

DATE: March 18, 2024
TO: File
FROM: Jennifer Guillermo, Investigations Director
SUBJECT: Closure Memorandum CIG Action for Deemed Appropriate – MF Referral (20240214)

On February 14, 2024, the Florida Housing Finance Corporation (Florida Housing) Office of Inspector General (OIG) staff received a correspondence from the Executive Office of the Governor, Office of the Chief Inspector General (CIG), which had the primary disposition as Refer for Action Deemed Appropriate. A review of the correspondence disclosed that Daniel Espino, Esq., Chief Development Officer and General Counsel for Consolidated Real Estate Investments (CREI) expressed a list of concerns regarding the Live Local Act and the perceived inflexibility exhibited by Florida Housing. Specifically, the limitations they stated which are limiting their efforts to qualify for State funding are:

1. Requiring tax credit experience for proposing developers.
2. Requiring that tax credit be utilized in the financing of the proposed projects.
3. Requiring an overreliance on state funding (mandated to use both LIHTC¹ and SAIL²) creating a concentration of state resources in fewer projects; failing to incentivize the leveraging of other sources through innovative financing.
4. Exhibiting inflexibility through strict set-aside and unit mix requirements (in terms of income mix, unit types, and number of units set aside), even when leveraging other income sources and not over relying on state funding.
5. Establishing an artificially high developer fee (up to 18% of project value), making project seem less financially viable and depleting state resources on developer profit.

Since the nature of these concerns are not within the purview of the OIG, OIG staff referred them to the Multifamily Program Office, for their review and response. On March 1, 2024, Marisa Button, Managing Director of Strategic Initiatives, provided the following response:

The subject of the complaint referred to Florida Housing Finance Corporation (Florida Housing) is the process Florida Housing is using for the allocation of funding for multifamily development provided in the Live Local Act. Presumably, the complaint is more specifically referring to the 150 million dollars in recurring funding provided through sec. 420.50871, F.S. (Live Local Funding). This statute provides various criteria Florida Housing is required to consider in funding multifamily developments. The statute reflects that the Live Local Funding is considered State Apartment Incentive Loan (SAIL) program funding, notwithstanding some requirements. Pursuant to the SAIL statute, the funding is limited to covering 25 percent of total development cost and may cover up to 35 percent of total development cost for developments that commit to serving extremely low income (ELI) residents or certain special needs demographics.

¹ Low Income Housing Tax Credit

² State Apartment Incentive Loan

Mrs. Button's explanations for the concerns in the complaint are addressed in order below:

1. Requiring tax credit experience for proposing developers.

The policy justification for this was that Florida Housing wanted to ensure the applicant had appropriate experience with the requirements a third-party investor would require in structuring the nonresidential component of the development. No other Live Local Request for Applications (RFA), (including RFAs 2024-206, 2024-214 and 2024-215) has eligibility, preference or point values associated with low-income housing tax credit (LIHTC) experience.

The only RFA that required tax credit experience was RFA 2023-213. At least one natural person Principal of at least one Developer entity must have met a requirement that:

- At least two of the developments must have (i) been financed utilizing either 9% or 4% Housing Credits; and (ii) committed to Average Income Test; or
- At least one of the developments must have (i) been financed utilizing either 9% or 4% Housing Credits; and (ii) included at least 20% of the units as non-Housing Credit units.

The policy justification for this experience requirement stemmed from the complexity of these transactions. These developments will serve a wide range of incomes and a large portion of the units have the potential to be non-housing credit units. This triggers what could become very complex legal and financial structures that are sometimes required by a third-party investor. The mixed-use component can also trigger these same types of complexities. Florida Housing wanted to ensure that the Applicants applying for funding under this RFA had the requisite experience to handle these types of complicated financing structures. We considered much public feedback in relation to the developer experience requirements and changed the requirements in the end to address those concerns. No other Live Local RFA (including RFAs 2024-206, 2024-214 and 2024-215) has eligibility, preference or point values associated with LIHTC experience.

2. Requiring tax credit be utilized in the financing of the proposed projects.

As referenced in the chart below, not all RFAs under the Live Local Act funding have required the leveraging of LIHTC funding. In the most recent workshops, Florida Housing has emphatically stated it will consider transactions that do not include LIHTC funding if we are provided with an explanation through a financial proforma of how the transaction can meet the statutory requirements to not exceed 25 percent of total development cost with the SAIL funding and meet the statutory income limit set asides. Florida Housing has not received such information. We remain committed to accepting, analyzing and discussing such proposals during the RFA development period.

3. Requiring an overreliance on state funding (mandated to use both LIHTC and SAIL) creating a concentration of state resources in fewer projects; failing to incentivize the leveraging of other sources through innovative financing.

As referenced above, the leveraging of private activity bond allocation and LIHTC, which are federal resources, result in a larger distribution of Live Local SAIL resources throughout the state, not a concentration of resources. Florida Housing has not been provided with any examples of

“innovative” housing development resources that meet the statutory program requirements. For example, resources that are used for infrastructure improvements related to the proposed housing development or existing tenant relocation resources, while beneficial, are not considered innovative housing development resources that support construction and permanent financing. Furthermore, limiting intended residents to at or above 80 percent area median income (AMI), in order to rely on 80% AMI rental income, without providing a range of affordable income set asides in the proposed development is also not an innovative housing development resource, and is contrary to the statutory intent of the resource.

4. Exhibiting inflexibility through strict set-aside and unit mix requirements (in terms of income mix, unit types, and number of units set aside), even when leveraging other income sources and not over relying on state funding.

