From: Mark Hendrickson [mailto:mark@thehendricksoncompany.com]
Sent: Saturday, February 24, 2018 4:07 PM
To: Trey Price <Trey.Price@floridahousing.org>; Marisa Button <Marisa.Button@floridahousing.org>; Brantley Henderson <Brantley.Henderson@floridahousing.org>; Kevin Tatreau <Kevin.Tatreau@floridahousing.org>
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Subject: Rule Comments from Florida ALHFA

Trey and FHFC Staff

I am submitting two sets of comments from Florida ALHFA related to the rules that govern bonds, SAIL, and housing credits.

One letter has comments related to the relationship between FLALHFA and FHFC, and the second to the concepts around 4% HC.

Please feel free to call or email with any questions.

Thanks.

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FLORIDA ALHFA

ASSOCIATION OF LOCAL HOUSING FINANCE AUTHORITIES

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February 22, 2018

Mr. Trey Price
Executive Director
Florida Housing Finance Corporation
227 North Bronough, Suite 5000
Tallahassee, Florida 32301

Re: Rules 67-21 and 67-48: **Policy Issues and Stand-Alone Bond Issues**

Dear Mr. Price:

Thank you for the opportunity to comment on the proposed changes to Rules 67-21 and 67-48.

We have a severe affordable housing shortage in Florida. Both FHFC and local HFA's should be doing everything we can to increase the housing stock—either with new construction or rehabilitation/preservation financings. None of us should be doing anything that harms these financings.

For housing bond deals—including those that access SAIL funds—this means that we should be doing everything within the law to increase tax credit basis, get more 4% housing credits, and bring the equity these deals need to Florida. This includes generating credits through the developer fee on acquisition and leaving that fee at its present level. Every dollar of tax credit equity frees up a dollar of SAIL for use elsewhere.

All of this is particularly critical on deals that do not access SAIL funds, which are totally dependent upon the 4% HC for their viability. For these deals, the only sources of financing are bonds and tax credit equity. These deals are most often related to the acquisition and rehabilitation developments that need $20,000 to $30,000 of rehabilitation per unit—with the financing extending the affordability period, revitalizing a neighborhood, and improving the lives of the residents.

If the concern is the perception of developers actually being paid a large fee related to the acquisition of a property, then mitigate that by requiring that at least 25% of developer fee be deferred.

The reality is, that as public entities that issue bonds, we are lucky to get developers who are willing and able to do 4% HC/bond deals. We don't get enough to use our bond cap, and we will never get enough SAIL funds to meet the need. Every unused dollar of bond cap is a wasted resource. This is not like 9% Housing Credits, which are massively oversubscribed. Bonds are an underutilized resource. We should be doing everything we can to help private sector access 4% HC because it is in best public interest for our state. That's our job as HFA directors.

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The following will address in more detail the issues raised earlier in this letter. I am sending a separate letter to address issues that relate to the relationship between FHFC and the members of Florida ALHFA:

1. **Florida ALHFA strongly supports the public policy of bringing as many 4% Housing Credits to Florida as possible, within the law. We should be working to this end, not creating unnecessary barriers that reduce eligible basis and therefore reduce equity**. Bond deals are extremely tight, and do not result in the abuse that was possible in FHFC's 9% HC deals—there simply isn't enough money in the deals for abuse to occur. Additionally, the local HFA's closely review each deal and it they have credit underwriting reports that would identify and eliminate costs that were excessive.

2. To that end, if a cost is not fraudulent or illegal, FHFC's policies should permit the cost to be in eligible basis.

3. **The proposed reduction in the developer fee for acquisition from 16% to 4% will destroy stand-alone acquisition-rehabilitation bond deals**. If the goal is to eliminate the rehabilitation of units and the extension of their affordability period, this change will do that. However, we do not think that is truly the intent of FHFC, but it is the result that will be realized.

4. Why is this the case**? Because reducing the developer fee on acquisition to 4% will reduce eligible basis to such an extent that the funds will be insufficient to cover costs**—even with a majority of the developer fee deferred. It is important to note—under current rules stand-alone bond deals never result in a fully paid developer fee. In fact, a deal is fortunate if they can get to a 50% paid fee. The remaining developer fee is paid from cash-flow, which is really not paying it at all (except for accounting purposes), because the cash-flow would go to the developer anyway.

5. **Another problem for acquisition-rehabilitation deals is the manner in which FHFC has been treating appraisals**. This is not the subject of the rule, but we need to raise the issue as to why FHFC is intervening into the methodology of legitimate appraisals to reduce value and thus unnecessarily reduce eligible basis and 4% HC equity. I will follow up with staff on this issue separately.

6. **Other unnecessary reductions in line items that create eligible basis will also harm bond transactions**, including limitations on legal fees that were legitimately incurred and reduction in the overall developer fee from 18% to 16%.

