

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MBCDC: The Allen, LLC

Petitioner,

FHFC CASE NO. 2020-030VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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PETITION FOR WAIVER OR VARIANCE OF RULE 67-32, F.A.C., ELDERLY HOUSING COMMUNITY LOAN PROGRAM (EHCL)

MBCDC: The Allen, LLC (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (the “Florida Housing”), for a waiver of the 151 Calendar Day reporting requirement and, in place, modify the rule requirement to nine-months for the audited financial statement and an executed Financial Reporting Form SR-1, (Rev. 05-14), as established in Rule Chapter 67-32 (Group 2 Applicants) of the Florida Administrative Code (the “F.A.C.”), (the “Rule”).

In support, the Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

MBCDC: The Allen, LLC
c/o Miami Beach Community Development Corporation, Inc.
Attention: Ahmed A. Marin
Executive Director
1688 Meridian Avenue, Suite 600 & 700
Miami Beach, FL 33139
Telephone: (754) 216-5853
Email: amartin@miamibeachcdc.org

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel are:

Legal Services of Greater Miami, Inc.
Shahrazad Emami, Esq.
4343 West Flagler Street, Suite 100
Miami, Florida 33134
Telephone: 305-438-2461
Email: semami@legalservicesmiami.org

B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of Rule Chapter 67-32, which provides in pertinent part:

Annually, within 151 Calendar Days following the Applicant's fiscal year-end, the Applicant shall provide the Corporation with an audited financial statement and a fully executed Form SR-1, (Rev. 05-14).

D. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

5. As required by Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), Petitioner, as a subsidiary of Miami Beach Community Development Corporation, Inc. (a non-profit entity) (the "MBCDC") has nine-months to submit its annual audit for the Allen Apartments (the "Development") to comply with all federal financial reporting requirements (the "Federal Requirements").

6. The Petitioner is one of the eleven entities owned by the MBCDC (a 501(c)(3) already limited in time and resources). In order for the Petitioner to comply with the 151 Calendar Day reporting requirement, its financing reporting depends on the financing reporting supplied by audit(s) from the other Entities. As a result of not meeting the reporting requirement, the Petitioner receives audit findings for non-compliance.

7. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Florida Housing shall grant a waiver when the person subject to the rule demonstrates that the application of the rule would (1) creates a *substantial hardship*¹ or, violates principles of fairness; and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), *Fla. Stat.* (2017).

8. If the Rule is imposed, the Petitioner will suffer unnecessary economic and operational hardships because federal grantor agencies may abstain from additional funding requests based on non-compliance. The waiver would allow the Petitioner to move ahead by meeting its Federal Requirements and increase ability to obtain funds because this Audit finding would not appear. Absent the waiver, Petitioner will need to seek additional sources to cover all costs associated with operations of the Development and jeopardize Petitioner's ability to provide decent, safe and sanitary housing, as required.

9. The petitioner meets the standards for granting the requested waiver. The requested waiver will not adversely impact the Development or Florida Housing. The strict application of the Rule will create a substantial hardship for Petitioner because reported as non-compliant will deprive it of receiving additional funding from federal grantor agencies. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent,

¹ "Substantial hardship" is shown by demonstrating economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), *Fla. Stat.* (2017).

safe and sanitary housing in the State. Denying the waiver would compromise the MBCDC's ability to provide and maintain affordable housing on behalf of Miami-Dade County and the City of Miami Beach.

E. ACTION REQUESTED

10. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (1) grant the requested permanent waiver of the 151 Calendar Day reporting requirement in the Rule and modify the requirement such that the Petitioner is required to provide the Corporation with an audited financial statement and a fully executed Form SR-1 within 9 months following the Petitioner's fiscal year-end.

Respectfully submitted,

Legal Services of Greater Miami, Inc.
Shahrazad Emami, Esq.
4343 West Flagler Street, Suite 100
Miami, Florida 33134
Telephone: 305-438-2461
Email: semami@legalservicesmiami.org

Counsel for Petitioner

By: /s/ Shahrazad Emami
SHAHRZAD EMAMI, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by hand delivery, with a copy served by the electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 12th day of May, 2020.

By: /s/ Shahrzad Emami
Shahrzad Emami, Esq.