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**Sent:** Monday, March 18, 2019 10:35 AM  
**To:** Marisa Button <[Marisa.Button@floridahousing.org](mailto:Marisa.Button@floridahousing.org)>  
**Cc:** Trey Price <[Trey.Price@floridahousing.org](mailto:Trey.Price@floridahousing.org)>; Jason Unger <[Jason.Unger@gray-robinson.com](mailto:Jason.Unger@gray-robinson.com)>  
**Subject:** 2019 Rule Development - Rule 67-21

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Marisa,

We are writing to provide comment on the draft rules and rulemaking for Rule Chapter 67-21 FAC.

Attached are specific comments identified and bookmarked within the draft rule and below is a discussion of the basis for our comments.

### **Maximizing Economic Growth and Production of Affordable Multi-Family Rental Housing with un-utilized non-competitive Private Activity Bond Allocation**

- The 2019 Private Activity Bond (PAB) Allocation in Florida provides a total of \$1,604,196,844 in bond allocation available for multifamily housing.
- According to the Florida Division of Bond Finance Historical Program Activity Report, from 2005 thru 2017, Florida issued less than 43% of the available \$23 billion in PAB Allocation.
- Based upon the 2015 Florida Housing Finance Corporation (FHFC) Economic Contributions Report, there were \$79,200,000 in FHFC Multi-family Mortgage Revenue Bonds (MMRB) issued in 2015 for 1,084 new units generating \$170,734,047 in Total Development Costs, which generated \$327,297,653 in Direct Economic Output, 2,357 jobs, \$107,128,401 in income/wages, and \$172,196,305 in Valued Added.
- Considering **just** the Direct Economic Output, the \$79,200,000 in FHFC MMRB in 2015 generated \$327,297,653 in Direct Economic Output or 413% of the MMRB amount issued.
- In 2017, \$541,168,540 was issued in MMRB by both FHFC and the Regional HFAs, which is **just 37%** of the new 2017 PAB allocation, excluding Carry Forward.
- **Based upon interpolation from the 2015 Study, \$1 billion in MMRB issued from the undersubscribed annual PAB Allocation would generate over \$4 billion in Direct Economic Output and over 13,000 in new affordable housing units.**

We would like to encourage FHFC to prioritize reducing fees, rules and restrictions that limit the maximum effectiveness of the MMRB program in generating new economic development activity and new affordable housing. Private Activity Bonds issued as MMRB with non-competitive 4% LIHTC are highly regulated through Federal guidelines. Those guidelines and regulations should be the **only** restriction to maximum utilization of this undersubscribed resource. **We would encourage direction from the FHFC Board that undersubscribed MMRB**

issued in conjunction with non-competitive 4% LIHTC and without other Federal or State resources should be restricted to the minimum fees necessary to cover program expenses and should remove all rules that create restrictions beyond the requirements of the Federal tax-exempt MMRB program and Federal LIHTC program minimums.

Thank you for your time and consideration.

**W. Scott Culp**



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*You can send me large files via this confidential drop box;*

<https://spaces.hightail.com/uplink/Scott-Culp>

(10) "Application" means the forms and exhibits created by the Corporation for the purpose of providing the means to apply for MMRB only, Non-Competitive Housing Credits only, or both MMRB and Non-Competitive Housing Credits, as outlined in subsection 67-21.003(1), F.A.C. A completed Application may include additional supporting documentation provided by an Applicant.

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

(12) "Bond Counsel" means the attorney or law firm retained by the Corporation to provide the specialized services generally described in the industry as the role of bond counsel.

(13) "Bond" or "Bonds" means Bond as defined in section 420.503, F.S.

(14) "Bond Trustee" or "Trustee" means a financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bond holders, and in some instances the Corporation, in enforcing the terms of the Program Documents.

(15) "Building Identification Number" means, with respect to a Housing Credit Development, the number assigned by the Corporation to describe each building in a Housing Credit Development, pursuant to Internal Revenue Service Notice 88-91.

(16) "Calendar Days" means the seven (7) days of the week.

(17) "Commercial Fishing Worker" means Commercial fishing worker as defined in section 420.503, F.S.

(18) "Competitive Housing Credits" or "Competitive HC" means those Housing Credits which come from the Corporation's annual Allocation Authority.