7. **We understand the political scrutiny that FHFC faces. We face it every day from our County Commissioners.** However, we do not understand the level of concern that FHFC expresses because it has different fee levels than some other states. Our total development costs are not excessive. We ask a great deal of our developers, in terms of longer affordability, resident programs, rehabilitation standards, energy efficiency, and unit/development amenities. One cannot look at developer fee in isolation of the difficulty of development in Florida and the fact that both FHFC and local HFA's require more than most states.

Additionally, we note that different states use different denominators for the calculation of their developer fee limits. For example, Florida calculates developer fee by:
Developer Fee/Development cost not including land and developer fee = Developer Fee %
Some states calculate the fee by dividing developer fee by costs less developer fee and include land in the denominator. Take any deal and make this change and it will result in a change in the developer fee of 1%-2%

8. **Florida ALHFA cautions FHFC on relying on NCSHA surveys of what other states claim that they do**. First, so long as Florida isn't radically higher on developer fee (which isn't even paid and is simply used to generate basis), and the total development cost is not excessive, then why the concern? Second, my experience is that the surveys are often inaccurate, do not provide any nuance, and are puffery of a state trying to pretend that it is much tougher than it really is. In any case, they aren't Florida. Adopting their standards and destroying production/preservation of units in Florida seems a dubious public policy.

   One example—and I've only checked out one case that was cited by FHFC staff as support for making some of the proposed changes—was California. The NCSHA survey stated that their developer fee on acquisition was 5% I looked up the non-competitive 4% HC application for California, which referred me to their QAP, and low and behold, the fee is 5% UNLESS you qualify for one of three exceptions, in which case it was 15%. The exceptions are easily achievable for almost every deal. You have to meet only one of the three, and they are (1) $25,000 of rehab per unit—which almost every deal in Florida does, (2) 30% below 50% AMI-which every Section 8 deal would meet, OR (3) an at-risk deal, which has a lengthy explanation that I didn't decipher.

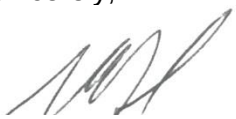
   So, California's developer fee on acquisition is 5%, except when it is 15%, which is always. But the NCSHA survey said it was 5%. To be perfectly blunt—we shouldn't be driven to bad policy because of what other states do or claim that they do. My experience with NCSHA, and I was on the Board of that organization, is that states routinely claim to be doing things that they are not—or exaggerate that they are doing to look tough to their fellow directors.

9. **Florida ALHFA believes it would be useful to provide an actual example** of how only one change—lowering the developer fee on acquisition—would negatively impact one deal. The information below relates to the Millennia Portfolio in Jacksonville—the deal where four old Section 8 deals in need of a new owner and massive rehabilitation are being financed with Jacksonville HFA bonds:
   - The four properties have 768 units
   - The total rehabilitation is projected to be $40.226 million, or $52,378 per unit
   - The acquisition price, negotiated between the current owner, HUD, and the new owner, is $52.7 million.
   - With a 16% developer fee on acquisition, the eligible basis from the fee would be $8,432,000
   - At the current tax credit percentage of 3.27% and 85 cents on the dollar price, this would generate $2.344 million of equity from the developer fee.
   - With a 4% developer fee, the equity would be reduced to $585,000—**creating a $1.759 million funding gap.**
   - All of this is before we deal with the FHFC appraisal review process which could radically impact the actual acquisition basis and resulting tax credit equity

   This is just one example, and not the most extreme case.

Again, I thank you and your staff for meeting with me and taking the time to review these comments. I am available to discuss at any time.

Sincerely,



Mark Hendrickson
Executive Director
Florida Association of Local Housing Finance Authorities

cc: Marisa Button
Brantley Henderson

FLORIDA ALHFA

ASSOCIATION OF LOCAL HOUSING FINANCE AUTHORITIES

February 23, 2018

Mr. Trey Price
Executive Director
Florida Housing Finance Corporation
227 North Bronough, Suite 5000
Tallahassee, Florida 32301

Re: Rules 67-21 and 67-48: **Relationship with Local HFAs**

Dear Mr. Price:

Thank you for the opportunity to comment on the proposed changes to Rules 67-21 and 67-48.

I am writing in my capacity as the Executive Director of the Florida Association of Local Housing Finance Authorities. The organization represents the twenty active local HFA's which serve all of Florida's large and medium counties, and some smaller counties (either directly or through interlocal agreements). Our members have been issuing tax-exempt bonds since 1979 and have proven through the years to be good stewards of public policy and responsible financing.

