From: Susan J. Leigh <sleigh@comcast.net>
Sent: Monday, February 26, 2018 5:33:17 PM
To: Trey Price
Cc: Marisa Button
Subject: Comments to the 2018 Proposed Rule Changes

Attached please find my written comments that were verbally presented at the workshop.

Thank you for the opportunity to participate in the process.

Susan

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February 24, 2018

Mr. Trey Price, Executive Director
Florida Housing Finance Corporation
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RE: Rule Development Workshop Comments
February 21, 2018
Revisions Rule Chapter 67-21; 67-48; 67-60

Dear Mr. Price:

Thank you for the opportunity to comment on the proposed changes presented at the workshop this week as well as the discussion on the various topics raised. The comments that follow were provided at the workshop but this is to provide a written record.

General Comments:

- Provide Timelines for FHFC to turn around documents submitted
- Applications should be subject only to the rule in place at the point of submission of application
- Over the past two years "policies" and interpretation have changes during the process associated with applying, credit underwriting and cost certification. This creates delays in decision making at a staff level and brings about uncertainty and inconsistent interpretation
- FHFC needs to be more cognizant of current economic conditions and be prepared to change processes if necessary or have a sense of urgency expressed and actualized within their decision making sensitivity
- The overriding theme of many of these changes appears to be a reduction in cost of units and a reduction in the appearance of "rich" deals. **From just a practical perspective the easiest and fairest way to reduce cost is to create a <u>meaningful</u> leveraging factor.**

Chapter 67-21. FAC

1. 67.21.014(q) and 67-21.026(12)(a) :
Reduce the Developer Fee limit from 18% 16% percent

The question to ask when looking at this proposed change is why? Within the workshop it was stated that other states had lower fees based on an NCSHA Study. After reviewing that study and then reviewing actual implementation in those states, it was revealed that there was more to the story. The fees were not absolute and in many cases the way to get a higher fee was more public purpose. Florida has some of the most developed public purpose from longer set-asides to serving lower-income families than other states.

From a historical perspective, from the beginning of SAIL and LITC, Florida was the leaded of the carrot versus stick approach to achieve significant public purpose. Other HFA's and NCSHA did not feel that HFA's should be the allocating agency and therefore did not seek out the responsibility. Florida did. They chose to be the leader in this new program before we ever figured out how to put the pieces in place. Florida Housing took the lead and created a compliance system for tax-exempt bonds to ensure compliance to the code. When the LITC program first appeared, the states were not allowed to charge a fee for compliance. Florida Housing, with a system in place because of their active Multifamily TE Bond Program, decided they would require compliance to ensure the projects were performing according to the LURA and ate the cost until such time we could charge fees. There were other HFA's throughout the United States that did not even know if the development had been built after the credits were utilized.

The devil is always in the details. Although, looking to see what others do is appropriate the time must be taken to review all the reasons and rational to insure that you are comparing apples to apples

Examples of other considerations:

- Targeted populations
- Markets
- Production
- Purpose i.e. preserving existing units
- Achieving the maximum use of unrestricted or unallocated resources while saving more restricted and allocated funding
- Need for preservation
- Economic Environment in place

Today, based on Florida's continued housing shortage and aging properties, it is imperative that production be emphasized. The decision made to reduce fees should be balanced with what the objective is and there should be a conscious decision with a complete rational to support the change.

Recommendation:

Do not make changes to the current fee

2. 67-21.027(6):
Final Cost Certification Application Package to be updated and Re-incorporated

67-21.027 (4)(a) **Timelines:**

Currently, the developer must present the cost certification to FHFC within 75 days after last building placed in service. With the new requirement that GC's must also cost certify it has increased the work that must be completed. All invoices must be reviewed and reconciled within those current 75 days and then the developer has to do the same.

The GC needs 60 days at least for that purpose prior to the developer review and CPA review.