(19) "Compliance Period" means a period of time that the Development shall conform to all set-aside requirements as described further in the rule chapter and agreed to by the Applicant in the Application.

(20) "Contact Person" means the person with whom the Corporation will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

(21) "Corporation" means the Florida Housing Finance Corporation as defined in section 420.503, F.S.

(22) "Cost of Issuance Fee" means the fee charged by the Corporation to the Applicant for the payment of the costs and expenses associated with the sale of Bonds and the loaning of the proceeds, including a fee for the Corporation.

(23) "Credit Enhancement" means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to the Corporation or its Trustee for a minimum of ten years by a third party Credit Enhancer or financial institution securing, insuring or guaranteeing the repayment of the Mortgage Loan or Bonds under the MMRB Program.

(24) "Credit Enhancer" means a financial institution, insurer or other third party which provides a Credit Enhancement or guarantee instrument acceptable to the Corporation securing repayment of the Mortgage Loan or Bonds issued pursuant to the MMRB Program.

(25) "Credit Underwriter" means the independent contractor under contract with the Corporation having the responsibility for providing Credit Underwriting services.

(26) "Credit Underwriting" means an in-depth analysis by the Credit Underwriter of all documents submitted in connection with an Application.

(27) "Credit Underwriting Report" means the report that is a product of Credit Underwriting.

(28) "Cross-collateralization" means the pledging of the security of one Development to the obligations of another Development.

(29) "DDA" or "Difficult Development Area" means areas designated by the Secretary of Housing and Urban Development as

# Summary of Comments on CHAPTER 67-21

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How is the "fee for the Corporation" determined? Why is this language necessary? The prior sentence addressed all "costs and expenses".

§1701q), 236 of the National Housing Act (12 U.S.C. §1701), 514, 515, or 516 of the U.S. Housing Act of 1949 (42 U.S.C. §1484), or 811 of the U.S. Housing Act of 1937 (42 USC §1437), or either has PBRA or is public housing assisted through ACC. If funded through the Corporation, the Development must maintain at least the same number of PBRA or ACC units. Such developments must not have closed on funding from HUD or RD after 1996 where the budget was at least \$10,000 per unit for rehabilitation in any year.

(86)(85) “Principal” means:

(a) ~~With respect to an Applicant that is:~~

~~1. For aA corporation, at the first principal disclosure level, each any officer, director, executive director, and or shareholder of the Applicant corporation, and, with respect to any shareholder of the Applicant corporation, at the second principal disclosure level, that is:~~

~~a. A corporation, each any officer, director, executive director, and or shareholder of the corporation,~~

~~(b)b. For aA limited partnership, each any general partner and each or limited partner of the limited partnership,;~~

~~(c)c. For aA limited liability company, each any manager and each or member of the limited liability company,;~~

~~(d)d. For aA trust, each any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline,~~

~~(e) For a Public Housing Authority, each officer, director, commissioner, and executive director of the Authority, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and, with respect to any shareholder entity identified at the second principal disclosure level that is:~~

~~e. A corporation, by the third disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,~~

~~f. A limited partnership, by the third principal disclosure level, any general partner or limited partner of the limited partnership, each of whom must be a natural person,~~

~~g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, each of whom must be a natural person, or~~

~~h. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons.~~

~~2. A limited partnership, at the first principal disclosure level, any general partner or limited partner of the Applicant limited partnership, and, unless otherwise excluded at subsection 67-21.002(9), F.A.C., with respect to any general partner or limited partner of the Applicant limited partnership, at the second principal disclosure level, that is:~~

~~a. A corporation, any officer, director, executive director, or shareholder of the corporation,~~

~~b. A limited partnership, any general partner or limited partner of the limited partnership,~~

~~c. A limited liability company, any manager or member of the limited liability company, or~~

~~d. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and, with respect to any entity identified at the second principal disclosure level that is:~~

~~e. A corporation, by the third principal disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,~~

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Number: 1      Author: sculp      Subject: Sticky Note      Date: 3/18/2019 10:27:34 AM

What is purpose of identifying the beneficiaries of a Trust? Can this purpose be accomplished in another manner? Can there be some form of Certification that none of the beneficiaries of the trust that have not been disclosed have been, or will be, actively involved in the development or management of affordable housing?

Does this definition of "Principal" create more new "experienced" Developers than intended?

