce Housing.
- (16) "Essential Services Personnel" means persons in need of affordable housing who are employed in occupations or professions in which they are considered essential services personnel, as defined by each county and eligible municipality within its respective local housing assistance plan pursuant to Section 420.9075(3)(a), FS.
- (17) "Principal" means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.
- (18) "Project" or "Property" consistent with Section 420.503(32), FS, means any work or improvement located or to be located in any one county in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction or the acquisition and the remodeling, improvement, rehabilitation, or reconstruction of existing structures, together with such related nonhousing facilities as the Corporation determines to be necessary, convenient, or desirable.
- (19) "Public-Private Partnership" means any form of business entity that includes substantial involvement of at least one county, one municipality, or one public sector entity, such as a school district or other unit of local government in which the Project is to be located, and at least one private sector for-profit or not-for-profit business or charitable entity, and may be any form of business entity, including a joint venture or contractual agreement.
- (20) "Rehabilitation" means the alteration, improvement or modification of an existing structure, restricted as follows:
 - (a) For rental units, a minimum of \$20,000 per unit and must be brought up to the state building code;
 - (b) For homeownership units, a minimum of 25% of the current appraised value and must be brought up to the state building code.
- (21) "Rent-Restricted Unit" means a unit for which the gross rent does not exceed 30 percent of the applicable income limitation imputed for unit type
- (22) "Request for Proposal" or "RFP" means, for the purposes of this rule, RFP 2006-05.
- (23) "Response" means the written submission by an Applicant for RFP 2006-05.

(24) "Total Development Cost" means the total of all residential costs incurred in the completion of a Project, all of which shall be subject to the review and approval by the Credit Underwriter and the Corporation.

(25) "Website" means the Florida Housing Finance Corporation's website for the CWHIP program is <http://www.floridahousing.org/home/developers/WorkforceHousing>.

(26) "Workforce Housing" means housing affordable to natural persons or families whose total annual household income does not exceed 140 percent AMI, adjusted for household size, or 150 percent AMI, adjusted for household size, in Areas of Critical State Concern designated under Section 380.05, Florida Statutes (FS), for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as Areas of Critical State Concern for at least 20 consecutive years prior to removal of the designation. For purposes of this rule includes affordable housing as defined in Section 420.004 FS.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.005 Fees

(1) The Applicant shall be responsible for the payment of any required credit underwriting and loan servicing fees for the term of the loan and compliance monitoring fees for the term of the affordability period.

(2) The Applicant shall be responsible for the payment of any necessary extension fees, as further described in subsection 67-58.020(25) and 67-58.070(22), Florida Administrative Code (FAC).

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.010 Miscellaneous Criteria

The Total Development Cost includes the following:

(1) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties.

(2) The cost of site preparation, demolition, and development.

(3) Any expenses relating to the issuance of tax-exempt bonds or taxable bonds, if any, related to the particular Project.

(4) Fees in connection with the planning, execution, and financing of the Project, such as those of architects, engineers, attorneys, accountants, Developer fee, and the Corporation.

(5) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Project.

(6) The cost of the construction, rehabilitation, and equipping of the Project.

(7) The cost of land improvements, such as landscaping and offsite improvements related to the Project, whether such costs are paid in cash, property, or services.

(8) Expenses in connection with initial occupancy of the Project.

(9) Allowances for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first 2 years after completion of the Project.

(10) The cost of such other items, including relocation costs, indemnity and surety bonds, insurance premiums, trustees fees and expenses, depositories, and agent's fees for the Corporation's bonds, for the construction or Rehabilitation of the Project.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

PART II MULTIFAMILY RENTAL PROJECTS

67-58.020 Credit Underwriting and Loan Procedures

The credit underwriting review shall include a comprehensive analysis of the Applicant; the real estate; the economic viability of the Project; the ability of the Applicant and the development team to proceed; the evidence of need for Workforce Housing in order to determine that the Project meets the Program requirements; and the determination of a recommended CWHIP loan amount.

(1) After the rankings are approved by the Board, the Corporation shall offer all Applicants within the funding range an invitation to enter credit underwriting. The Corporation shall select the Credit Underwriter for each Project.

(2) The invitation to enter credit underwriting constitutes a preliminary commitment.

