



RON DESANTIS
GOVERNOR

STATE OF FLORIDA
Office of the Governor

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July 29, 2019

Harold L. Price, Executive Director
Florida Housing Finance Corporation
227 N. Bronough St., Suite 5000
Tallahassee, Florida 32301

**RE: Inspector General Case Number 190328-01
Chief Inspector General Correspondence Number 2019-04-15-0007**

Dear Mr. Price:

On April 26, 2019, the Office of Inspector General (OIG) for the Florida Housing Finance Corporation (FHFC) initiated an investigation pursuant to sections 112.3187 -112.31895, Florida Statutes (The Whistle-blower's Act). The whistle-blower alleged concerns about the conduct of the FHFC staff and the application of FHFC rules.

Enclosed is the final report received by my office as issued by the FHFC OIG. In accordance with the provisions of the Whistle-blower's Act, the complainant was notified of the findings and was given 20 days from the date of the final report to provide comments. The complainant's comments and the FHFC OIG's addendum to the report are also enclosed.

Based on my review, this office considers this matter to be closed. If you have any questions or comments, please call me at (850) 717-9264.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melinda M. Miguel".

Melinda M. Miguel
Chief Inspector General

Enclosures

cc: Chris Hirst, Inspector General (w/o enclosure)

**Office of Inspector General
Investigative Report
Case Number 190328-01WB**

INTRODUCTION

Between March 12 - 28, 2019, Florida Housing Finance Corporation (Florida Housing) Inspector General (IG) Chris Hirst met with a complainant, who expressed concerns¹ about Florida Housing staff members' interactions with Steve Auger, former Florida Housing Executive Director (ED) and current Chief Executive Officer (CEO) of Birdsong Housing Partners (Birdsong) and the Osprey Pointe development project.

The complainant also provided a written and an oral statement to the Office of Inspector General (OIG) staff with pertinent details listed below (paraphrased):

- The complainant:
 - Has some concerns regarding information that was communicated to them.
 - Said this is not a complaint of misconduct nor is it an accusation of illegal behavior.
 - Was requesting an investigation to provide assurances that rules have been applied consistently and that CEO Auger, as former ED of Florida Housing, has not received special treatment.

Note: Along with the written statement, the complainant also provided copies of several emails related to correspondence and meetings associated with the concerns.

BACKGROUND

Some background details are listed below:

About Florida Housing:²

Florida Housing Finance Corporation (Florida Housing) was created by the state Legislature 35 years ago to assist in providing a range of affordable housing opportunities for residents that help make Florida communities great places in which to live, work and do business. Our vision is to be recognized as an outstanding provider of innovative, measurable, data-driven and fiscally sustainable solutions that respond to the affordable housing challenges of our state.

Today, Florida Housing continues its mission by increasing affordable housing opportunities and ensuring that its programs are well matched to the needs of those we serve. We know that we cannot accomplish our mission alone. As such, we continue to work with local governments, non-

¹ Some additional concerns expressed by the complainant (WB) to the OIG are not included in this report because they are not within the OIG purview and have been referred to Human Resources (HR) for review and action deemed appropriate.

² From the Florida Housing website <https://www.floridahousing.org/about-florida-housing> and the Florida Housing Intranet.

profits, elected officials and others to help spread the importance of affordable housing in Florida's communities.

Florida Housing Overview as of January 2019:

Multifamily Mortgage Revenue Bonds

Objective: To finance the development and preservation of rental apartments through proceeds from taxable and tax exempt bonds issued to provide below market rate loans to developers who set aside a certain percentage of their apartments for low income families.

Source of Financing: Federal private activity bond volume allocated to states

Low Income Housing Tax Credits

Objective: To provide equity to developers through private sector investment by providing a dollar-for-dollar reduction in federal tax liability in exchange for the acquisition/substantial rehabilitation and new construction of affordable rental housing for low income households. Affordable housing developers sell these tax credits to large, private investors and use the cash from the sale to infuse equity into the construction of the property, lessening the need for additional debt.

Source of Financing: Federal population-based allocation to states

HOME Investment Partnerships Program

Objective: Provides low-interest or zero-interest loans to developers to finance the construction and rehabilitation of homes and rental apartments. Additionally, HOME funds may be used for Tenant Based Rental Assistance to provide rent subsidy and security deposit assistance for very low- to moderate income households.

Source of Financing: Federal funding

State Apartment Incentive Loan Program (SAIL)

Objective: To provide gap financing through non-amortizing, low-interest loans to developers to leverage mortgage revenue bonds or competitive Low Income Housing Tax Credit resources and obtain the full financing needed to construct affordable rental units for very low income families.

Source of Financing: The state affordable housing trust funds and unobligated Florida Affordable Housing Guarantee funds

How Florida Housing Finance Corporation Makes Resource Allocation Decisions

Florida Housing targets funding to specific populations and geographic areas of the state based on a number of factors. Federal and state programs target all or a portion of funds to households at or below income levels set by each program. . .

On the rental side, Florida Housing allocates program resources, such as federal Low Income Housing Tax Credits, through a competitive solicitation process whereby a series of approximately 15 "Requests for Applications" (RFAs) are issued each year to focus on various geographic areas of the state and offer funding for different types of housing and to serve different populations in need. For each RFA issued, a draft is circulated for public comment and one or more public workshops are held to seek input. Stakeholders may submit comments at these meetings or via phone, email or letter. This allocation process maintains a balanced, open, and transparent process that is flexible and is capable of reacting to changing markets and needs.

Accountability – How Florida Housing Finance Corporation Ensures Program Resources Are Appropriately Used

Multifamily Rental Process

The rental funding process begins with rule making and development of one or more Requests for Applications. Applications are submitted, scored independently by each member of a staff review committee, discussed and ranked by the full committee and the final recommendation is sent to Florida Housing's Board of Directors for approval. Applicants have the right to contest the findings through an administrative hearing process.