~~3. A limited liability company, at the first principal disclosure level, any manager or member of the Developer limited liability company, and, with respect to any manager or member of the Developer limited liability company that is:~~

- ~~a. A corporation, at the second principal disclosure level, any officer, director or shareholder of the corporation,~~
- ~~b. A limited partnership, at the second principal disclosure level, any general partner or limited partner of the limited partnership, or~~
- ~~c. A limited liability company, at the second principal disclosure level, any manager or member of the limited liability company.~~

~~(87)(86)~~ “Private Placement” means the sale of the Corporation Bonds directly or through an Investment Banker to 35 or fewer initial purchasers who are not purchasing the Bonds with the intent to offer the Bonds for retail sale and who are Qualified Institutional Buyers.

~~(88)(87)~~ “Program Documents” or “Loan Documents” means the MMRB Loan Commitment, MMRB Loan Agreement, Note, Mortgage, Credit Enhancement, MMRB Land Use Restriction Agreement, trust indenture, preliminary and final official statements, intercreditor agreement, assignments, bond purchase agreement, compliance monitoring agreement, mortgage servicing agreement and such other ordinary and customary documents necessary to issue and secure repayment of the Bonds and the MMRB Loan sufficient to protect the interests of the Bond owners and the Corporation.

~~(89)(88)~~ “QCT” or “Qualified Census Tract” means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50 percent or more of the households at an income which is less than 60 percent of the area median gross income, or a poverty rate of not past 25 percent, in accordance with section 42(d)(5)(C) of the Internal Revenue Code.

~~(90)(89)~~ “Qualified Institutional Buyer” is sometimes called a “sophisticated investor” and specifically includes the following:

(a) Any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers that, in the aggregate, own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:


1. Any insurance company as defined in section 2(13) of the Securities Act of 1933,
2. Any investment company registered under the Investment Company Act of 1940 or any business development company as defined in section 80a-2(a)(48) of that Act,
3. Any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958,
4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees,

5. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974,
6. Trust funds of various types, except for trust funds that include participants’ individual retirement accounts or H.R. 10 plans,
7. Any business development company as defined in section 80b-2(a)(22) of the Investment Advisors Act of 1940,
8. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (except a bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Act of 1933, or a foreign bank or savings and loan or similar institution), partnership, Massachusetts or similar business trust, or any investment adviser registered under the Investment Advisors Act.

(b) Any dealer registered under section 15 of the Securities Exchange Act of 1934, acting on its own behalf or on the behalf of other Qualified Institutional Buyers who in the aggregate own and invest at least \$10 million of securities of issuers not affiliated with the dealer (not including securities held pending public offering).

(c) Any dealer registered under section 15 of the Securities Exchange Act of 1934 acting in a riskless principal transaction on

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 Number: 1      Author: sculp      Subject: Sticky Note      Date: 3/18/2019 10:28:01 AM  
What about Private Placement to Sophisticated Investors?

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 Number: 2      Author: sculp      Subject: Sticky Note      Date: 3/18/2019 10:28:30 AM  
This definition excludes "sophisticated investor"



(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties, of which the total cost cannot exceed the appraised value of the real property as determined in the Credit Underwriting process.

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

(c) Any expenses relating to the issuance of Tax-exempt Bonds or Taxable Bonds related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, Developer Fee, and the Corporation. However, fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against the Corporation with respect to a Development shall not be included in Total Development Cost.

(e) 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 Development.

(f) The cost of the construction, rehabilitation, and equipping of the Development.

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

(h) Expenses in connection with initial occupancy of the Development.

(i) Allowances for contingency reserves and any anticipated operating reserves as recommended by the Credit Underwriter and approved by the Corporation.

(j) The cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the Corporation's bonds, for the construction or Rehabilitation of the Development.

(4) In determining the income standards of Eligible Persons for its various programs, the Corporation shall take into account the following factors:

(a) Requirements mandated by federal law.

(b) Variations in circumstances in the different areas of the state.

(c) Whether the determination is for rental housing.

(d) The need for family size adjustments to accomplish the purposes set forth in this rule chapter.

With respect to the HC Program, an Eligible Person shall mean a Family having a combined income which meets the income eligibility requirements of the HC Program and Section 42 of the IRC.