(3) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter no later than 7 days after the date of the letter of invitation.

(4) If the invitation to enter credit underwriting is accepted:

(a) The Applicant shall submit the credit underwriting fee to the Credit Underwriter within 15 days of the date of the letter of invitation.

(b) Failure to submit the required credit underwriting fee by the specified deadline shall result in withdrawal of the invitation.

(5) If an Applicant fails to submit the fee(s) as required, the Corporation will select additional Application(s) in the priority approved by the Board.

(6) The Applicant has 14 months from the date of the acceptance of the letter of invitation to complete credit underwriting and receive Board approval unless an extension of up to 10 months is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of 1 percent of the CWHIP loan amount if the Board approves the extension request.

(7) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, general contractor, and other members of the development team.

(8) The Credit Underwriter shall report any inconsistencies, discrepancies or changes made to the Applicant's Application during credit underwriting.

(9) The Applicant shall be responsible for all fees in connection with the documentation submitted to the Credit Underwriter.

(10) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(11) A full or self-contained appraisal per the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed Project's financial feasibility. Appraisals which have been ordered and submitted by a third party lender which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall review and consider the market study, the Project's financial impact on developments in the area previously funded by the Corporation, and other documentation when making its recommendation. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(12) The minimum debt service coverage shall be 1.10 for the CWHIP loan, including all superior mortgages. The maximum debt service coverage shall be 1.60 for the CWHIP loan, including all superior mortgages.

(13) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price or stipulated sum construction contract, which may include change orders for changes in cost or changes in the scope of work. The Credit Underwriter shall review the Project's costs and if it is determined that a pre-construction analysis or a physical needs assessment for Rehabilitation is required, the fee for such analysis shall be borne by the Applicant.

(14) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum replacement reserve amount of \$200 per unit per year must be used for all rental Projects; however, the amount may be increased based on a physical needs assessment. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50 percent of the required replacement reserves for 2 years and must be placed in escrow at closing.

(15) The Credit Underwriter may request additional information, but at a minimum the following will be required during the underwriting process:

(a) For the Applicant, general partner(s), and guarantors, audited financial statements or financial statements for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications compiled or reviewed by a licensed Certified Public Accountant in accordance with the Statement on Standards for Accounting and Review Services (SSARS). If audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant are not available, unaudited financial statements prepared within the last 90 days and the two most recent year's tax returns reviewed by the Credit Underwriter in accordance with Part III, Sections 604 through 607, of the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 6, 2003, which is adopted and incorporated by reference and available on the Corporation's Website. If the entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(b) For the general contractor:

(i) Verification that the general contractor has the requisite knowledge and experience to complete the proposed Project;

(ii) Narrative regarding experience with residential construction; and

(iii) Audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100 percent of the total construction cost is issued in the name of the general contractor by a company rated at least "A-" by AMBest & Co.

(16) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

(a) Liquidity of the guarantor;

(b) Developer and general contractor's history in successfully completing Projects of comparable in size and scope;

(c) Problems encountered previously with Developer or contractor; and

(d) Exposure of Corporation funds compared to Total Development Cost;

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity. In addition, a letter of credit or payment and performance bond will be required if the Credit Underwriter determines after evaluation of paragraphs (a)-(d) in this subsection that additional surety is needed.

(17) The Developer fee shall be limited to 16 percent of the Total Development Cost exclusive of the land cost. A Developer fee on the building acquisition cost shall be limited to 12 percent of the cost of the building exclusive of the land cost.

(18) The general contractor's fee shall be limited to a maximum of 14 percent of the actual construction cost.

(19) The general contractor must meet the following conditions:

(a) Employ a Project superintendent and charge the costs of such employment to the general requirements line item of the general contractor's budget;

(b) Charge the costs of the Project construction trailer, if needed, and other overhead to the general requirements line item of the general contractor's budget;

(c) Secure building permits, issued in the name of the general contractor;

(d) Secure a payment and performance bond (or approved alternate security for general contractor's performance, such as a letter of credit), issued in the name of the general contractor, from a company rated at least "A-" by AMBest & Co.;

(e) Ensure that none of the general contractor duties to manage and control the construction of the Project are subcontracted; and

(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity unless otherwise approved by the Board for a specific Project.