This concern is referenced in the response to number 3, above. The statutory intent, and requirement, is to provide a broad range of affordable and workforce unit set asides. Sec. 420.50871, F.S., states that the loans provided through the innovative SAIL program shall be SAIL loan under sec. 420.5087, F.S. with certain notwithstanding clauses in sec. 420.5087 (1) and (3), F.S., as well as sec. 420.507 (48) and (50), F.S. One clause that is not excluded is the requirement in sec. 420.5087 (2), F.S., or the requirement in sec. 420.5087 (6), F.S., which requires Florida Housing to consider, when selecting developments for funding, the applicants’ agreement to set aside a certain percentage of units at or below 60% AMI, as well as the applicant’s agreement to set aside units for extremely low-income households.

5. Establishing an artificially high developer fee (up to 18% of project value), making project seem less financially viable and depleting state resources on developer profit.

The developer fees are set through administrative rules set forth at Rule 67-21.014(2)(q) and 67-48.0072(16), F.A.C., which have been workshopped for decades and subject to public feedback. The fee is not artificial, but rather a demonstration of the risk it takes to develop affordable housing with income and associated rent set asides predominately at or below 60 percent AMI and including ELI units (in accordance with the demonstrated cost burdened needs of the state) with long term affordability commitments. Florida Housing’s developer fee is consistent with nationwide housing finance authority (HFA) developer fee standards. Furthermore, developers often defer developer fee or forgo fee altogether in order to leverage the feasibility of the proposed development. The fee is a cap, not a requirement.

Thank you for the opportunity to clarify the mischaracterizations put forth by the complainant. Florida Housing has every confidence that it administers the Live Local allocation process in an open, flexible, and transparent manner in accordance with statutory and regulatory requirements while prioritizing the affordable and workforce housing policy objectives set forth through the Executive Office of the Governor and the Legislature.

For reference – The Live Local funding has been divided into separate RFAs that address multiple or individual statutory criteria from the above referenced section of the RFA. The chart below reflects the RFAs.

RFA Number	Live Local Criteria in Sec 420.508721, FS Purple is 70% of funding criteria. ³ Blue is 30% of funding criteria.	Timing of RFA	Live Local Funding in RFA	Income Restricted Unit Requirements
2023-213	<ul style="list-style-type: none"> •Mixed Use •Urban Infill •Publicly Owned Land •Elderly <p>(All developments were required to be either Urban Infill or Mixed Use, and there were some goals to fund publicly owned land and elderly demographic.)</p>	<p>71 Applications received.</p> <p>Preliminary funding recommendations made at February 2, 2024 meeting.</p> <p>Currently under notice of protest period. Anticipated 10 developments funded.</p>	<p>\$100 million. Applicants were required in the RFA to leverage Live Local resources with private activity bond allocation (Florida Housing or local issuer) and noncompetitive low-income housing tax credits (LIHTC).</p> <p>During workshop, Florida Housing mentioned it would consider financing structures without LIHTC during the following cycle if provided with appropriate financing structure to meet statutory requirements.</p>	<p>Live Local Criteria required a preference for developments that were mixed income.</p> <p>Requirements included a certain number of units up to 120 percent Area Median Income (AMI) with a qualifying market study, but also include a range of incomes including ELI units to comply with statutory mandate.</p>
2024-206	<ul style="list-style-type: none"> • Rural Areas of Opportunity <p>(Priority focused on Hurricane Idalia impacted areas.)</p>	<p>8 Applications received February 14, 2024.</p> <p>Review Committee scheduled March 7, 2024.</p>	<p>\$7 million. Applicants were required to leverage HOME Investment Partnerships loan financing.</p>	<p>At least 80 percent of the total units at or below 60 percent AMI, including some ELI units. This AMI is appropriate for rural areas of the state where average market rents are not reaching rents established for 80 - 120 percent AMI households.</p>
2024-214	<p>Redevelopment</p>	<p>Conceptual workshops held December 5, 2023, and January 30, 2024.</p> <p>Currently obtaining stakeholder feedback to determine RFA requirements and schedule of RFA release date.</p>	<p>\$20 million.</p> <p>During both workshops, Florida Housing has referenced it is willing to review financing structures that do not include LIHTC if financial pro formas can demonstrate statutory requirements are met.</p> <p>Otherwise, Florida Housing assumes the developments will leverage private activity bond allocation and LIHTC.</p>	<p>The language of this statutory criteria requires the redevelopment of an existing affordable housing development, and relocation of those residents to a new affordable housing development with more overall and affordable units.</p> <p>There will be a range of income set asides required for both developments, but all residents of the existing affordable development must have their AMIs set aside in the new development, with a meaningful option to reside in the new development.</p>

³ Add 70%/30%

<p>2024-215</p>	<p>Housing Near Military Installations</p>	<p>Conceptual workshop held January 18, 2024. Currently meeting with military installation personnel throughout the state to identify resident program and amenity needs.</p>	<p>\$23 million. During the workshop, Florida Housing has referenced it is willing to review financing structures that do not include LIHTC if financial pro formas can demonstrate statutory requirements are met. Otherwise, Florida Housing assumes the developments will leverage private activity bond allocation and LIHTC.</p>	<p>There will be a range of income set asides.</p>
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Based on the information provided to the OIG, staff are closing this matter. However, if additional information is received, then it will be considered for action deemed appropriate.

Approved: _____



Chris T. Hirst, Inspector General

Date: _____

3.18.2024