Once recommended orders are issued through the hearing process and brought back to the Board for final action, developments awarded financing are invited to enter the credit underwriting process. Developments are assigned to one of three independent credit underwriters under contract with Florida Housing. Independent professionals approved by the credit underwriter complete necessary evaluations, such as appraisals and market studies. Credit underwriting reports are reviewed and approved by Florida Housing staff and the Board of Directors before loan closing may proceed. At loan closing, Florida Housing receives construction completion guarantees and operating deficit guarantees as applicable. The developer signs personal guarantees for these.

Throughout the construction process, Florida Housing's servicers manage the draw process, construction inspections and other duties to ensure commitments. Once the development is completed, Florida Housing's compliance monitoring agents visit every development at least every year for the portion of our portfolio with state funds, and at least once every three years (as required by federal regulations) for those properties with Low Income Housing Tax Credits only that are in their first 15 years of their federal compliance period. For the remaining affordability period, these properties are monitored annually. The monitors ensure compliance with applicable federal and state statutes and rules, and with the loan closing documents. Florida Housing's staff and servicers also receive and review audited financial statements for each property annually as a part of our permanent loan servicing and asset management processes.

Florida Housing Strategic Plan – Adopted by the Board on September 19, 2014³

The following components of the Florida Housing Strategic Plan contain pertinent parts related to this review (bold added for emphasis):

MISSION - Statements outlining the purpose, primary objectives and aspirations of Florida Housing. Provide a range of affordable housing opportunities for residents that help make Florida communities great places to live, work and do business.

GUIDING PRINCIPLES - The values the Board and Staff use to do business.

As Florida Housing carries out its mission and vision, we will:

- **Conduct business in an honest, ethical, open and respectful manner**
- **Be mindful and accountable stewards of resources entrusted to us**
- **Remain innovative, flexible and responsive in our programs and funding strategies**
- **Base decisions on objective data and collaboration with public and private sector stakeholders**

II. PRIORITY: Ensure that rental programs are flexible enough to respond to housing needs in Florida's diverse communities and can respond to changing market conditions

³ Florida Housing's Strategic Plan <https://www.floridahousing.org/docs/default-source/data-docs-and-reports/strategic-plan/2014-adopted-strategic-plan---september-19-2014.pdf?sfvrsn=2>

- C. Continue work on a comprehensive preservation strategy to save critical, aging affordable properties that are worthy of preservation, including those in Florida Housing’s portfolio

IV. PRIORITY: Ensure that information about Florida Housing’s programs and the role that affordable housing plays in our state’s economy is accessible and understandable to government officials, stakeholders and the public

- C. Create a customer focused approach to help different types of developers access Florida Housing’s programs, from application for financing, to credit underwriting, to property and asset management

Florida Housing Long Range Program Plan 2019-20 through 2023-24, dated September 28, 2018⁴

The following components of the Florida Housing Long Range Program Plan contain pertinent parts related to this review:

Pursuant to Chapter 216, F.S., this document was submitted to the: Office of Policy and Budget; House Appropriations Committee; and the Senate Committee on Appropriations, with some details listed below:

FLORIDA HOUSING FINANCE CORPORATION’S GOAL

To maximize the capacity of local governments and the private sector, both for profit and nonprofit, to develop and preserve affordable housing.

Note: Some details from the **Glossary of Terms and Acronyms** are listed below:

Credit Underwriting – The loan pre-approval process where it is determined whether a project is feasible given the financing mechanisms available.

Development – Also known as a project or property, a development is any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as Florida Housing determines to be necessary, convenient, or desirable.

Preservation Projects – Documents/Information Submitted to and Approved by the Board⁵

Preservation projects have been a topic of discussion by the Board for many years. During the July 27, 2018 and December 14, 2018 Board Meetings, presentations were made by Florida Housing staff about preservation of rental properties in the Florida Housing portfolio, which have been attached for further review (Attachment 1).

Note: Nancy Muller, Director of Policy/Special Programs, and Laura Cox, Director of Asset Management and Guarantee Program, made these presentations to the Board in 2018. The Osprey Pointe development (Osprey Pointe) is a preservation project.

⁴ Florida Housing Long Range Program Plan 2019-20 through 2023-24
<http://floridafiscalportal.state.fl.us/Document.aspx?ID=18063&DocType=PDF>

⁵ Board Meeting Agendas and Packages <https://www.floridahousing.org/data-docs-reports/board-meeting-agendas-and-packages>

Florida Housing Multifamily Programs

Multifamily Programs are divided into two areas –

- Multifamily Allocations staff members work with the rule development and the RFA process, which is a competitive bid process administered by Florida Housing where an applicant is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to rule chapter 67-60, F.A.C.; and
- Multifamily Development staff members work with the developers on Multifamily construction, rehabilitation/preservation projects that have been invited into credit underwriting.

Additional information about the credit underwriting process will be provided below in the Regulatory Guidance Section.

About Birdsong Housing Partners and Their Osprey Pointe Development

Birdsong Housing Partners is a housing developer, with details listed below from their website <http://birdsonghousing.com/about.html>:

About Birdsong: DDER Development, LLC, doing business as Birdsong Housing Partners (“Birdsong”), is an experienced multi-family affordable housing developer with a successful track record in new construction and rehabilitation of multi-family affordable housing developments within the Florida Housing Finance Corporation’s Low Income Housing Tax Credit (LIHTC), Multifamily Mortgage Revenue Bond (MMRB) programs, as well as multi-family affordable housing in Louisiana and Texas and HUD’s [U.S. Department of Housing and Urban Development] 221(d)(4) program.