(20) The Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of 6 consecutive months for the CWHIP loan and all superior mortgages.

(21) The Credit Underwriter shall review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation-funded Project.

(22) All items required by the Credit Underwriter must be provided. If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless an extension of time has been approved by the Corporation, shall result in withdrawal of the Application. If the Application is withdrawn, the Corporation will select additional Application(s) in the priority approved by the Board.

(23) The Credit Underwriter shall complete its analysis and submit a written draft report and recommendation to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter. The Corporation shall provide to the Credit Underwriter comments on the draft report and, as applicable, on the Applicant's comments. Then, the Credit Underwriter shall review and incorporate, if deemed appropriate, the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be submitted to the Corporation and the Credit Underwriter. The Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(24) The Credit Underwriter's recommendations shall be sent to the Board for approval.

(25) After approval of the Credit Underwriter's recommendation for funding by the Board, the Corporation shall issue a CWHIP loan commitment.

(26) The CWHIP loan and other mortgage loans related to the Project must close within 90 days of the date of the CWHIP loan commitment unless an extension is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of one percent of the CWHIP loan amount if the Board approves the extension

(27) Prior to any CWHIP loan closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel; and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and Draw schedule.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New

67-58.030 Terms and Conditions of Loans

(1) The proceeds of all loans shall be used for new construction or Rehabilitation of affordable, decent, safe and sanitary housing units.

(2) The CWHIP loan shall be in a first, second or other subordinated lien position. For purposes of this rule, mortgages securing a letter of credit as credit enhancement for the bonds financing the first mortgage shall be considered a contingent liability and part of the first mortgage lien, provided that the Borrower's counsel furnishes an opinion regarding the contingent nature of such mortgage satisfactory to the Corporation and its counsel.

(3) The loans to Public-Private Partnerships shall have interest rates as follows:

(a) One percent simple interest per annum, non-amortizing, will accrue on loans to Projects where long term affordability of 50 years is provided and when at least 80 percent of the units are set aside for Workforce Housing and at least 50 percent of the units are set aside for Essential Services Personnel. Such loans, including interest, shall be forgiven upon successful completion of the Compliance Period.

(b) For CWHIP loans not eligible for forgiveness, 3 percent fully amortized loans to Projects other than those identified in paragraph (a) above;

(c) The amount of any superior mortgages combined with the CWHIP mortgage shall be less than the appraised value of the Project. Any debt service reserve requirement associated with a superior mortgage shall be excluded from the amount of the superior mortgage for purposes of this calculation.

(4) For CWHIP loans not eligible for forgiveness, the term shall be for a period of not more than 30 years. The loan term may exceed 30 years as required to be coterminous with the first mortgage or if otherwise approved by the Board.

(5) The Corporation shall require adequate insurance to be maintained on the Project as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective November 3, 2003, which is adopted and incorporated by reference and available on the Corporation's Website.

(6) The Corporation may intervene and renegotiate terms or take other actions necessary to further CWHIP goals or avoid default of a CWHIP loan. Such renegotiations shall be based upon consideration of the following:

(a) Performance of the Borrower during the CWHIP loan term;

(b) Availability of similar housing stock for Eligible Persons in the area;

(c) A plan for the repayment of the loan at the new maturity date;

(d) Assurance that the security interest of the Corporation will not be jeopardized by the renegotiation;

(e) Fiscal goals; and

(f) The preservation or advancement of Workforce Housing for Eligible Persons.

(7) After accepting a preliminary commitment, the Borrower shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the CWHIP mortgage without prior approval of the Board. However, a Borrower may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. The Corporation shall be notified in writing of any such change prior to the Borrower taking such action.

(a) The Board shall approve requests for mortgage loan refinancing only if the Project cash flow is improved; the Project's economic viability is maintained; the security interest of the Corporation is not adversely affected; and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests for mortgage loan refinancing which require extension of the CWHIP loan term or otherwise adversely affect the security interest of the Corporation, unless the criteria outlined in the paragraph above are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Project or unless the Board determines that public policy will be better served by the extension as a result of the Borrower agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Project feasible and which does not exceed an industry standard term.

