

From: Shawn Wilson <swilson@blueskycommunities.com>
Sent: Friday, June 8, 2018 2:13 PM
To: Marisa Button <Marisa.Button@floridahousing.org>
Cc: Scott Macdonald <smacdonald@blueskycommunities.com>
Subject: 2018/19 RFA Public Comments

Dear Marisa,

I applaud FHFC for opening the door to several improvements that will help get the best Developments funded. In that connection, I offer comments in several areas:

Reduce reliance on Lottery through an App cap for Medium 9% RFA and Miami-Dade 9% RFA:

By limiting the number of applications you will ensure that Developers only submit the best Developments. Even if Lottery is still a tie-breaker, it will not result in a marginal Development being approved since they will all be good ones. This is government funding and it is good public policy to ensure that it is spread among the Applicants and to ensure that the government funding is going to the best projects. This notion has been adopted by many states (example below). Finally, by limiting the number of apps, Developers will be more careful in their Applications because they will have fewer on which to focus. This should reduce the number of mistakes and thereby reduce the amount of litigation FHFC has to waste time and resources addressing.

Recommendation: Limit of 3 Apps per Principal in Medium 9% and 2 Apps in Miami-Dade 9%.

An example of another state: Alabama has the following language in its QAP, which describes not only the limit, but the enforcement.

Owner & Project Cap. AHFA will establish a maximum amount of Housing Credits (Cap) an applicant and a project will be allocated. The intent of the Cap is to promote fair and objective administration of the Housing Credit program by ensuring that no owner(s), related entity, or project can receive an excessive share of the available Housing Credits in any application cycle.

No single project will be allocated Housing Credits in excess of 12% of the state's current Housing Credit ceiling, as defined in Section 42(h)(3)(c) of the IRC (Ceiling) and no owner(s), related entities, principals or individuals as defined below shall be allocated Housing Credits in excess of 12% of the Ceiling. Regardless of each individual owner's percentage of ownership in a project, 100% of the project's Housing Credit allocation will count towards the Cap for all owners.

The Housing Credit Cap will be determined by the amount of Housing Credits the project is eligible to receive using AHFA's determined eligible basis. The amount of Housing Credits received by any increase in eligible basis will be considered in determining the project Cap. In all circumstances, all Housing Credits received in the current competitive cycle will count toward the individual owner's Cap.

When Housing Credits are combined with HOME funds, no related entities, principals or individuals as defined by AHFA's identity of interest shall be allocated HOME funds in excess of 20% of the state's current HOME fund allocation. Regardless of the percentage of ownership in a project, 100% of the project's HOME fund allocation will count towards the Cap.

4.) *Identity of Interest.* AHFA requires that the applicant identify the existence of an identity of interest with any other party to the project including the sale of real estate.

"Identity of Interest" is defined as follows:

Parties that have an identity of interest are presumed to be sufficiently related for them to be treated as a single applicant for purposes of the Cap. As described below, AHFA may in its discretion, identify other parties whose relationship is sufficiently close to cause them to be treated as a single applicant for purposes of the Cap. A significant factor in the evaluation will be whether, based on the facts and circumstances, a primary purpose of a party's involvement in a project appears to be avoidance of the Cap.

The following relationships constitute an identity of interest for purposes of identifying related parties in order to apply the Cap:

(i.) Individual persons are considered related to each other (a.) if they have any of the following direct relationships: parent, child, spouse, son-in-law, daughter-in-law, father-in-law, and mother-in-law, including any such direct relationship created by marriage, remarriage, adoption, or any other legally recognized status, or (b.) if one individual is an employer, by common law or otherwise, of the other.

(ii.) Entities are considered related to each other (a.) if any director, shareholder, partner, member or any other type of owner of any entity would be considered a related individual (under item a. above) to any director, shareholder, partner, member or any other type of owner of another entity, (b.) if the entity has the ability to control another entity, or (c.) if the entity owns a material interest in another entity. An entity will be presumed to control another entity if it has a percentage of ownership in the other entity or the ability to appoint a percentage of the members of the other entity's governing body (i.e., board of directors, board of trustees, partners, managers, etc.) that would permit it to control the other entity either by operation of law or by agreement. A material interest means any ownership interest in excess of 20% of the stock, partnership interests, membership interests or other forms of ownership of any entity; provided, however, that ownership interests held by Housing Credit investors, Housing Credit syndicators or special administrative partners or members shall be disregarded for purposes of 20% test.

(iii.) Without limiting the above, a trust will be considered related to any individual or entity if any trustee, trustor, grantor, settlor, beneficiary, permissible distributee, any person or entity serving a role similar to the foregoing, or any person holding power of appointment (general or limited) over trust property would be considered related to the individual or entity under items a. or b. above.

(iv.) Any other relationship which, while not specifically listed above, is determined to constitute an identity of interest because it is a relationship at least as close as an identity of interest described above or because it would permit an allocation that violates the intent of the Cap.

Rewarding performance:

Right now, a Developer may have an unlimited number of Developments in Credit Underwriting (i.e. has accepted an Invitation but has not Closed). Some of these may obtain extension after extension. Allowing a Developer in this circumstance to continue to apply, increases the likelihood that the Developer will not provide the proper focus and energy on those unclosed transactions; and virtually ensures that any new ones will take longer than they should.

Recommendation: Any Principal with either (a) 5 or more projects in Credit Underwriting, or (b) 2 or more projects in Credit Underwriting for more than 21 months, as of the Application Deadline, is not eligible for that RFA.

LGAO Rotation in 9% RFAs:

The same Developer has won the LGAO in Duval County for each of the 3 years. These wins were all via a well-regulated competitive process and all 3 are great Developments. However, we have recently been told by local stakeholders that there is little sense in applying for the LGAO, because they tell me that same Developer will never lose. This same thing could happen in other counties as well, where a local 'favored son or daughter' wins multiple years in a row.

Recommendation: No Principal who won a 9% Allocation with the LGAO in a 2017 RFA is eligible to win a 9% Allocation in that same County in the 2018 RFA.

Thank you very much, Shawn



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