<p style="text-align: center;">Osprey Pointe Brevard County Units: 65 Rehabilitation Population: Family Financial Partners: Florida Housing Finance Corporation Under Construction</p>

In emails dated April 29, 2019, Lisa Nickerson, Multifamily Program Administrator provided some details about Osprey Pointe, which are listed below (paraphrased):

- The original name of the development was Shull Manor.
- Regarding the written documentation submitted to the Board on Multifamily Program requests related to Osprey Pointe to include Board approval of the original allocation and/or carryover:
 - the original allocation/carryover does not require board approval (Attachment 2); however,
 - the 2nd carryover (credit swap) did require approval based on our rule and was presented to the Board on September 18, 2018 (Attachment 3).
- Regarding any requests submitted to the Board for approval on behalf of Osprey Pointe, they are listed below by date:
 - July 7, 2017 – Request to change management company (Attachment 4);
 - July 31, 2017 – Request to change number of buildings (Attachment 5);
 - January 16, 2018 – Request to change development name (Attachment 6); and

- o April 10, 2019 – Request to change mid-point on light switches and thermostats, cabinet drawer and door handles in bathroom, and remove dishwashers (Attachment 7), with the Florida Housing “CORRESPONDENCE REVIEW / ROUTING FORM” listed on right to show it was originated by the Project Manager, then reviewed by the Assistant Director (AD) and Director of Multifamily Programs, along with the ED of Florida Housing:

Florida Housing Finance Corporation
CORRESPONDENCE REVIEW / ROUTING FORM

Originator Name: [Handwritten]
 Transmittal Date: 5/10/19
 Phone/Fax/Email: [Handwritten]
 Subject: Florida Housing Finance Corporation - Osprey Pointe

Form # FH-2017-0004

Order #	Initials	Signature	Route to:	Initials	Date
			Multifamily Program Manager		
			Multifamily Programs Administrator		
			Assistant Director of Multifamily Programs	[Handwritten]	[Handwritten]
2			Director of Multifamily Programs	[Handwritten]	[Handwritten]
?			Executive Director	[Handwritten]	[Handwritten]
			Other:		
			Other:		

Documentation regarding Osprey Pointe was reviewed to include the:

- Capital Needs Assessment (CNA) for Osprey Pointe dated June 14, 2018 (Attachment 8);
- Email correspondence from Sofia Miles, Multifamily Program Manager (Manager), who was hired by Florida Housing on February 27, 2017 (after CEO Auger’s departure from Florida Housing), and assigned the Osprey Pointe development in 2018 (Attachment 9);
- Osprey Pointe fka [formerly known as] Shull Manor – CUR [Credit Underwriting Report], PCR [Plan And Cost Review], CNA and Pictures (Attachment 10); and
- Osprey Pointe fka Shull Manor Board Package (Attachment 11).

Administrator Nickerson also explained that Osprey Pointe has a viability loan and an item about this loan was presented to the Board at the March 22, 2019 Board Meeting. The information from the Florida Housing Board Package shows:

II. MULTIFAMILY BONDS

- A. Request Approval of Credit Underwriting Report for Osprey Pointe (2018-050BS), with the associated documents attached for further review (Attachment 12).

Note: All of these documents show the activities related to the processing of the Osprey Pointe development by staff members from Osprey Pointe, AmeriNat credit underwriting, and Florida Housing.

About CEO Auger from His Florida Housing Personnel File

In an email dated April 3, 2019, Jessica Cherry, AD of Operations, provided the following details from CEO Auger’s Florida Housing personnel file:

- CEO Auger’s dates of employment were from November 13, 2000 – January 5, 2017.
- On April 29, 2012, CEO Auger signed the “Acknowledgement and Receipt” form, which stated, “I have knowledge that I have access to the employee handbook via the intranet and I understand that it is my responsibility to read the handbook.”
- On January 5, 2019, CEO Auger’s two-year post-employment restriction ended.

Note: During his tenure as ED, CEO Auger signed the policies thus creating and amending the policies related to Conflicts of Interest and Post-Employment Restrictions.

ALLEGATIONS

Based on the information provided, OIG staff initiated an investigation of the activities associated with CEO Auger and the Osprey Pointe development for the time period after the development was accepted into credit underwriting on June 19, 2017, to determine whether:

1. Former Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Post-employment Restrictions*.
2. Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Conflicts of Interest*.
3. Florida Housing staff members may not have consistently applied rules governing the Multifamily development process, which allowed CEO Auger to receive special treatment on the Osprey Pointe development.
4. [REDACTED]

The investigation was conducted regarding these allegations in accordance with Sections 112.3187-112.31895, Florida Statutes (F.S.), the Whistle-blower's (WB) Act⁶. The complainant was granted WB status on April 26, 2019.

Note: The time period was selected based on the concerns expressed by the WB about activities that occurred after Birdsong's Osprey Pointe development had completed the RFA allocation process and had been invited into credit underwriting on June 19, 2017. Some details about the credit underwriting process are listed below under the Regulatory Guidance Section, under Florida Administrative Code (FAC), Rules.

If supported, the allegations may constitute a violation of Florida Housing policies/procedures, and/or state laws, including:

- Section 420.506(1), F.S., Housing, Executive director; agent and employees; inspector general
- Chapter 112, Part III
- Florida Housing Policy #: 2.07, Code of Ethics, Post-Employment Restrictions
- Florida Housing Policy #: 2.02, Code of Ethics, Conflicts of Interest
- Florida Housing Policy #: 12.01 Inspector General, Mandatory Reporting Requirements
- Florida Housing Policy #: 12.04, Inspector General, Fraud Policy

⁶ The Whistle-blower's Act, §112.3187-112.31895, F.S., is intended to protect current employees, former employees, or applicants for employment with state agencies or independent contractors from retaliatory action. Whistle-blower designation is determined by the OIG in consultation with the Governor's Chief Inspector General's office. If a complaint meets whistle-blower criteria, the whistle-blower's identity is protected from release and an investigation is conducted pursuant to §112.3189, F.S.