(8) All CWHIP loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR Part 100, and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35, which are adopted and incorporated by reference and are available on the Corporation's Website.

(9) All Workforce Housing rental units shall be Rent Restricted Units.

(10) The documents creating, evidencing or securing each CWHIP loan must provide that any violation of the terms and conditions described in Rule Chapter 67-58, FAC, constitutes a default under the CWHIP loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(11) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the CWHIP loan.

(12) The minimum Compliance Period for a CWHIP Project shall be the greater of 20 years or the term of the CWHIP loan.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.040 Sale or Transfer of a Project

The CWHIP loan shall be assumable upon sale or transfer of the Project if the following conditions are met:

(1) The proposed transferee agrees to maintain all set-asides and other requirements of the CWHIP loan for the period originally specified or longer; and

(2) The proposed transferee and release of transferor receives a favorable recommendation from the Credit Underwriter and approval by the Board.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.050 Construction Disbursements

(1) CWHIP loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the CWHIP loan to the Total Development Cost unless approved by the Credit Underwriter.

(2) Ten business days prior to each Draw, the Borrower shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Borrower for a Draw. The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.

(3) The Corporation and its servicer shall review the request for a Draw, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation.

(4) The Corporation shall disburse construction Draws through Automated Clearing House (ACH). The Borrower may request disbursement of construction Draws via a wire transfer. The Borrower will be charged a fee of \$10 for each wire transfer requested. This charge will be netted against the Draw amount.

(5) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Borrower in connection with the request for a Draw, if:

(a) The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs from that as shown on the loan documents; or

(b) The percentage of progress of construction of the improvements differs from that shown on the request for a Draw.

(6) The servicer may request submission of revised construction budgets.

(7) If the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Draw, the Borrower Applicant shall pay to the Credit Underwriter a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter.

(8) Retainage in the amount of 10 percent per Draw shall be held by the servicer during construction until the Project is 50 percent complete. At 50 percent completion, no additional retainage shall be held from the remaining Draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the CWHIP loan agreement.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.060 Loan Servicing

(1) By May 31st of each year of the CWHIP loan term, the Borrower shall provide the Corporation with audited financial statements. The audited financial statements shall be due no later than May 31st following the end of the calendar year following the year in which the first unit is occupied.

(2) The Corporation's servicer shall issue a monthly billing for the principal and interest due on the CWHIP loan.

(3) The Borrower shall remit the principal and interest due to the Corporation's servicer no later than the 15th day of each month of the CWHIP loan term.

(4) After maturity or acceleration, the note shall bear interest at the default interest rate from the due date until paid. Unless the Corporation has accelerated the CWHIP loan, the Borrower shall pay the Corporation a late charge of 5 percent of any required payment that is not received by the Corporation within 15 days of the due date.

(5) Any sale, conveyance, assignment, or other transfer of interest or the grant of a security interest in all or any part of the title to the Project other than a superior mortgage shall be subject to the Corporation's prior written approval.

(6) The final billing for the purpose of payoff of the CWHIP loan shall also include a billing for compliance fees to cover monitoring of CWHIP requirements beyond the maturity date of the note. Such fees shall be computed by determining the present value of the annual compliance monitoring fee and multiplying that by the number of years for which the Project will have a set-aside for Eligible Persons beyond the repayment date. The present value discount rate shall be 2.75 percent per annum. Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Project provided the compliance monitoring fee covers some or all of the period following the anticipated CWHIP loan repayment date.

(7) CWHIP loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

PART III HOMEOWNERSHIP PROJECTS

67-58.070 Credit Underwriting

The credit underwriting review shall include a comprehensive analysis of the Applicant; the real estate; the economic viability of the Project; the ability of the Applicant and the development team to proceed; the evidence of need for Workforce Housing, in order to determine that the Project meets the Program requirements; and the determination of a recommended CWHIP loan amount.

(1) After the rankings are approved by the Board, the Corporation shall offer all Applicants within the funding range an invitation to enter credit underwriting. The Corporation shall select the Credit Underwriter for each Project.

(2) The invitation to enter credit underwriting constitutes a preliminary commitment.

(3) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter no later than 7 days after the date of the letter of invitation.