(5) Financial Beneficiary and Affiliate, as defined in rule 67-21.002, F.A.C., do not include third party lenders, third party management agents or companies, third party service providers, Housing Credit Syndicators, credit enhancers regulated by a state or federal agency, or contractors whose total fees are within the limit described in this rule chapter.

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

(7) Disclosure of the Principals of the Applicant must comply with the following: 

(a) The Applicant must disclose all of the Principals of the Applicant (first disclosure level);

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



(c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third disclosure level). Unless the entity is a trust, all of the Principals must be natural persons; and

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

(8) Disclosure of the Principals of each Developer must comply with the following.

(a) The Applicant must disclose all of the Principals of the Developer (first disclosure level); and

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

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.509, 420.5099 FS. History—New 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17, Amended 7-8-18,\_\_\_\_\_.*

### **67-21.003 Application and Selection Process for Developments.**


(1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

(a) If the NC Award will be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule chapter 67-60, F.A.C., the Applicant shall apply for the NC Award using the forms and procedures specified in the applicable competitive solicitation for such other funding. Unless otherwise specifically provided in the solicitation, all of the substantive provisions of this chapter will continue to apply to the NC Award. Any references in this chapter to “Application” shall mean the application or response submitted for such other funding.


(b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. \_\_\_\_\_ 05-2018) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation’s website under the Multifamily Programs link labeled Non-Competitive Programs or from \_\_\_\_\_ <http://www.flrules.org/Gateway/reference.asp?No=Ref-09576>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

(c) All Applications must be complete, legible and timely when submitted, except as described below. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation’s facilities or equipment for purposes of compiling or completing an Application.

(2) For purposes of the Non-Competitive Application Package, failure to submit an Application completed in accordance with the Application instructions and these rules will result in the failure to meet threshold in accordance with the instructions in the Application and this rule chapter.

 For purposes of the Non-Competitive Application Package, each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Non-Competitive Application Package and these rules. The Contact Person shall be notified by e-mail of items identified by the Corporation to be addressed by the Applicant, which may include financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the

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 Number: 1      Author: sculp      Subject: Sticky Note      Date: 3/18/2019 10:29:35 AM  
"scored" - why is there "scoring" for non-competitive applications? Should this be eligibility requirements?

inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

(k) Submission of one original hard copy with the required number of photocopies of the Application by the applicable Application submission deadline, as outlined in the Non-Competitive Application instructions;

(l) Payment of the required Application fee and, if applicable, the TEFRA fee at submission of the Application;

(m) The Application labeled "Original Hard Copy" must include a properly completed Applicant Certification reflecting an original signature.

All other items may be submitted as cures pursuant to subsection (4), above.

(9) A Development will be withdrawn from funding and any outstanding commitments for funds will be rescinded if at any time the Board of Directors determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application or to the Credit Underwriter, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(10) If an Applicant or Developer or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer has any existing Developments participating in any Corporation programs that remain in non-compliance with the Internal Revenue Code, title 67, F.A.C., or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the Application or at the time of issuance of a Credit Underwriting Report, the requested allocation will, upon a determination by the Board of Directors that such non-compliance substantially increases the likelihood that such Applicant or Developer will not be able to produce quality affordable housing, be denied and the Applicant or Developer and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Corporation's programs until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(11) The withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs.

(12) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is requested in writing and approved in writing by the Corporation. The Corporation shall consider the facts and circumstances of each Applicant's request and any Credit Underwriting Report, if available, prior to determining whether to grant such request.

(13) For Applications requesting MMRB:

(a) The Corporation shall initiate TEFRA Hearings on the proposed Developments after Applications are submitted. Neither the TEFRA Hearing, the invitation into Credit Underwriting, nor the Acknowledgment Resolution obligate the Corporation to finance the proposed Development in any way.

(b) Upon receipt of the Credit Underwriting Report, the Corporation shall submit the Credit Underwriting Report to its IRMA for a preliminary recommendation of the method of bond sale for each Development pursuant to rule 67-21.0045, F.A.C.

(c) The Corporation shall notify the Applicant, in writing, of the Board of Directors determination related to approval of the Credit Underwriting Report and require the Applicant to submit the good faith deposit within 14 Calendar Days from the receipt of such notice.