REGULATORY GUIDANCE

The following Florida Statutes, Florida Administrative Code (FAC) - Rule, and Florida Housing Policies contain pertinent parts related to this investigation:

Criteria/Regulatory Guidance:	Details
Section 112.313(9), F.S., Standards of conduct for public officer, employees of agencies, and local government attorneys	(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.— 3.a. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.
Section 112.312(8), F.S., Definitions	112.312 Definitions.—As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires: 8) "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.
Section 112.312(22), F.S., Definitions	112.312 Definitions.—As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires: (22) "Represent" or "representation" means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

Criteria/Regulatory Guidance:	Details
Florida Housing Policy #: 2.02, Code of Ethics, Conflicts of Interest, effective 4/22/16	<p>POLICY STATEMENT Employees will take all steps necessary to safeguard their ability to make objective, fair and impartial decisions independent of any undue influence or improper motives, as more specifically described below.</p>
	<p>ROLES, RESPONSIBILITIES AND REQUIREMENTS</p> <ol style="list-style-type: none"> 1. All Employees have a duty to avoid conflicts of interest and the appearance of a conflict of interest, and a duty to disclose and rectify any such conflicts that may occur in the scope of their employment. 2. Employees are prohibited from using or attempting to use their official positions to obtain a special privilege for themselves or others. 3. Employees are prohibited from disclosing or using information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others.
	<p>PROCEDURES</p> <ol style="list-style-type: none"> 1. Employees will accept no compensation for the performance of their job duties other than that provided by the Corporation or specifically authorized by the Chief Ethics Officer. 2. Employees will not accept or continue any outside employment that creates a conflict of interest or the appearance of a conflict of interest. 3. Employees whose immediate relatives (spouse, siblings, parents, and children) are lobbyists will, at least quarterly, disclose to the Chief Ethics Officer the names of all clients of such lobbyists. These employees will not participate in any matter that would inure to their relative's special gain or loss, and will recuse themselves from discussions, meetings, etc., involving clients of their immediate relatives. Any such matters will be reassigned to another employee. Where confidentiality requirements prohibit the public disclosure of any such names of clients, the Corporation will take the measures necessary and appropriate to assure effective recusal by affected employees. 3. In addition to any periodic requirements to report, Employees will immediately disclose any potential conflict of interest or any circumstances that may create the appearance of a conflict of interest to his or her immediate supervisor and the Chief Ethics Officer.

<p>Florida Housing Policy #: 2.07, Code of Ethics, Post-Employment Restrictions, amended 4/1/16</p>	<p>POLICY STATEMENT It is imperative that employees not only remain objective, fair and impartial during employment with the Corporation, but also in certain post-employment situations.</p> <p>ROLES, RESPONSIBILITIES AND REQUIREMENTS</p> <ol style="list-style-type: none"> 1. State and Federal laws restrict the activities of certain employees for one to two years after they leave Florida Housing Finance Corporation. Violations may have consequences for the former employee as well as an entity that subsequently employs the affected person. 2. Employees, except for nonexempt (hourly) employees, are prohibited from personally representing any person or entity for compensation before Florida Housing Finance Corporation for two years after terminating employment with Florida Housing, pursuant to Section 112.313(9), Florida Statutes. Violations will be reported to the Florida Commission on Ethics. 	
<p>Criteria/Regulatory Guidance:</p>	<p>Details</p>	
<p>Florida Housing Policy #: 12.01, Inspector General, Mandatory Reporting Requirements, effective 4/5/16</p>	<p>POLICY STATEMENT</p> <ol style="list-style-type: none"> 1. This policy describes the requirements for reporting to the Office of Inspector General (OIG) suspected or confirmed allegations of wrongdoing by an employee or contractor of Florida Housing. This policy also defines the types of reportable incidents and the recommended timeframes for reporting. <p>ROLES AND RESPONSIBILITIES</p> <p>All Employees have a duty to report any suspected or confirmed allegations of wrongdoing by adhering to the mandatory reporting requirements, as set forth in this policy.</p> <ol style="list-style-type: none"> 2. Timeframe Suspected or confirmed allegations as outlined in the Reportable Incidents section of this policy shall be reported as soon as possible after discovery. 3. Method(s) of Reporting Reportable incidents may be submitted to the OIG in person, electronically (email, report fraud website, the OIG SharePoint site, etc.), mail, fax, or telephone. 	
<p>Criteria/Regulatory Guidance:</p>	<p>Details</p>	
<p>Florida Housing Policy #: 12.04, Inspector General, Fraud Policy, amended 3/21/16</p>	<p>POLICY STATEMENT This fraud policy is established to enforce controls, monitor program compliance, and to detect, deter, prevent, and eradicate fraud, theft, waste, or abuse against Florida Housing.</p> <ol style="list-style-type: none"> 2. Responsibility to Report Suspected Fraud All employees are required to report any suspected fraud, theft, waste or abuse, or other dishonest conduct to the employee's supervisor, other management, or to the Inspector General. The Inspector General will determine the merits of a report of suspected fraud with the assistance of the OIG staff. The identity of an employee or complainant who reports suspected fraud will be protected to the full extent allowed by law (The Whistle-blower's Act, Sections 112.3187-112.31895, Florida Statutes). 	
<p>Criteria/Regulatory Guidance:</p>	<p>Details</p>	
<p>FAC, Rule 67-48.002 Definitions, Florida Housing, Chapter: Competitive Affordable Multifamily Rental Housing Programs SAIL/HOME/HC</p>	<p>(9) "Applicant" means any person or legal entity of the type and with the management and ownership structure described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to rule chapter 67-60, F.A.C., for one or more of the Corporation's programs. For purposes of rules 67-48.0105, 67-48.0205 and 67-48.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. Unless otherwise stated in a competitive solicitation, as used herein, a 'legal entity' means a legally formed corporation, limited partnership or limited liability company with a management and ownership structure that consists exclusively of all natural persons by the third principal disclosure level. For Applicants seeking Housing Credits, the Housing Credit</p>	

