

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
July 22, 2005
Action Items



FINANCE

Action Supplement

I. FINANCE

A. Investment Policy

1. Background

- a) Florida Housing developed and implemented an investment policy in January 1998. The Board of Directors approved the policy.
- b) The policy has been periodically reviewed by staff and Florida Housing's Investment Advisor; however, no changes have been made.

2. Present Situation

- a) Given the current interest rate environment, changes in the policy are needed to provide flexibility to improve the rate of return on investments. Under the existing policy, for example, investments such as the State Treasury's Special Purpose Investment Accounts (SPIAs) are not authorized for investment of general funds.
- b) In order to meet economic conditions as they change, including the use of the Treasurer's SPIAs, greater flexibility is needed in the policy.

3. Recommendation

Grant the Executive Director the authority to modify the investment policy to meet liquidity and / or yield expectations. Such modifications shall be presented to the Board at the next scheduled meeting following any change for ratification.

LEGAL

Action

I. LEGAL

A. In Re: Revised Petition for Negotiated Rulemaking, Chapters 67-21 and 67-48, F.A.C.

1. Background

- a) On June 10, 2005, a “Petition for Negotiated Rulemaking, Chapters 67-21 and 67-48, F.A.C.,” (“Petition”) was filed with Florida Housing on behalf of The Florida Coalition for the Homeless, Inc. (FCH), the Miami Coalition for the Homeless, Inc.(MCH), the Broward County Homeless Initiative Partnership Board (HIP), the Florida Association of Communities Organizing for Reform Now (ACORN), Human-Services Coalition of Miami-Dade County, Inc. (HSC), The Center for Affordable Housing, Inc. (The Center), and Citrus Health Network, Inc. (Citrus Health).
- b) On June 24, 2005, a “REVISED Petition for Negotiated Rulemaking, Chapters 67-21 and 67-48, F.A.C.,” (“Revised Petition”) was filed with Florida Housing. The Revised Petition differs from the Petition in that the Petitioner HIP is changed from “the Broward County Homeless Initiative Partnership Board (HIP)” to “Broward County Board of County Commissioners c/o the Broward County Homeless Initiative Partnership (HIP) Board and Administration.” Also, the description of Petitioner HIP is expanded to include Broward County and its Board of County Commissioners and Office of Housing. (A copy of the Revised Petition is included as [Exhibit “A.”](#))
- c) The Revised Petition seeks negotiated rulemaking for “Chapters 67-21 and 67-48, Florida Administrative Code, (the so-called Universal Rule)” for 2005-2006.” We understand this to mean the 2006 Universal Application Cycle Rule. The Petitioners “recognize that requests for deeper targeting requirements in the rules are both complex and controversial . . . , and believe that such issues need to be discussed in a forum that brings together the nonprofit and profit developers, as well as other stakeholder organizations, for a focused and direct dialogue among those most directly affected by the rules.” Petitioners further assert that the “workshops traditionally held as part of the rule development process are, in their view, not the best method of facilitating.
- d) Section 120.54(2)(d)1, Fla. Stat., provides:
 - (d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2.

LEGAL

Action

Present Situation

Entering into negotiated rulemaking is at the discretion of the agency. To give representation on a negotiating committee to the number and diversity of parties interested in the 2006 Universal Application Cycle rules would result in a very large committee. The draft rule produced by such a committee enjoys no special legal status, and would invite challenge from any interest or party which was not included in the negotiating committee. A copy of the Notice of Hearing is attached as [Exhibit B](#).

3. Recommendation

That the Board Deny the Revised Petition for Negotiated Rulemaking, and invite the organizations represented to participate in the rule development process for the 2006 Universal Application Cycle rule amendments.