(4) If the invitation to enter credit underwriting is accepted:

(a) The Applicant shall submit the credit underwriting fee to the Credit Underwriter within 15 days of the date of the letter of invitation.

(b) Failure to submit the required credit underwriting fee by the specified deadline shall result in withdrawal of the invitation.

(5) If an Applicant fails to submit the fee(s) as required, the Corporation will select additional Application(s) in the priority approved by the Board.

(6) The Applicant has 14 months from the date of the acceptance of the letter of invitation to complete credit underwriting and receive Board approval unless an extension of up to 10 months is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of one percent of the CWHIP loan amount if the Board approves the extension request.

(7) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, general contractor, and other members of the development team.

(8) The Credit Underwriter shall report any inconsistencies, discrepancies or changes made to the Applicant's Application during credit underwriting.

(9) The Applicant shall be responsible for all fees in connection with the documentation submitted to the Credit Underwriter.

(10) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(11) A full or self-contained appraisal per the Uniform Standards of Professional Appraisal Practice, which shall include a separate appraisal for each model and typical lot being offered for sale, and a separate market study shall be ordered by the Credit Underwriter at the Applicant's expense from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed Project's financial feasibility. Appraisals which have been ordered and submitted by a third party lender which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall review and consider the market study, the Project's financial impact on developments in the area previously funded by the Corporation, and other documentation when making its recommendation. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(12) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price or stipulated sum construction contract, which may include change orders for changes in cost or changes in the scope of work. The Credit Underwriter shall review the Project's costs and if it is determined that a pre-construction analysis or a physical needs assessment for Rehabilitation is required, the fee for such analysis shall be borne by the Applicant.

(13) The Credit Underwriter shall request the following information:

(a) From the Applicant and general partners, audited financial statements or financial statements for the most recent fiscal year ended; credit check, banking and trade references; and deposit verifications compiled or reviewed in accordance with SSARS. If audited financial statements or financial statement compiled or reviewed in accordance with SSARS are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter and the two most recent year's tax returns. If the entities are newly formed (less than 18 months in existence as of the date that the credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules; and

(b) From the general contractor:

(i) Verification that the general contractor has the requisite knowledge and experience to complete the proposed Project;

(ii) Narrative regarding experience with residential construction; and

(iii) Audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended; credit check, banking and trade references; and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the general contractor by a company rated at least "A-" by AMBest & Co.

(14) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

(a) Liquidity of the guarantor;

(b) Developer and general contractor's history in successfully completing developments of comparable in size and scope;

(c) Problems encountered previously with Developer or contractor; and

(d) Exposure of Corporation funds compared to Total Development Cost.

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity. In addition, a letter of credit or payment and performance bond will be required if the Credit Underwriter determines after evaluation of paragraphs (a)-(d) in this subsection that additional surety is needed.

(15) The Developer fee shall be limited to 16 percent of the Total Development Cost exclusive of the land cost. A Developer fee on the building acquisition cost shall be limited to 12 percent of the cost of the building exclusive of the land cost.

(16) The general contractor's fee shall be limited to a maximum of 14 percent of the actual construction cost.

(17) The general contractor must secure building permits issued in the name of the general contractor.

(18) The Credit Underwriter shall review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation-funded Project.

(19) All items required by the Credit Underwriter must be provided. If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless an extension of time has been approved by the Corporation, shall result in withdrawal of the Application. If the Application is withdrawn, the Corporation will select additional Application(s) in the priority approved by the Board.

(20) The Credit Underwriter shall complete its analysis and submit a written draft report and recommendation to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter. The Corporation shall provide to the Credit Underwriter comments on the draft report and, as applicable, on the Applicant's comments. Then, the Credit Underwriter shall review and incorporate, if deemed appropriate, the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be submitted to the Corporation and the Credit Underwriter. The Credit Underwriter shall provide a final report, which will address comments made by the Applicant, to the Corporation.

(21) The Credit Underwriter's recommendations shall be sent to the Board for approval.

(22) After approval of the Credit Underwriter's recommendation for funding by the Board, the Corporation shall issue a CWHIP loan commitment.