If the developer does not meet that deadline, which is impossible, they have to pay a $1000 penalty. There is no penalty or requirement for FHFC to turn around the cost certification once it is received. The current systems are taking 4 to 12 months to move through FHFC.

FHFC should have no more than 90 days for their internal review and to provide 8609's with 45 days for initial comments back to the developer.

Recommendation:

- **The developer should have 120 days from the last building being placed in service to submit their cost certification.**
- **FHFC should have no more than 90 days for their internal review and to provide 8609's; the developer should receive FHFC initial comments within 45 days.**

Cost Certification update:

It is stated that you are going to rewrite and update this section. It is important to provide that information to the development community so that there is sufficient time to for the professionals (CPA's and Tax Attorneys) to review and comment.

Cost Certification versus Credit Underwriting

There appears to be concept at FHFC that Cost Certification and Credit underwriting reports should compared and be within dollars of each other. Credit underwriting is

performed on a "proposed projects" and a cost certification is an "as built" accountability. There have been internal determinations made by FHFC as to eligible basis on specific items within the cost certification.

Cost certifications are analyzed for eligible basis by professional tax credit CPA's and Attorneys. Internal and external staff should not be in the business of second guessing those professionals. In the end, the developer is liable financially for any missteps and will have to be responsive to the IRS for those same issues.

In regard to 4% credit application submittals for cost certifications, the FHFC should look back the requirements of the IRS.

3. 67-21.003
Changes to non-competitive Applications

It is not clear which transactions that the addition of Total Development Cost are to apply. Is the intent for these costs to only apply to State Financed Tax Exempt transactions or for both local and state?

Chapter 67-48

1. 67-48.0072(21)

Currently the time it takes to move through the submission, scoring, appeals and Board approval, and credit underwriting warrants a longer time from for SAIL, EHCL and Home deadlines from 9 to 12 months. This will be helpful to all that participate.

2. 67-48.0072(21) and 67-48.0072(26)

The change that is suggested that fees can be paid at closing for Non-Profits. Why aren't all fees due at closing as opposed to just non-profits?

Chapter 67-21 and 67-48

1. 67-21.014(q), 67-21.026(12) and 67-48.0072(16)(a)

Reduction of Acquisition fee to 4%

It is counterintuitive to reduce developer fee and in addition require that Code eligible costs be taken out of the fee reducing it further.

a. Reduction in developer fee reduces basis and therefore less "free" credits
b. Developer fee is the buffer for unexpected cost
c. Consider amount of "public purpose" that adds to the overall cost of the project

d. Consider "50" years versus required 15
e. Consider guarantee risk and project risk of developer
f. Echo Helen Feinberg's comments already submitted

Recommendation:

For all the reasons stated above it is important that the current developer fee not be reduced and kept at their current level.

2. 67-21.014(q), 67-21.026(12)(a) and 67-48.0072(a)
Maximum allowable Brokerage fees and excess is subject to Developer Fee

It is not clear as to the reason for this change. Brokerage fees are a product of the private sector not developers. Again, there is an suggestion that the developer fee be reduced to include these fees.

Recommendation:

No change in how brokerage fees are currently accounted for should be considered.

4. 67-21.0025(3)(d) and 67-58.0075(3)(d)
Attorney fees incurred in conjunction with litigation not included in Total Development Cost

Since FHFC removed the process to be notified directly of potential scoring errors, developers are required to submit a protest/appeal in order to bring incorrect scoring or scoring errors to the attention of FHFC. It is cost of participating in the process to receiving funding. Please clarify your intent.

a. Are these fees that were incurred because you were challenged?
b. As an example of incorrect scoring by FHFC and there was not way to communicate the error except through a filing. Is this to mean that is not an eligible cost associated with getting the credits or subsidy?
c. What is your basis for excluding these costs?

Thank you again for the opportunity to provide comment and questions. I will be happy to expound on any of these items or answer any questions they may raise.

Sincerely,

Susan J. Leigh
President