LEGAL

Action Supplement

I. LEGAL

A. In Re: “Revised Petition for Negotiated Rulemaking, Chapters 67-21 and 67-48, F.A.C.”

1. Background

- a) On June 10, 2005, a “Petition for Negotiated Rulemaking, Chapters 67-21 and 67-48, F.A.C.,” (“Petition”) was filed with Florida Housing on behalf of The Florida Coalition for the Homeless, Inc. (FCH), the Miami Coalition for the Homeless, Inc.(MCH), the Broward County Homeless Initiative Partnership Board (HIP), the Florida Association of Communities Organizing for Reform Now (ACORN), Human-Services Coalition of Miami-Dade County, Inc. (HSC), The Center for Affordable Housing, Inc. (The Center), and Citrus Health Network, Inc. (Citrus Health).
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- c) The Revised Petition seeks negotiated rulemaking for “Chapters 67-21 and 67-48, Florida Administrative Code, (the so-called Universal Rule)” for 2005-2006.” We understand this to mean the 2006 Universal Application Cycle Rule. The Petitioners “recognize that requests for deeper targeting requirements in the rules are both complex and controversial . . . , and believe that such issues need to be discussed in a forum that brings together the nonprofit and profit developers, as well as other stakeholder organizations, for a focused and direct dialogue among those most directly affected by the rules.” Petitioners further assert that the “workshops traditionally held as part of the rule development process are, in their view, not the best method of facilitating.
- d) On July 5, 2005, Florida Housing filed a “Motion to Dismiss REVISED Petition for Negotiated Rulemaking, Chapters 67-21 and 67-48, F.A.C.” (A copy of the Motion is attached as [Exhibit “B”](#).)
- e) On July 14, 2005, Petitioners filed “Petitioner’s Response in Opposition to Florida Housing’s Motion to Dismiss REVISED Petition for Negotiated Rulemaking, Chapters 67-21 and 67-48, F.A.C.” (A copy of the Response is attached as [Exhibit “C”](#).)

LEGAL

Action Supplement

f) Section 120.54(2)(d)1, Fla. Stat., provides:

- (1) (d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. **Present Situation**

Entering into negotiated rulemaking is entirely at the discretion of the agency. To give effective representation on a negotiating committee to the number and diversity of parties interested in the 2006 Universal Application Cycle rules would result in a very large committee, likely as large as the number of attendants at the corporation's rulemaking workshops. The draft rule produced by such a committee enjoys no special legal status, and would invite challenge from any interest or party which was not included in the negotiating committee.

3. **Recommendation**

That the Board Deny the Revised Petition for Negotiated Rulemaking, and invite the organizations represented to participate in the rule development process for the 2006 Universal Application Cycle rule amendments.

LEGAL

Action Supplement

B. In re: Dixie County SHIP Program

1. Background/Present Situation

- a) On February 28, 2005, a compliance monitoring agent of the Florida Housing Finance Corporation conducted a SHIP Program Review of the Dixie County SHIP program. The report resulting from this review is attached hereto as [Exhibit "D"](#). This report includes unsatisfactory findings regarding the documentation of files and records, applications and processing, income verification, income certification, new construction, rehabilitation or emergency repairs and recipient file discrepancies. The report also noted unsatisfactory administrative procedures, including maximum award, selection criteria, annual report submission, minimum home ownership requirements, income limit set-aside requirements, advertising, organization and supervision, staffing, operating procedures and manuals, and training. As a result, the overall rating of the SHIP Program Review was determined to be unsatisfactory.
- b) Follow-up site visits by the technical assistance provider on April 5, 2005, April 14, 2005, April 28, 2005, and May 5, 2005, revealed that the unsatisfactory findings noted above had not been resolved, and indicated the need for additional site visits.
- c) The deficiencies identified in the attached report constitute a pattern of violation of the criteria for a local housing assistance plan established under Sections 420.907 – 420.9079, Florida Statutes, and Chapter 67-37 and Rule 67-53.005, Florida Administrative Code. Accordingly, all SHIP fund disbursements from the Florida Housing Finance Corporation to Dixie County, Florida were suspended, effective July 1, 2005, and continuing until such time as the County demonstrates correction of the identified deficiencies and complete compliance with the requirements of Chapter 420, Part VII, Florida Statutes, and Chapter 67-37 and Rule 67-53.005, Florida Administrative Code.
- d) The deficiencies described above establish a pattern of violation of the criteria for a local housing assistance plan established under Sections 420.907 – 420.9079, Florida Statutes, and Chapter 67-37, Florida Administrative Code.
- e) Accordingly, Dixie County was notified by letter dated June 16, 2005, that payment of SHIP funds will be suspended, effective July 1, 2005, continuing until such time as the County demonstrates correction of the above deficiencies and complete compliance with the requirements of Chapter 420, Part VII, Florida Statutes, and Chapter 67-37, Florida Administrative Code. (A copy of the letter is attached as [Exhibit "E"](#).) Dixie County filed a response to Florida Housing's letter on July 1, 2005. (A copy of the letter is attached as [Exhibit "F"](#).)