(23) The CWHIP loan and other mortgage loans related to the Project must close within 90 days of the date of the CWHIP loan commitment unless an extension is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of one percent of the CWHIP loan amount if the Board approves the request to extend the commitment beyond the period outlined in this rule chapter.

(24) Prior to any CWHIP loan closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel; and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and Draw schedule.

Specific Authority Ch. 2006-69, s. 27, LOF
Law Implemented Ch. 2006-69, s. 27, LOF, History-New

67-58.080 Terms of the Loan to Public-Private Partnerships

(1) The proceeds of all loans shall be used for new construction or Rehabilitation of affordable, decent, safe and sanitary housing units.

(2) The CWHIP loan shall be in a first, second (or other subordinated lien position).

(3) The loans to Public Private Partnerships shall have interest rates as follows:

(a) One percent simple interest per annum, non-amortizing, will accrue on loans to Projects where long term affordability of at least 30 years is provided and when at least 80 percent of the units are set aside for Workforce Housing and at least 50 percent of the units are set aside for Essential Services Personnel. During construction, interest will accrue at 3 percent simple interest per annum and will be forgiven upon sale of the unit to an Eligible Person.

(b) For CWHIP loans not eligible for forgiveness, 3 percent fully amortized loans to Projects other than those identified in paragraph (a) above;

(c) The amount of any superior mortgages combined with the CWHIP mortgage shall be less than the appraised value of the Project. Any debt service reserve requirement associated with a superior mortgage shall be excluded from the amount of the superior mortgage for purposes of this calculation.

(4) The Corporation shall require adequate insurance to be maintained on the Project as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other casualty insurance.

(5) After accepting a preliminary commitment, the Borrower shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the CWHIP mortgage without prior approval of the Board. However, a Borrower may reduce the interest rate on any superior or inferior mortgage loan without

the Board's permission, provided that no other terms of the loan are changed. The Corporation shall be notified in writing of any such change prior to the Borrower taking such action.

(6) All CWHIP loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR Part 100, and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35.

(7) The documents creating, evidencing or securing each CWHIP loan shall provide that any violation of the terms and conditions described in Rule Chapter 67-58, FAC, constitutes a default under the CWHIP loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(8) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the CWHIP loan.

(9) The Compliance Period for a CWHIP Project shall be the greater of 20 years, the term of the CWHIP loan, or the term of the affordability period committed to in the Response.

(10) For units set-aside as Workforce Housing, Applicants are responsible for limiting the sales price of any unit to not more than 80 percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher, and require that all Eligible Persons purchasing the homeownership units occupy the homes as their primary residence, and ensuring that the purchase price of the property after construction does not exceed the appraised value of the property.

(11) The Corporation shall acquire real and personal property or any interest in the Project if that acquisition is necessary to protect any loan; sell, transfer, and convey any such property to an Eligible Person without regard to the provisions of Sections 253 and 270, FS; and, if that sale, transfer, or conveyance cannot be consummated within a reasonable time, lease the Project for occupancy by Eligible Persons.

(12) Loans shall be assigned to Eligible Persons on a pro-rata basis with each set-aside unit closing.

(13) Units set aside for Workforce Housing shall be deed-restricted for resale to Eligible Persons at a sales price of not more than 80 percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher, at the time of resale.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.090 Disbursement of Funds, Draw Requests, and Construction Loan Servicing

(1) CWHIP loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the CWHIP loan to the Total Development Cost unless approved by the Credit Underwriter.

(2) Ten business days prior to each Draw, the Borrower shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Borrower for a Draw. The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.

(3) The Corporation and its servicer shall review the request for a Draw, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation.

(4) The Corporation shall disburse construction Draws through Automated Clearing House (ACH). The Borrower may request disbursement of construction Draws via a wire transfer. The Borrower will be charged a fee of \$10 for each wire transfer requested. This charge will be netted against the Draw amount.

(5) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Borrower in connection with the request for a Draw, if:

(a) The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs from that as shown on the loan documents; or

(b) The percentage of progress of construction of the improvements differs from that shown on the request for a Draw.

(6) The servicer may request submission of revised construction budgets.

(7) If the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Draw, the Borrower shall pay to the Credit Underwriter a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter.