(d) Upon Board of Directors approval of a Credit Underwriting Report and a preliminary recommendation for the method of bond sale from the Corporation's IRMA, staff shall proceed with activities necessary to facilitate issuance of the bonds. This shall





specifying the method of sale.



(2) Following receipt of the Credit Underwriting Report, staff shall provide the Corporation’s IRMA copies of such report for review and preparation of a written recommendation for the method of Bond sale.

(3) In preparing a recommendation for the method of sale to the Board of Directors, the IRMA shall consider the following:

- (a) The anticipated credit and security structure of the transaction;
- (b) The proposed financing structure of the transaction;
- (c) The Corporation’s programmatic objectives; and,
- (d) Other factors identified by staff, counsel, or the Applicant.

(4) The written recommendation shall include an identification of the Development, the recommended method of sale, and a summary statement as to why the particular method of sale is being recommended.

(5) For those transactions that the Corporation’s IRMA recommends as candidates for a competitive sale, the Corporation shall engage a structuring agent. The Applicant may, at its sole expense, engage a financial advisor for the transaction. Any cost to the Applicant for the financial advisor engaged by the Applicant in excess of \$18,000 must be paid out of the Developer Fee.

(6) For those transactions that the Corporation’s IRMA recommends for a negotiated sale, the Corporation shall appoint an underwriter or placement agent.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507(4), (13), (19), (20), 420.508, 420.509(12) FS. History—New 1-7-98, Formerly 9I-21.0045, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01, Amended 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17, Amended 7-8-18, Repromulgated \_\_\_\_\_.*

**67-21.006 MMRB Development Requirements.**

A Development shall at a minimum meet the following requirements or an Applicant shall be able to certify that the following requirements shall be met with respect to a Development:

(1) Must provide safe, sanitary and decent multifamily residential housing for lower, middle and moderate income persons or families.

(2) Must be owned, managed and operated as a Development to provide multifamily residential rental property comprised of a building or structure or several proximate buildings or structures, each containing two (2) or more dwelling units and functionally related facilities, in accordance with section 142(d) of the Internal Revenue Code.

(3) The Development shall consist of similar units, containing complete facilities for living, sleeping, eating, cooking and sanitation for a Family.

(4) None of the units in the Development shall be used on a transient basis, nor shall they be knowingly leased for a period of less than 180 days unless a determination is made by the Corporation that there is a specific need in that particular area for leasing arrangements of less than 180 days, but in no event shall a lease be for a period less than 30 days, nor shall a Development be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home or trailer court or park.

(5) All of the dwelling units shall be rented or shall be available for rent on a continuous basis to members of the general public, and the Applicant shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be occupied in compliance with the Internal Revenue Code or are being held for the

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Number: 1 Author: sculp Subject: Sticky Note Date: 2/28/2019 10:51:30 AM -05'00'  
Does Private Placement go to the IRMA?

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Number: 2 Author: sculp Subject: Sticky Note Date: 2/28/2019 10:53:14 AM -05'00'  
What is the purpose of the "two (2) or more"? Federal bond regs do not exclude buildings of one unit.



accordance with an investment agreement subject to the requirements of the Internal Revenue Code for Tax-exempt Bonds.

(4) The Applicant shall also establish and maintain escrow deposits sufficient to pay any insurance premiums and applicable taxes, as determined by the MMRB Loan Agreement.

(5) The Corporation shall charge such program administration fees as are required to pay the cost of administering the program during the life of the Bonds and MMRB Loan.

(6) The interest rate on the MMRB Loan shall be determined by the Corporation at the time of sale of the Bonds based on the financing structure and the interest rate on the Bonds.

(7) Prepayments shall be permitted only in accordance with the terms and conditions of the Program Documents.

(8) The Corporation shall appoint a Trustee and servicing agent when necessary to administer the program and service the MMRB Loan.

(9) All MMRB Loans are contingent upon:

(a) The sale, issuance and delivery of the Bonds and the availability of Bond proceeds.

(b) The Applicant obtaining title insurance on the property.

(c) The Applicant obtaining all governmental approvals for constructing and operating the Development as a multifamily housing Development.

(d) The Applicant providing to the Corporation, Bond Counsel and Special Counsel the Note, Mortgage, financing statements, survey, insurance policies, escrow agreement, investment agreements, opinions of counsel including preference opinions, if required, and such other documents as are necessary to ensure that the Corporation has a secured Mortgage Loan.