	<p>Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required. The terms 'first principal disclosure level' and 'third principal disclosure level' have the meanings attributed to them in the definition of "Principal."</p> <p>(10) "Application" means the sealed response submitted to participate in a competitive solicitation for funding pursuant to rule chapter 67-60, F.A.C.</p> <p>(25) "Credit Underwriter" means the independent contractor under contract with the Corporation having the responsibility for providing stated credit underwriting services.</p> <p>(93) "Preservation" means Rehabilitation of an existing development that was originally built in 1996 or earlier and has an active contract through one or more of the following HUD or RD programs: Sections 202 of the Housing Act of 1959 (12 U.S.C. §1701q), 236 of the National Housing Act (12 U.S.C. §1701), 514, 515, or 516 of the U.S. Housing Act of 1949 (42 U.S.C. §1484), 811 of the U.S. Housing Act of 1937 (42 U.S.C. §1437), or either has PBRA or is public housing assisted through ACC. If funded through the Corporation, the Development must maintain at least the same number of PBRA or ACC units. Such developments must not have closed on funding from HUD or RD after 1996 where the budget was at least \$10,000 per unit for rehabilitation in any year.</p>
<p>FAC, Rule 67-48.0072 Credit Underwriting and Loan Procedures, effective 9/15/16</p>	<p>67-48.0072 Credit Underwriting and Loan Procedures.</p> <p>Credit underwriting is a de novo review of all information supplied, received or discovered during or after any competitive solicitation scoring and funding preference process, prior to the closing on funding, including the issuance of IRS Forms 8609 for Housing Credits. The success of an Applicant in being selected for funding is not an indication that the Applicant will receive a positive recommendation from the Credit Underwriter or that the Development team's experience, past performance or financial capacity is satisfactory. The credit underwriting review shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, the evidence of need for affordable housing in order to determine that the Development meets the program requirements and determine a recommended SAIL, EHCL, or HOME loan amount, Housing Credit allocation amount or a combined SAIL or HOME loan amount and Housing Credit Allocation amount, if any; and for any Development that has rehabilitation with or without acquisition, a capital needs assessment prepared in accordance with generally accepted industry investment grade standards shall be ordered by the Credit Underwriter, and its findings shall be used to determine rehabilitation that will be carried out, including applicable energy, green, universal design and visitability features, and to set replacement reserves. Corporation funding will be based on appraisals of comparable developments, cost benefit analysis, and other documents evidencing justification of costs. As part of the credit underwriting review, the Credit Underwriter will consider the applicable provisions of Rule Chapter 67-48, F.A.C.</p> <p>(10) For Competitive HC, SAIL, and HOME Applicants, a full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and development type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the development property's financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit Syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a SAIL or HOME loan, a Housing Credit Allocation, or a combined SAIL loan and Housing Credit Allocation or Housing Credit Allocation and HOME loan. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have:</p>

- | | |
|--|--|
| | (a) An average physical occupancy rate of 92 percent or greater; and,
(b) For Developments with new construction units, an average market rental rate, based on unit mix and annualized rent concessions, of 110 percent or greater of the applicable maximum Housing Credit rental rate. |
|--|--|

EXECUTIVE SUMMARY

Based on the information provided, OIG staff initiated an investigation of the activities associated with CEO Auger and the Osprey Pointe development for the time period after the development was accepted into credit underwriting on June 19, 2017, to determine whether:

1. Former Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Post-employment Restrictions*. Based on a lack of corroborating evidence, OIG staff determined that the allegation is **Not Supported**.
2. Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Conflicts of Interests*. The Florida Housing Conflict of Interest policy requires, "All employees have a duty to avoid conflicts of interest and the appearance of a conflict of interest. . ." Based on a lack of corroborating evidence, OIG staff determined that the allegation is **Not Supported**.
3. Florida Housing staff members may not have consistently applied rules governing the Multifamily development process and which allowed CEO Auger to receive special treatment on the Osprey Pointe development. Based on a lack of corroborating evidence, OIG staff determined that the allegation is **Not Supported**.
4. [REDACTED] Based on lack of corroborating evidence and conflicting statements, OIG staff determined that the allegation is **Not Supported**.

COMPLAINANT/WB INTERVIEW

The WB provided a written statement on March 28, 2019. A follow-up interview was conducted on April 16, 2019.

DOCUMENTATION/RECORDS ANALYSIS

OIG staff reviewed documents associated with the processing of the Osprey Pointe development to include, but not limited to: Florida Housing email correspondence; and Multifamily 2017 & 2018 RFA Tracking – Excel file. The results of the reviews are listed below by related documents:

Florida Housing Email Correspondence

In an email dated April 15, 2019, OIG staff requested Florida Housing Information Technology Services staff provide any Florida Housing emails to include incoming or outgoing emails, CC (Carbon Copy) or BCC (Blind Carbon Copy) from or to CEO Auger from or to Director Muller and Multifamily staff members for the time period of January 5, 2017 to January 5, 2019. Based on the review of this query, OIG staff did not locate any emails that show CEO Auger initiated or engaged in any email correspondence that would violate his two-year ban.

