

From: Shawn Wilson [<mailto:SWilson@blueskycommunities.com>]

Sent: Tuesday, July 01, 2014 2:14 PM

To: Ken Reecy

Cc: Steve Auger

Subject: PUBLIC COMMENT

Public Comment – Related to:

Request for Applications (RFA) Process

AND

Rule Development

Dear Ken,

This written comment shall replace the posted public comment (from me) dated 6/12/14. That posted item does not reflect the oral comment I made at the public meeting. At that meeting, I suggested one simple fix to the RFA's to prevent one of the unintended negative consequences of changing the definition of Principal. That simple fix is shown at the end of this Public Comment.

POSITION: Do not delete Officers of LLC's as Principals. Officers of LLC's have always been, and ought to remain Principals.

DISCUSSION:

Officers of LLC's are very often the top employees who manage the affairs of the LLC, as I did for many years at my former companies. There are certainly plenty of Managers and Members who know far less about the business than many Officers. FHFC ought to encourage those top employees in this business who have the drive and the experience, to strike out on their own. That's good public policy. Narrowing the field and closing the system (while benefitting those of us on the inside) may not be the best policy.

The proposed modification to the definition of Principal removes Officers of an LLC from being Principals. This was done as a reaction to a Recommended Order this year. That recommended order did not specifically state that an officer of an LLC should not be a Principal, it merely noted that the RFA was not clear in this regard. It was not clear because the RFA (Exhibit C, Sec. 3) failed to require the listing of Officers of an LLC; even though Officers of an LLC were Principals according to (our plain reading of) the Rule definition.

A better fix is to expressly specify in the RFA that Officers of an LLC (if any) must be listed. Changing the definition of Principal goes far beyond what is needed in order to prevent the confusion that gave rise to the issue this year.

Changing the definition also has at least 2 negative unintended consequences.

1. Here is a situation that will arise with the new rule:
 - Someone who is not eligible (due to arrearages, foreclosures, etc.) to participate in FHFC programs will contrive an entity structure where they are "only" the President of the LLC Applicant entity.
 - The President will be empowered to manage the affairs of the LLC.

- The President will have a vested financial interest in the affairs of the LLC.
- The President will not be disclosed in the Application.

2. Some who gained experience as an officer of an LLC and have already been scored by FHFC as an Experienced Developer on several applications, may be in jeopardy of now NOT being “Experienced.”

If you do delete Officers of LLC’s, here are two suggestions:

1. Ensure that persons or entities previously determined by Staff or Board action to gain maximum points for being an Experienced Principal will continue to gain maximum points, so long as they are Principals in any new Application. I think this can be managed by simply publishing a list of all those who gained maximum points in the RFA’s from 2013 and so far in 2014. This fix will also eliminate challenges in this section of the RFA.

2. Add the language in **red** below to all RFA’s:

*If the experience of a Principal for a Developer entity listed in this Application was acquired from a previous affordable housing Developer entity, the Principal must have also been a Principal **or an Officer** of that previous Developer entity.*

In reaction to another public comment posted: Another public comment recommends further narrowing the definition of prior experience to place minimum timeframes bracketed by Carryover and 8609. We do not agree with this. First of all, 4% Tax Credit Transactions do not even have Carryovers. More importantly, this merely invites technical challenges and does not demonstrate any more experience. Having the “three project” requirement already ensures that one’s Experience has been gained over a lengthy period of time.

Thank you very much, Shawn Wilson



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