2. Recommendation

Staff recommends that the Board issue an order approving the suspension of SHIP payments with conditions as described above, until such time as the program is in compliance with applicable laws and rules.

MINUTES

Action

II. MINUTES

- A. Consider Approval of the April 22, 2005, [Board of Directors' Meeting Minutes](#).
- B. Consider Approval of the June 10, 2005, [Board of Directors' Meeting Minutes](#).

MULTIFAMILY BONDS

Action Supplement

I. MULTIFAMILY BONDS

- A. Request Approval for an Assumption of LURA Obligations of the Developments financed with Florida Housing's 1999 Series K-1 Bonds in the principal amount of \$17,035,000 in Tax-Exempt Bonds (the "Series 1999 K-1 Bonds") and 1999 Series K-3 Bonds in the principal amount of \$1,135,000 of Subordinate Tax-Exempt Bonds (the Series 1999 K-3 Bonds together with the Series 1999 K-1 Bonds are hereafter referred to as the "Bonds")

DEVELOPMENT NAME ("Developments"):	Sunset Place/Cimarron/Olive Tree Apartments
DEVELOPER/PRINCIPAL ("Developer")/("Owner"):	Coastal Affordable Housing, Inc./The NHP Foundation/Ralex Properties, Inc.(Olive Tree)/Miles Properties, Inc.(Cimarron, Sunset Place)
NUMBER OF UNITS:	138/400/86
LOCATION ("County"):	Pinellas/Hillsborough/Broward
TYPE (Rental, Homeownership):	Rental
SET ASIDE:	20% @ 50%; 60% @ 80%
ALLOCATED AMOUNT:	\$18,170,000 Tax-Exempt Bonds
ADDITIONAL COMMENTS:	Assumption of LURA Obligations

1. Background

- a) In September, 1999, Florida Housing financed the acquisition and rehabilitation of the Developments with \$17,865,000 in Tax-Exempt Bonds, designated as 1999 Series K-1 Bonds, \$395,000 in Taxable Bonds, designated as 1999 Series K-2 and \$1,200,000 in Subordinate Tax-Exempt Bonds designated as 1999 Series K-3.
- b) On August 12, 2004, Standard & Poor's reduced the rating on the privately placed Series 1999 K-1 Bonds from "A" to "BBB-" and on the Series 1999 K-3 Bonds from "BBB" to "BB-" with the comment that the rating reduction was based in part on a decline in debt service coverage.
- c) At the January 14, 2005 board meeting, Florida Housing approved an amendment to the Indenture, which would enable the Owner to purchase the Bonds in lieu of redemption upon an event of default.

2. Present Situation

The Owner has advised Florida Housing that an event of default has occurred and has taken steps to secure financing to purchase the bonds in lieu of redemption. The Owner, in a letter dated July 19, 2005 ([Exhibit "A"](#)), states that once the bonds are purchased it will sell Olive Tree to Ralex Properties, Inc. ("Ralex"), and Cimarron and Sunset Place to Miles Properties, Inc. ("Miles"). Ralex, pursuant to a 1031 exchange, must purchase the Olive Tree property by July 25, 2005. Miles must purchase the remaining properties by August 20, 2005. The Owner states if the purchases do not occur by those dates, they will not take place at all and the Owner will incur significant financial hardship.