Analysis: During the time period of October and December 2018, email correspondence shows Multifamily staff discussing the issues related to the appraisal amongst themselves, with AmeriNat staff (the credit underwriting company assigned to the project), and with Lisa Lacock, Director of Operations, Birdsong. However, CEO Auger was not included in this correspondence. Then for the time period after January 5, 2019, the email correspondence shows Multifamily staff continuing to discuss the appraisal issue and other matters involving the

Osprey Pointe development amongst themselves, with AmeriNat staff, and sometimes with Birdsong staff – to include CEO Auger.

Florida Housing Emails from Multifamily Staff

As part of this investigation, several Multifamily staff members were asked to provide email correspondence and/or supporting documents to show the activity related to the processing of the Osprey Pointe development after CEO Auger had completed his two-year ban (January 5, 2017-January 5, 2019), with details listed below by date of correspondence:

- On January 10, 2019, CEO Auger sent an email to several Florida Housing staff members after their meeting with him regarding an appraisal of Osprey Pointe, in which he (CEO Auger):
 - thanked the Multifamily staff involved in the meeting on January 9, 2019.
 - attached a letter dated January 10, 2019 (Attachment 13), in which he provided details about their concerns with the October 23, 2018 appraisal of Osprey Pointe.
 - stated in the final paragraph of the letter:

Based on the concerns, we respectfully request a new appraisal to be engaged for this transaction. As time is of the essence, we appreciate your consideration of this request as quickly as is practicable. If any further detail is required or if you have any further questions, please do not hesitate to contact us.

- In response to this email and letter from CEO Auger, several Multifamily staff reviewed the information and recommended approval of a second appraisal, with [REDACTED]

- [REDACTED] responded, “Looks good to me. I would recommend moving forward with the second appraisal for this one.”
- [REDACTED] responded, “I’m okay with allowing the engagement of a second appraisal on this transaction due to the circumstances that both the applicant and Florida Housing have concerns about the validity of the value and the underwriter indicating the appraiser not considering the details of the CNA.”

- In emails dated February 14, 2019 – March 8, 2019, CEO Auger communicated with Multifamily staff, and Tom Louloudes, Credit Underwriting Manager, AmeriNat, regarding the CNA and features for Osprey Pointe. These emails have been attached for further review (Attachment 14).
- In emails dated February 22, 2019 – March 8, 2019, CEO Auger communicated with Multifamily staff, with the subject lines of the emails listed as: “Osprey Pointe/Shull Manor request to engage counsel at our own risk” and “Osprey Pointe f/k/a Shull Manor Apartments – Counsel Assignment” respectively. These emails have been attached for further review (Attachment 15).

Note: In an email dated June 13, 2019, Administrator Nickerson stated the following in response to the question whether there are any rules for conducting second appraisals, “I don’t believe there are any rules for conducting a 2nd appraisal; however, it is within our purview to request a 2nd appraisal when we deem it to be necessary.”

Analysis: These emails were sent and/or received by CEO Auger after his two-year ban, which ended on January 5, 2019. In addition, these emails show that CEO Auger was communicating with Multifamily staff and the

AmeriNat underwriter in a collaborative effort to address/resolve the issues related to the Osprey Pointe development.

Document Reviews - 2017 & 2018 Multifamily RFA Tracking - Excel Files

OIG staff requested Multifamily staff provide their documentation to show the milestones or activities for Osprey Pointe. In an email dated April 5, 2019, Administrator Nickerson provided two Excel files (Attachment 16), with details about the RFAs awarded and the status of these projects. In an email dated April 24, 2019, OIG staff requested Administrator Nickerson to explain the "10% Test Extension" and advise whether any of the tabs show information that needs further explanation for Osprey Pointe. Administrator Nickerson provided a response in an email dated April 25, 2019, which has been attached for further review (Attachment 17), with pertinent parts listed below (paraphrased):

- Carryover tab – For Osprey Pointe, they received an extension until September 27, 2019 to meet the 10% test and Site Control. So far, all other deadlines are on track.
- Site Inspection tab – Osprey Pointe has not yet had a site inspection. This is consistent with their progress report.
- Fees tab – Osprey Pointe paid all fees due to us at this time. The final compliance fee will be paid at or around the EUA [extended use agreement] or final cost certification.
- Underwriting tab – Osprey Pointe is missing the date for the final PRL [Preliminary Recommendation Letter], but it was received. The PRL triggers issuance of the carryover agreement. We will add this to our tracking spreadsheet. They have also completed underwriting and submitted 8821s and the market study.
- RFA CU [Credit Underwriting] Items due tab – Osprey Pointe submitted all items required for this tab.
- Credit Pricing tab – Osprey Pointe's credit pricing at PRL is on the spreadsheet. We will add pricing for Credit Underwriting.

TIMELINE

**Summary of Some of the Activities Related to
the Two-Year Post-Employment Restriction and the Processing of Osprey Pointe Development**