(8) Retainage in the amount of 10 percent per Draw shall be held by the servicer during construction until the Project is 50 percent complete. At 50 percent completion, no additional retainage shall be held from the remaining

Draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the CWHIP loan agreement.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.100 Terms of the Loan to Eligible Persons

(1) CWHIP loans to Eligible Persons shall be for a period of not more than 30 years. The loan term may exceed 30 years as required to be coterminous with the first mortgage or if otherwise approved by the Board.

(a) For forgivable loans, the loan, including the accruing 1 percent simple interest per annum, shall be forgiven pro-rata each year as long as the set-aside unit remains in compliance.

(b) For loans that are not forgivable, the repayment terms shall be at 3 percent interest fully amortizing for the term of the loan.

(2) The CWHIP loan to an Eligible Person must be in not lower than second position unless otherwise approved by the Board.

(3) Units must be sold to Eligible Persons that qualify at the time of purchase contract execution. Eligible Persons must agree to occupy the unit as their principal residence throughout the period of affordability or transfer the property in accordance with the resale restrictions throughout the period of affordability.

(4) Loans to Eligible Persons shall be evidenced by a properly executed note and secured by a properly executed and recorded mortgage provided by the Corporation.

(5) The Eligible Person must maintain replacement cost hazard insurance naming the Corporation as an additional insured.

(6) A mortgagee policy of title insurance in the amount of the CWHIP loan to the Eligible Person must be provided naming the Corporation as an additional insured.

(7) The Corporation will consider resubordinating its existing second mortgage loan to an Eligible Person to a first mortgage loan when a refinancing occurs. In making a determination, the Corporation will review the following terms of the new transaction: loan type; term of the loan; interest rate; type of interest rate (variable or fixed); principal balance of the loan; reason for requesting subordination of the loan; and whether or not the terms of the new loan are beneficial to the Eligible Person. Eligible Persons requesting resubordination are subject to the following:

(a) The Eligible Person must have resided in the property for at least 1 year prior to requesting the resubordination;

(b) No additional debt can be refinanced into the new first mortgage with the exception of home repairs or improvements;

(c) The Eligible Person cannot receive any cash out as a result of the refinancing; and

(d) The Eligible Person is limited to one resubordination.

(8) Any Eligible Person requesting resubordination is subject to a one time processing fee not to exceed \$50. In the event it is determined that the borrower is not eligible for resubordination, 50 percent of the processing fee will be returned to the Eligible Person. Failure to submit the appropriate documentation and fees may result in a delay in receiving the resubordination agreement.

(9) Eligible Persons must comply with all deed restrictions including those regarding resale of the set-aside unit. Before a unit may resold, the potential purchasers must submit to the Credit Underwriter all documentation necessary for the Credit Underwriter to determine that the potential purchaser qualifies as an Eligible Person. In addition, the Credit Underwriter must determine that the sales price for that set-aside unit is not more than 80 percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher. The Credit Underwriter must also verify that the potential purchaser will occupy the set-aside unit as their primary residence.

(10) The Corporation shall acquire real and personal property or any interest in the Project if that acquisition is necessary to protect any loan; sell, transfer, and convey any such property to an Eligible Person without regard to the provisions of Chapters 253 and 270, FS; and, if that sale, transfer, or conveyance cannot be consummated within a reasonable time, lease the Project for occupancy by Eligible Persons.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

67-58.110 Permanent Loan Servicing – Annual Review

The Corporation's servicer shall annually certify permanent residency and insurance certification of the Eligible Person occupying a CWHIP unit.

Specific Authority Ch. 2006-69, s. 27, LOF

Law Implemented Ch. 2006-69, s. 27, LOF, History-New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Bridget Warring, Homeownership Programs Manager
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
(850) 488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:

David R. Westcott, Deputy Development Officer, Homeownership
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
(850) 488-4197

DATE PROPOSED RULE DEVELOPMENT APPROVED:

June 9, 2006 Corporation Board Meeting

DATE PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW:

Volume 32, Number 27, July 7, 2006

Any person requiring special accommodation at this hearing because of a disability or physical impairment should contact Bridget Warring at the above address. If you are hearing or speech impaired, please use the Florida Dual Party Relay system, which can be reached at 1-800-955-8770 (Voice) or 1-800-955-9771 (TDD).