(e) If required by Bond Counsel in order to deliver their opinion in connection with the issuance of the Bonds or at the request of the Corporation, the Bonds being validated pursuant to chapter 75, F.S., and a certificate of no appeal issuing.

(f) Receipt of TEFRA approval for Tax-exempt Bonds.

(10) All MMRB Loans shall be reviewed and originated by a servicer designated by the Corporation, in conformance with the Act.

(11) The Applicant shall agree to execute or cause to be executed all of the MMRB Program Loan Documents required by the Corporation to secure the unconditional payment of the MMRB Loan and to retain the tax-exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

(12) The Applicant shall, prior to the requested date for funding, or as requested during Credit Underwriting, supply in draft form to the Corporation the following documents with respect to the Development being financed, together with any other documents required by the MMRB Loan Agreement:

(a) A survey, as described in the Application, dated within 90 days of the date submitted showing the location of all improvements, encroachments, easements and rights-of-way, and a site plan which has been approved by the appropriate governmental authorities.

(b) A fully completed, executed and sealed surveyors' certification to the Corporation.


(c) Written evidence of appropriate zoning and governmental approvals.

(d) Plans and specifications bearing the seal of a licensed engineer.

(e) Written evidence of required insurance and payment of premiums.

(f) Required opinions of counsel necessary for the issuance of the Bonds.

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 Number: 1      Author: sculp      Subject: Sticky Note      Date: 2/28/2019 10:59:58 AM -05'00'

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is the interest rate determined by the Corporation in Private Placements?

(18) All of the dwelling units within a Development shall be rented or available for rent on a continuous basis to members of the general public. The owner of the Development shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be rented to Eligible Persons. All Developments must comply with the Fair Housing Act as implemented by 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 as implemented by 24 CFR Part 8 (“Section 504 and its related regulations”), and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35. To the extent that a Development is not otherwise subject to Section 504 and its related regulations, the Development shall nevertheless comply with Section 504 and its related regulations as requirements of the MMRB Program to the same extent as if the Development were subject to Section 504 and its related regulations in all respects. To that end, for purposes of the MMRB Program, an MMRB Loan shall be deemed “Federal financial assistance” within the meaning of that term as used in Section 504 and its related regulations for all Developments.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.502, 420.507(4), (6), (9), (11), (21), 420.508 FS. History—New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.008, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, Amended 3-30-08, Repromulgated 8-6-09, Amended 11-7-11, 7-16-13, 2-2-15, 9-15-16, 5-24-17, 7-8-18, Repromulgated \_\_\_\_\_.*

#### **67-21.009 Interest Rate on Mortgage Loans.**



The Corporation shall establish the interest rate on Mortgage Loans at the time of sale of the Bonds. The interest rate shall in no event exceed the arbitrage limit which is legally allowed without jeopardizing the tax exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented Chapter 75, 420.507, 420.508, 420.509 FS. History—New 12-3-86, Amended 1-7-98, Formerly 9I-21.009, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, 2-2-15, 9-15-16, 5-24-17, 7-8-18, \_\_\_\_\_.*

#### **67-21.010 Issuance of Revenue Bonds.**

The Corporation shall fund Mortgage Loans with the proceeds from the sale of Bonds. The issuance and sale of the Bonds shall be governed by resolutions adopted by the Corporation and by section 420.509, F.S., and this rule chapter. If Bonds cannot be sold or cannot be sold in an amount or at an interest rate or under conditions which satisfy the Credit Underwriting Report, as the same may be amended, the Corporation shall terminate its MMRB Loan Commitment and such other agreements as were executed in conjunction with the proposed MMRB Loan.


*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507(6), 420.508, 420.509 FS. History—New 12-3-86, Amended 1-7-98, Formerly 9I-21.010, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, Amended 2-2-15, Repromulgated 9-15-16, 5-24-17, 7-8-18, \_\_\_\_\_.*

#### **67-21.013 Non-Credit Enhanced Multifamily Mortgage Revenue Bonds.**



Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender. The Corporation shall engage the Investment Banker with respect to such Bonds. The Corporation, in its discretion, will allow only one of either an underwriting discount or a placement agent fee, but not both. Unless such Bonds are rated in one of the four highest rating categories by a nationally recognized rating service and are the subject

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 Number: 1      Author: sculp      Subject: Sticky Note      Date: 3/18/2019 10:32:00 AM  
Does the Corporation determine the interest rate on Private Placement?

