From: Shawn Wilson <swilson@blueskycommunities.com>
Sent: Tuesday, February 27, 2018 12:44:02 PM
To: Trey Price; Marisa Button
Subject: Rule 67-21/67-48 public comment

Dear Trey and Marisa,

Please see attached my comments to various sections of the proposed rule 67-21/67-48. Also, please note that I agree with prior comments made by Scott Culp, Mark Waterbury, and (most eloquently) Helen Feinberg. I cut and pasted each relevant section, with my comment directly below it in blue.

As always, I am available to discuss these in more detail in any setting that makes sense.

Thank you very much, Shawn

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(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 with respect to a Development shall not be included in Total Development Costs.

In first reading this, it appears that in the event that an Applicant/litigant gets its legal fees paid by the other party, then those fees are not included. That would make sense. Later, I heard that its FHFC's intent to exclude ALL legal fees incurred in pursuing any litigation/challenge on an RFA. We oppose this. I do not discern a rationale for this. Perhaps it is meant to make Applicants less likely to file a challenge. I do not believe it will have this effect, because no deal is so thin that it can't afford an additional $50-60K in "unrecoverable costs". FHFC's RFA system is set up to inevitably result in and accommodate litigation. If you enact this rule change, then you should change the challenge system to be informal; thus, eliminating the need for us to hire lawyers. If the goal is to reduce litigation, it might be productive to look at states that have very little litigation in their system and see how they do it.

(15) ~~The owner of a Development must notify the Corporation of an intended change in the management company.~~ The Corporation must approve, pursuant to Rule Chapter 67-53, F.A.C., the Applicant's selection of a management company prior to such company assuming responsibility for the Development. The owner of a Development must notify the Corporation of an intended change in the management company prior to such company assuming responsibility for the Development. A key management company representative must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

This sounds fine, but in event of criminal activity or gross negligence, the owner may have to get rid of the management company immediately.

(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.

Please explain the intent and impact of this. Does this impose additional accessibility requirements beyond what is required now?

(e) At a minimum, each ~~the~~ general partner ~~partner(s)~~ (whether individual or ~~and~~ entity) or each manager/managing member ~~manager(s)/managing member(s)~~ (whether individual or ~~and~~ entity), as applicable, of the Applicant shall provide a guarantee for completion of construction. In addition, one or more entities or individuals (other than a general partner or manager/managing member) having an ownership interest, either directly or indirectly, in the Applicant or in the general partner or managing member of the Applicant shall be required to provide guarantees or personal guarantees, as applicable, for completion of construction as recommended by the Credit Underwriter or as otherwise required by the Corporation. The Corporation shall consider the following when determining the need for additional construction completion guarantees based on the recommendations of the Credit Underwriter:

Please explain the intent and impact of this. Does this impose additional guarantee requirements beyond what is required now? The credit underwriter should continue to determine who the individuals are that should provide guarantees. Many trusts are unable to provide guarantees.

(q) Developer Fee shall be limited to 16 ~~18~~ percent of Development Cost which excludes ~~excluding~~ land and operating deficit reserves and, for purposes of determining this portion of the total Developer Fee, it also excludes the building acquisition cost. A Developer Fee on the building acquisition cost shall be limited to 4 percent of the cost of the building, excluding land. Consulting

We oppose these changes.

I was informed that the rationale for these changes was a report from NCSHA. I may have gotten bad information. A monumental change like this should only be made to address something specific to what is happening in Florida.

In any event, the developer fee was increased to 18 percent on bond deals more than 10 years ago in recognition of these being more complicated than a regular tax credit deal. That extra 2 percent gets eaten up in additional overhead. Nothing has changed, so this reduction makes bond deals less attractive. Since bonds are your conduit for spending SAIL, I would think you want to make bond deals as attractive as possible.

Regarding the reduction down to 4% on the building acquisition: this will discourage rehab and preservation deals. Don't forget that in 2017 you instituted new rehab rules that are driving up the rehab budgets and making these jobs more complicated and less profitable. I heard you wanted to see specific examples of how this impacts a deal. We are presently doing a rehab job where this change would have reduced the developer fee by $761,716. But, keep in mind, it would not have any impact on the amount of FHFC assistance, so it is only punitive to the developer. The likely impact of this change (other than an overall reduction in preservation/rehab apps) would be downward pressure on the rehab budget and upward pressure on the amount needed from FHFC. A change that would make rehab deals more difficult to complete is not a good policy change as it will result in fewer units being preserved as affordable housing.