Date	Details
11/13/00	CEO Auger's first date of employment at Florida Housing.
12/16/16	RFA 2016-116 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (RFA 2016-116) was issued
1/5/17	CEO Auger's last date of employment at Florida Housing.
2/3/17	Application Deadline for RFA 2016-116.
4/3/17	CEO Auger's first date of employment with Birdsong.
4/26/17	Review Committee Meeting (2016-116) was held - Osprey Pointe, 65 rehab units, family, Brevard County-9% Low-Income Housing Tax Credits and Viability Loan Funding.
5/5/17	The Review Committee's recommendations for Osprey Pointe (2016-116) were approved at the Board Meeting.
6/19/17	Osprey Pointe (2016-116) was invited into credit underwriting.
7/7/17	Board submittal and approval on behalf of Osprey Pointe - Request to change management company (see Attachment 4).
7/31/17	Board submittal and approval on behalf of Osprey Pointe - Request to change number of buildings (see Attachment 5).
1/16/18	Board submittal and approval on behalf of Osprey Pointe - Request to change development name (see Attachment 6).
9/18/18	Board submittal and approval on behalf of Osprey Pointe - Request for approval of 2 nd carryover (credit swap) (see Attachment 3).
October - December 2018	Email correspondence during this time period shows Multifamily staff discussing the issues related to the appraisal amongst themselves, with AmeriNat staff, and with Director Lacock. However, CEO Auger was not included in this correspondence.
12/14/18	Florida Housing's Board Meeting at the Hyatt Regency Orlando Airport. CEO Auger and Director Muller had dinner together in the restaurant located at this hotel. Note: Multiple Florida Housing staff and Board members dined at this location on this date and during the same approximate timeframe.
12/17/18	[REDACTED]
12/18/18	[REDACTED]
1/5/19	The two-year ban ends for CEO Auger.
1/5/19 - April 2019	Email correspondence during this time period shows Multifamily staff continue to discuss the issues related to Osprey Pointe amongst themselves, with AmeriNat staff, and sometimes with Birdsong staff - to include CEO Auger.
1/9/19	CEO Auger met with several Multifamily staff members to discuss concerns about Osprey Pointe appraisal.
1/10/19	CEO Auger sent an email and letter to Florida Housing regarding the Osprey Pointe appraisal.
2/2/19	CEO Auger sent an email to AD Kennedy, with the subject, "Osprey Pointe/Shull Manor request to engage counsel at our own risk."
3/7/19	Board Package Submission Deadlines - All Draft Items and Exhibits are due by 12:00 p.m. CEO Auger sent an email to several Multifamily staff members (see Attachment 7) requesting clarification of an issue related to lowering light switches in concrete walls, which was deemed not feasible in the CNA.
3/22/19	Florida Housing's Board Meeting in Tallahassee - Board submittal and approval on behalf of Osprey Pointe - Request Approval of Credit Underwriting Report for Osprey Pointe (2018-050BS), (see Attachment 17).
After 3/22/19	Regarding the "strong-arm" comment, AD Kennedy said: CEO Auger contacted him after his two-year ban had ended; "I probably said that" after the March 2019 Board Meeting because CEO Auger "kept calling"; and he does not think CEO Auger really strong-armed staff.
4/10/19	Board submittal and approval on behalf of Osprey Pointe - Request to change mid-point on light switches and thermostats, cabinet drawer and door handles in bathroom, and remove dishwashers (see Attachment 10).

INTERVIEWS

During the interviews, Multifamily staff members were requested to provide responses to questions related to the allegations, with pertinent details listed below:

Allegation 1: Regarding whether Former Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Post-employment Restrictions* (*bold added for emphasis*):

- Florida Housing Multifamily staff members interviewed said they **did not** have any knowledge of former Florida Housing staff members violating Florida Statutes and/or Florida Housing Policies regarding *Post-employment Restrictions* related to CEO Auger on the Osprey Pointe development.
- Florida Housing Multifamily staff members interviewed said they **were not** contacted by CEO Auger prior to the end of his two-year ban.
- Marisa Button, Director of Multifamily Allocations, believes CEO Auger went above and beyond to maintain the appropriate distance during his time-out.
- As reported above, Manager Miles was assigned to the Osprey Pointe development in 2018, and she explained:
 - She was hired at Florida Housing at the end of February 2017, which was after CEO Auger's departure from Florida Housing.
 - She usually worked with Director Lacock via email on this project.
 - In March 2019, was the first time she had contact with CEO Auger, via emails.
 - The first time she was introduced to CEO Auger was at a review committee meeting, when he said to her, 'Hey, you just emailed me,' but nothing else.
 - They expect the Osprey Pointe development to be placed in service/completed in 2020.
- Director Muller:
 - Said, "Steve [Auger] never contacted me about Osprey Pointe. However, Steve [Auger] and I do have contact with each other."
 - When asked to consider: the Florida Statutes and the Florida Housing Policies; her statement that she did not feel he [CEO Auger] was soliciting her on behalf of Osprey Pointe; and whether she felt there were any violations of his two-year ban, she said, "I don't think so. No. Not being the expert, just being a you know, a generally knowledgeable person and you know being a common person in that regard. No, I would not say so."
 - Regarding whether CEO Auger was lobbying her assistance on anything, she stated:

No, Steve [Auger] did a great job in the two-year period of answering a lot of questions from me as I strove to figure things out after he left; and acted as a number of developers and others do for me and those of us that seek out subject matter experts outside of Florida Housing. I have always understood that I am allowed to ask people, who are in the two-year phase, that I am allowed to ask questions and seek information from them. I believe that's the standard we have upheld.
- GC Brown:
 - Regarding whether CEO Auger participated in any activity that would have violated his two-year ban, he stated, "No. No. . . he stayed strictly away from that. Like I said, I had zero contact with him during that ban."
 - Regarding whether he was aware of any Florida Housing staff members contacting CEO Auger during his two-year ban, he said, "Yes, I understand there were instances where Florida Housing staff reached out to Steve [Auger]. I did not. Or Ken Reecy [former Multifamily Director and former Interim Florida Housing ED] to ask procedural questions. That's OK, for them to do that."
 - Regarding whether Florida Housing staff members contacting CEO Auger, was not CEO Auger soliciting a staff member, he said:

No. He's not representing the entity before the agency in that context. So that's fine, and both Steve [Auger] and Ken [Reecy] graciously offered to help, help Trey [Price, ED, Florida Housing] in his new position, and did. But to the best of my knowledge, there was never [sic], they never crossed any line in to representing the entity before the agency. All of their business with Birdsong was conducted by Lisa Lacock and as I understand it, she was the only person from that organization that dealt with Multifamily staff.