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 Number: 2      Author: sculp      Subject: Sticky Note      Date: 2/28/2019 11:04:37 AM -05'00'  
no provision for sale to sophisticated investor?

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of a Credit Enhancement instrument, such Bonds shall comply with at least one of the following criteria:

(1) The Bonds shall be issued in minimum denominations of \$100,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds (including the underwriter and any purchaser purchasing the Bonds in an immediate resale from an underwriter), and all subsequent purchasers of the Bonds, or

(2) The Bonds shall be issued in minimum denominations of \$250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds (including the underwriter and any purchaser purchasing the Bonds in an immediate resale from an underwriter), but an investment letter shall not be required of subsequent purchasers of the Bonds. Any investment letter shall state, among other things, that such purchaser is a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender, is purchasing such Bonds for its own account and not for immediate resale to a purchaser other than a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender, and has made an independent investment decision as a sophisticated or institutional investor.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.507(4), (5), (6), (9), (11), (14), (16), (18), (19), (20), (21), 420.509 FS. History—New 11-23-94, Amended 1-7-98, Formerly 9I-21.013, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, 8-6-09, 11-7-11, 7-16-13, Amended 2-2-15, 9-15-16, 5-24-17, 7-8-18, Repromulgated \_\_\_\_\_.*

#### **67-21.014 MMRB Credit Underwriting Procedures.**

Credit Underwriting is a de novo review of all information supplied, received or discovered during or after any application scoring process, prior to the closing on funding. The success of an Applicant in being selected for funding is not an indication that the Applicant will receive a positive recommendation from the Credit Underwriter or that the Development team's experience, past performance or financial capacity is satisfactory.

(1) An invitation into Credit Underwriting shall require that the Applicant submit the Credit Underwriting and appraisal fee and information required to complete the Credit Underwriting, to the Credit Underwriter in accordance with the schedule established by the Corporation upon the recommendation of the Credit Underwriter. Failure to submit the Credit Underwriting and appraisal fee or meet the deadlines as set forth in the schedule shall result in the immediate termination of Credit Underwriting activities.

(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



fees, if any, and any financial or other guarantees required for the financing must be paid out of the Developer Fee. Consulting fees include payments for Application consultants, construction management or supervision, Local Government consultants and property acquisition brokerage fees when in excess of the appropriate limit. The maximum brokerage fees shall be limited to the lesser of \$300,000 or a percent of the acquisition price, which shall be set at 4 percent when the acquisition price is \$5 million or less, 3 percent when the acquisition price is \$10 million or less, and 2 percent when the acquisition price is in excess of \$10 million. Fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against the Corporation with respect to a Development shall also not be included in Total Development Costs. Fees for services provided by architects, accountants, appraisers, engineers or financial advisors engaged by the Applicant as outlined in subsection 67-21.0045(5), F.A.C., may be included as part of the Total Development Costs, except that those fees for a financial advisor engaged by the Applicant that are in excess of \$18,000 must be paid out of the Developer Fee. In the event of extraordinary circumstances, Applicant may petition the Board for relief from the cap on Investment Banker fees. The Corporation shall not authorize fees to be paid for duplicative services or duplicative overhead.

(r) General Contractor's fees are inclusive of general requirements, profit and overhead and shall be limited to 14 percent of actual construction costs. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements. Additionally, fees shall be allowed to be paid only to the person or entity that actually meets the definitional requirements to be considered a General Contractor. The Corporation shall not allow fees for duplicative services or duplicative overhead. The General Contractor must meet the following conditions:

1. Employ a Development superintendent and charge the costs of such employment to the general requirements line item of the General Contractor's budget inclusive of the general requirement items related to construction costs identified in The Final Cost Certification Application Package,

2. Charge the costs of the Development construction trailer, if needed, and other overhead to the general requirements line item of the General Contractor's budget,

