

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WARLEY PARK, LTD., a Florida
Limited partnership,

Petitioner,

FHFC CASE NO. 2017-092VW
Application No. 2017-258CSN

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____ /

PETITION FOR WAIVER OF RULE 67-48.002(93)(a)2., F.A.C.

Petitioner Warley Park, Ltd (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the definition of "principal" as defined in Rule 67-48.002(93), Florida Administrative Code ("F.A.C.") (collectively, the "Rules") and any requirement associated with RFA 2017-103 that principals who are not "Financial Beneficiaries" must submit IRS Form 8821. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

Warley Park, Ltd, a Florida limited partnership
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1105 Kensington Park Drive, Suite 200
Altamonte Springs, FL 32714
Telephone: 407-333-3233
Fax: 407-333-3919
Email: jwolf@wendovergroup.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

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B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of Rule 67-48.002(93)(a)2., F.A.C., which provides as follows:

“Principal” means:

(a) With respect to an Applicant that is:

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 67-48.002(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:

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

5. Under this definition of “Principal,” RFA 2017-103 requires the Volunteers¹ to submit Form 8821. Petitioner is requesting a waiver of this requirement so that the Volunteers, who serve solely in an advisory capacity and receive no financial benefit, are not required to disclose highly confidential information.

D. STATUTES IMPLEMENTED BY RULE 67-48.002, F.A.C.

6. Rule 67-48.002, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute relating to the State Apartment Incentive Loan Program, Section 420.5087 and the statute relating to the HOME Investment Partnership Program; HOME Investment Partnership Fund, Section 420.5089, Florida Statutes.

E. JUSTIFICATION FOR GRANTING WAIVER OF RULE 67-48.002, F.A.C.

7. Petitioner requests a waiver of the definition of “Principal” that appears in Rule 67-48.002(93)(a)2., F.A.C.

8. Petitioner timely responded to RFA 2017-103 - Housing Credit and SAIL Financing for Homeless Persons and Persons with Disabling Conditions.

9. On October 30, 2017, Petitioner received an Invitation to Enter Credit Underwriting - At Risk (the “Invitation”). The Invitation stated that Rule 67-48.0072(4)(a)2., F.A.C. (the “Rule”), had to be complied with by November 13, 2017. The Rule provides: “Within 14 Calendar Days of the date of the invitation, Competitive HC, SAIL, EHCL, and HOME Applicants shall submit IRS Tax Information Authorization Form 8821 (“Form 8821”) for all **Financial Beneficiaries** to the Corporation.” See Rule 67-48.0072(4)(a)2., F.A.C. (emphasis added). “Financial Beneficiary” is defined as “any Principal of the Developer or Applicant entity who

¹ Petitioner is a non-profit corporation that has no shareholders. Instead, Petitioner has a Board of Directors, each of whom serve solely in an advisory capacity and none of whom receive any financial benefit from Petitioner. These Board of Directors serve in a purely volunteer position and will be referred to as the “Volunteers”.

receives or will receive any **direct or indirect financial benefit** from a Development except as further described in Rule 67-48.0075, F.A.C.” *See* Rule 67-48.002(50), F.A.C.

10. Petitioner has principals that meet the definition of a “Financial Beneficiary” and timely submitted Form 8821 for these principals on November 13, 2017.

11. However, Petitioner also has principals that do not meet the definition of a “Financial Beneficiary” and, therefore, are not required by the Rule to submit Form 8821. These non-Financial Beneficiary principals are board members of a non-profit organization and serve solely in an advisory capacity, receiving no salary.

12. On November 13, 2017, Florida Housing advised Petitioner that the Volunteers must nonetheless submit Form 8821 by December 31, 2017. Petitioner is a non-profit corporation that has no shareholders. Instead, Petitioner has a Board of Directors, each of whom serve solely in an advisory capacity and none of whom receive any financial benefit from Petitioner. These Board of Directors serve in a purely volunteer position and will be referred to as the “Volunteers”² because -- even though the Rule is limited to Financial Beneficiaries -- RFA 2017-103 states: “Within 14 Calendar Days, the Applicant must submit IRS Form 8821 for all Financial Beneficiaries **and all natural person Principals** disclosed on the Principals of the Applicant and Developer(s) Disclosure Form.” *See* RFA 2017-103 (emphasis added). “Principal” is defined as “With respect to an Applicant that is: . . . 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 67-48.002(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.”

² Florida Housing granted an extension for Petitioner to submit the Volunteers’ Form 8821 by December 31, 2017.

See Rule 67-48.002(93)(a)2., F.A.C. Under this definition of “Principal,” the Volunteers must submit Form 8821, which will dissuade such board members from volunteering their time to the non-profit organization. Indeed, many of the Volunteers are public officials or other persons in the public eye that would rather step down than release their highly confidential information via Form 8821.

13. If the requested waiver is not granted, Petitioner will lose the invaluable services provided by the Volunteers in their advisory capacity.

14. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,³ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), *Fla. Stat.* (2017).

15. Upon information and belief, the purpose of the requirement to provide Form 8821 is to identify potential conflicts of persons financially benefitted by the housing credits. Because the Volunteers will not be directly or indirectly financially benefitted by the housing credits, the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner (*i.e.*, the loss of the Volunteers) while still achieving the underlying purpose of the RFA requirement.

³ Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), *Fla. Stat.* (2017)

16. In this instance, Petitioner meets the standards for the requested waiver. The requested waiver will not adversely impact Florida Housing. Further, the waiver will serve the purposes of the Statute and the Act, because Florida Housing will be able to make loans available to Petitioner as intended by Section 420.5089(2), Florida Statutes. Denying the waiver would deny Petitioner of the Volunteers' advice, which advice would help Petitioner to provide housing affordable to very-low-income persons as intended by Section 420.5087.

F. ACTION REQUESTED

17. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested permanent waiver of the definition of "Principal" such that Petitioner's principals that do not receive a direct or indirect financial benefit are not required to submit Form 8821; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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