FHFC has recognized that local HFA's are responsible bond issuers and have the demonstrated capacity to determine if deals are feasible and if they have adequate public purpose. This recognition is reflected in our agreement several years ago with regards to the allocation of 4% Housing Credits to rental developments financed with local HFA bonds. FHFC adopted the "mini-application", which allows each HFA to establish its own public purpose criteria, rather than being subject to FHFC's, and is designed to result in the virtually automatic allocation of 4% HC to our deals, so long as they have a credit underwriting report from one of the three CU's approved by FHFC.

Our relationship with FHFC has been strong, and we have been mutually supportive in legislative and other matters. We have partnered in the area of single family housing, and two local HFA's have been the entities that successfully implemented the Area of Opportunity Funding. If there is any question as to the capacity and public purpose orientation of Florida ALHFA members, one only needs to analyze the LGAOF application and selection process administered by the Hillsborough County and Jacksonville HFA's.

Florida ALHFA wants to continue the strong relationship with FHFC. To that end, we are making the following suggestions/comments:

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1. **Local HFA's and SAIL: FHFC's SAIL application process creates a bias against applications using local HFA bonds**. Florida ALHFA is an active part of the effort to achieve housing funding from the legislature, including SAIL funding. The "deal" with FHFC over the years is that the SAIL application should be neutral as to which entity was the bond issuer.

   In recent years, FHFC has amended the RFA's to only require a developer to "check a box" indicating that that they are seeking FHFC bonds. If the applicant is using local bonds, they are required to produce a letter from the local HFA "*certifying the date the bond application was deemed complete and stating whether the bond application process was competitive or non-competitive. A "complete application" means that no more than de minimis clarification of the application is required for the agency to make a decision about the issuance of bonds requested in the application*."

   This means that an applicant must submit a complete bond application and fees to a local HFA in advance of a SAIL application (well in advance of the SAIL RFA deadline, as the application must be reviewed and deemed "complete"), while only checking a box if they are using FHFC bonds. This is unfair, violates our long-time agreement on SAIL application neutrality, and has resulted in almost all applicants choosing to take the easy route and check the box.

   The SAIL application process should be neutral, not because of "turf" concerns, but because developers should be able to use the financing that is most efficient and strengthens the financial feasibility of the deal. This is in the public interest. When it is in the public and development's interest to use a local HFA bond, there should not be administrative impediments for an applicant making that choice.

   Florida ALHFA requests that all RFA's for SAIL or SAIL Workforce be changed so that applicants using local HFA bonds be required only to submit a letter from the local HFA stating that they are aware of the SAIL application and will review the bond application when received.

2. **Another problem for acquisition-rehabilitation deals is the manner in which FHFC has been treating appraisals**. This is not the subject of the rule, but we need to raise the issue as to why FHFC is intervening into the methodology of legitimate appraisals to reduce value and thus unnecessarily reduce eligible basis and 4% HC equity. I will follow up with staff on this issue separately.

3. **Requirements on Payment and Performance Bonds**: Please confirm that these are not applicable to local HFA deals. Each HFA makes its own determination, as the primary lender, as to how to secure the construction or rehabilitation of a development. We have previously reached an agreement with FHFC on this subject.

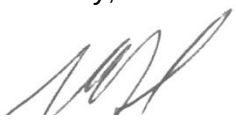
4. **Ownership "Tiers"**: FHFC has initiated a requirement that a natural person be identified at some higher level of the ownership structure. We understand that this is part of some plan to identify "bad actors" and impose some type of penalty on them in competitive applications. This requirement should not be imposed on local HFA bond deals seeking their 4% HC. Each HFA can determine if the ownership structure is acceptable. This is particularly of interest to Florida ALHFA as we are aware that FHFC staff recently took the position that on a local bond deal that had already closed—housing credits would not be awarded because of this issue. This is not acceptable. If FHFC needs to identify a "natural person" in the ownership structure, simply require the credit underwriting report to include such an identification.

5. **Maintaining the Mini-Application for 4% HC**: Florida ALHFA will be reviewing all proposed changes to the rules and process to make sure that the integrity of the mini-application process stays in place. This means that we will oppose any changes which replace local HFA review and policies with those of FHFC.

6. **Redundant Monitoring Fees**: When a deal utilizes local HFA bonds for financing, and FHFC for 4% HC and/or SAIL, the developer is required to pay multiple monitoring fees. This is even though the monitoring if for essentially the same activity—is the property owner meeting the income requirements in accordance with bond and housing credit law (which are the same). The only difference is that some programs and features may be required by the issuer that are not required by FHFC, and vice versa. Florida ALHFA would like the opportunity to meet with FHFC staff to address this issue and work out a manner in which monitoring reports can be consolidated, reducing unnecessary fees that burden the economics of a development.

Again, Florida ALHFA values it long-time positive relationship with FHFC. We are hopeful that it will continue. However, it is important for FHFC to recognize that local HFA deals should not be penalized in the SAIL application process, and that the public policy and credit underwriting reviews of the local HFA should be respected.

Sincerely,



Mark Hendrickson
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