3. Recommendation

That the Board approve the Assumption of LURA Obligations after purchase in lieu of redemption of the bonds for the Developments subject to further approvals and verifications by the Credit Underwriter, Bond Counsel, Special Counsel and the appropriate Florida Housing staff.

PREDEVELOPMENT LOAN PROGRAM (PLP)

Action

III. PREDEVELOPMENT LOAN PROGRAM (PLP)

A. Request Approval to Allow Carlisle Development Group, LLC (Carlisle), a Florida For-Profit Corporation, to Act as Co-Developer on Two (2) Additional PLP Loans for Christine Cove Apartments (Applicant - Urban Core Enterprises, a Florida Non-Profit Corporation) and St. Luke's Life Center (Applicant - St. Luke's Ministry, a Florida Non-Profit Corporation)

1. Background

- a) Effective February 3, 2005, Rule Chapter 67-38.002 (1), F.A.C. was amended to limit the number of outstanding PLP loans that an Applicant, Affiliate, limited partnership or general partner thereof may have at any given time. This rule amendment was adopted as a tool to address the limited resources, inherent risks and increase in popularity of the PLP. Developments are at their highest level of risk during the predevelopment stage. By spreading resources over a larger number of diverse applicants, Florida Housing mitigates its risk. It was further determined that pooling of a large percentage of PLP funds among only a few applicants could prevent other non-profit organizations with limited resources and capacity from being able to access the funds, especially with more and more organizations becoming familiar with the availability of PLP funding.
- b) Further, Rule Chapter 67-38.0023(1)(e) allows a limited partnership to apply for the PLP as long as the general partner is a non-profit organization that holds at least a 51% ownership interest in the Development.

2. Present Situation

- a) On May 18, 2005, staff received a letter from Carlisle requesting permission to be an Affiliate (co-developer) of two (2) additional PLP applications ([Exhibit A](#)).
- b) When acting in the capacity of a co-general partner and/or limited partner in a limited partnership created with a non-profit corporation, Carlisle has worked successfully in the PLP. All such loans have remained in good standing throughout their terms. The outstanding loans of the limited partnerships in which they are involved have already been awarded funding through other Florida Housing programs, thus ensuring payoff of the PLP loans. As an experienced developer, Carlisle's involvement in these new joint ventures will assist the Applicants, Urban Core Enterprises and St. Luke's Ministry, to build capacity for the development of affordable housing. Carlisle will act as co-developer and will not have an ownership interest in these two additional developments.
- c) Due to Carlisle's past performance in the PLP, staff believes there is minimal risk attached to the approval of two additional PLP applications. Additionally, the satisfaction of the Royalton Apartments PLP loan is anticipated in September of this year. Carlisle has demonstrated its ability to assist non-profit developers with successfully competing in and matriculating through to other Florida Housing programs, thus providing assistance with capacity building as envisioned by the PLP.

3.

PREDEVELOPMENT LOAN PROGRAM (PLP)

Action

Recommendation

In accordance with Rule Chapter 67-38.002(1), Florida Administrative Code, approve Carlisle's request to be an Applicant and/or Affiliate of (4) outstanding PLP loans.

RENTAL RECOVERY LOAN PROGRAM

Action

IV. RENTAL RECOVERY LOAN PROGRAM

A. Selection of Lottery Seed Number

1. Background

The Rental Recovery Loan Program Application Instructions provide that each Application that is assigned an Application number will receive a random lottery number at or prior to the issuance of final scores and that the lottery numbers will be assigned by having Florida Housing's internal auditors run the total number of assigned Application numbers through a random number generator program.

2. Present Situation

The seed number must be selected so that the internal auditors will be able to randomly generate the lottery numbers at the appropriate time.

3. Recommendation

The Chair should select a seed number from the listing of numbers provided by internal audit.