3. Secure building permits, issued in the name of the General Contractor,




4. If deemed necessary by the Corporation and the Credit Underwriter in their evaluation of construction completion guarantees in paragraph (2)(e), above, secure a payment and performance bond whose terms do not adversely affect the Corporation's interest, issued in the name of the General Contractor, from a company rated at least "A-" by AMBest & Co., or a Corporation-approved alternate security for the General Contractor's performance such as a letter of credit issued by a financial institution with a senior long term (or equivalent) credit rating of at least "Baa3" by Moody's, or at least "BBB-" by Standard & Poor's or Fitch, or a financial rating of at least 175 by IDC Financial Publishing,

5. Ensure that none of the General Contractor duties to manage and control the construction of the Development are subcontracted,

6. Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor,

7. Ensure that not more than 20 percent of the construction cost, not to include the General Contractor fee or pass-through fees paid by the General Contractor, is subcontracted to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor, with the exception of a subcontractor (or any group of entities that have common ownership or

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 Number: 1      Author: sculp      Subject: Sticky Note      Date: 2/28/2019 11:12:01 AM -05'00'

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need some clarification that bond purchaser may waive this in Private Placement



requirements by the Treasury for the transfer of the Housing Credit Development. The proposed transferee agrees to maintain all set-asides and other requirements of the Extended Use Agreement for the period originally specified; pay any and all unpaid compliance monitoring fees through the end of the Extended Use Agreement; and execute any assignment and assumption documents the Corporation deems necessary to effectuate the ownership change. For those Developments that have not waived the right to submit a qualified contract, any transfer of that Development will require the transferee to agree to a waiver of <sup>1</sup> right to submit a qualified contract before approval of the transfer will be provided by the Corporation. <sup>2</sup> The transfer requirements will be determined by the rule in effect at the time of the transfer request. All requests which only require subordination of the regulatory agreements must be submitted in writing to the Director of Special Assets and contain the specific details of the subordination. In addition to any related professional fees, the Corporation shall charge a non-refundable subordination fee of \$1,000 for each regulatory agreement to be subordinated. The applicable fee will be determined by the rule in effect at the time of the subordination request.

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History—New 7-16-13, Repromulgated 2-2-15, 9-15-16, 5-24-17, Amended 7-8-18,\_\_\_\_\_.*


#### **67-21.031 Qualified Contracts.**

(1) An owner's written request to the Corporation for a qualified contract (a "qualified contract request") shall be governed by 26 CFR 1.42-18 (the "qualified contract regulations"), Section 42 of the IRC, as applicable, and this rule section in effect at the time of the qualified contract request.


(2) In submitting a qualified contract request, and in keeping with the intent of this rule and the governing law, the owner of the Development is presumed to do so with good faith intent to sell the Development when presented with a qualified contract. While the qualified contract request may ultimately result in the termination of the Extended Use Agreement should the Corporation fail to present the owner with a qualified contract during the one-year period (as same may be suspended from time to time), that is the default position and not the intended purpose of a qualified contract request. To that end, for purposes of this rule and processing a qualified contract request, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract by presenting the owner with a contract that meets the requirements of subsection (3), below. It shall be the owner's responsibility to negotiate with the purchaser, in good faith and with the intent to sell the development, the specific terms of the contract, and the owner's rejection of the contract or failure to act on the contract because of terms other than those required in subsection (3), below, shall in no way affect the status of the contract as a qualified contract. The Corporation shall have no duty and is not responsible to either the owner or the purchaser for negotiating the details of the contract following its submission to the owner.

(3) Qualified contract means a bona fide contract (as defined herein) to acquire the development (within a reasonable period after the contract is entered into) for the qualified contract amount (also referred to as the qualified contract price). Bona fide contract means a certain and unambiguous offer to purchase the Development for an amount which equals or exceeds the qualified contract amount (the qualified contract purchase price) made by a purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract to purchase. The bona fide contract shall be in the form of a contract for sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Corporation, and must provide for an initial non-refundable earnest money deposit (the initial deposit) from the purchaser in the minimum amount of \$50,000 and obligate the purchaser to make a second non-refundable earnest money deposit (the second deposit) equal to three (3) percent of the qualified

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 Number: 1 Author: PopPop Subject: Sticky Note Date: 3/17/2019 2:00:08 PM  
Why is waiver of QC right a requirement of this rule?

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 Number: 2 Author: PopPop Subject: Sticky Note Date: 3/17/2019 2:00:51 PM  
How can you subject an Applicant to a future rule?

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