- ED Trey Price said he was not aware of CEO Auger participating in any activity that would have violated his two-year ban and he stated:

... To the best of my knowledge, Steve Auger has and, and Ken Reecy have both, have both dutifully fulfilled ... their terms of their ban. I know Ken Reecy is still going on until I think September. So that remains to be true. In my opinion.

Regarding whether CEO Auger was: trying to "strong-arm" staff to speak with him in order to address his concerns with the Osprey Pointe Credit Underwriting Report; or pushing Florida Housing staff to reassess an appraised value on his deal, which was reported to have never been done by Florida Housing prior to this deal, staff provided the following responses:

- AD Kennedy said (paraphrased) CEO Auger contacted him after his two-year ban and he explained:
 - "I probably said that" after the March 2019 Board Meeting [March 22, 2019] because CEO Auger "kept calling".
 - He "doesn't think he [CEO Auger] really did that [strong-arm staff]".
 - He said he did not think it fair to staff to have them keep answering his [CEO Auger's] calls.
 - Regarding his instructions to forward CEO Auger's calls to him:
 - He told staff to send calls from CEO Auger to him.
 - They were dealing with the HVAC [heating, ventilation, and air conditioning] system, the replacement reserve was high, CEO Auger wanted to change it, and it was not handled properly by other Multifamily staff.
 - The HUD CNA was lower, and they wanted them to match.
 - He agreed with CEO Auger on what caused the number to be high.
 - Due to the pending deadline for the Board Package, underwriting was instructed to include a sentence about it - CNAs to recommend size before closing.
 - They would have done this for anyone.
 - He and his staff did not have contact with CEO Auger during his two-year ban.
- Tammy Bearden, Loan Closing Manager, said she was present for the entire conversation between AD Kennedy and CEO Auger, and she stated the following (paraphrased):
 - The conversation occurred on the day the Board Package was due in March 2019.
 - She heard the conversation because AD Kennedy was speaking with CEO Auger via the speaker phone.
 - CEO Auger was asking questions about his credit underwriting report, but she did not feel that he was trying to strong-arm AD Kennedy.
 - As a result of the call, she said she would call the attorney for the "at your own risk counsel assignment," which is allowed, but does not happen a lot.
 - In this case, she said the documents were also being sent to HUD and that even after the Board approves items, things can change.
 - So, they work with the attorneys to make sure the documents are right.
- Heather Greene, Multifamily Programs Coordinator, and Freebeau Swindle, Construction Administrator, said they heard/were aware that AD Kennedy make the comment about CEO Auger trying to strong-arm staff, but they said they did not feel that way.

- Director Muller said, "That's not correct" and she has "never" heard a Florida Housing staff member say "strong-arm" regarding Steve [Auger] trying to contact Florida Housing staff. Regarding the appraisal and/or any other issues, whether CEO Auger received special assistance/consideration due to his previous position as ED of Florida Housing or due to lobbying any Florida Housing staff members she stated:

... We have had a series of problems with appraisals lately. I believe it's fair to say, but again, I am not the expert that Osprey was another one of those problems. So, it's up to Florida Housing to address the problems when we see them. It may mean doing something for the first time ever. The allegation that whatever we did was for the first time ever, I can't confirm or deny that because I just [sic], I'm not the expert on that. So, it is my job when I hear something to say something internally about it. I feel like I acted appropriately in that regard. . . I didn't know that he had gotten a deadline [sic]. There's nothing that I know that suggests to me that he [CEO Auger] received anything special because of his former association here.

- Melissa Levy, AD Multifamily Programs, stated (paraphrased):
 - The replacement reserves were an issue and an appraisal was needed in order to meet HUD deadlines.
 - They determined the replacement reserves as a condition of the report to figure out later as the credit underwriting report was presented to the Board.
 - Birdsong staff wanted to change the HVAC systems at Osprey Pointe and wanted to recognize the change.
 - She was aware CEO Auger voiced concerns and may have reached out to some of the SAIL [State Apartment Incentive Loan] managers, such as Multifamily Program Coordinator Greene or AD Kennedy.
 - On January 9, 2019, she attended a meeting held to discuss the Osprey Pointe appraisal issues, [REDACTED] attendance and the issues were resolved.
 - She was aware AD Kennedy asked his staff to forward calls to him from CEO Auger in the last couple of weeks.
 - She did not receive any calls from CEO Auger before the end of his two-year ban.
- Regarding the comment that CEO Auger "strong-armed" staff and whether AD Kennedy told staff to direct CEO Auger's calls to him, Director Tatreau stated he was:

Not aware of that direction, but that would be an unusual practice because typically you have staff reviewing, editing and finalizing underwriting reports for Board presentation; and it is often that developers will call any and all staff reviewing their report to talk about that. Most likely, it is usually going to focus on the staff who's assigned to that deal or that person's supervisor is usually how it works out and if that supervisor still doesn't give an answer that the developer likes it usually bubbles up to the top person at that level. To me, it's like the top person is basically there to put out fires that staff has said no to a lot and fix it and convince them that is the right answer. Or figure out what a yes, but the kind of conditions that you would approve it. Staff does a good job of saying no, when they have to say no, but it is usually the developer talking to the staff. . .

No, Steve [Auger], he'll usually give you his logic. If he talks to you, he'll give you his logic, but every developer does that. They'll try to convince you one way or another give you his logic. He's not unique in that boat. There are many more developers who are much stronger in their communication than Steve [Auger] is.

Allegation 2: Regarding whether Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Conflicts of Interests* (bold added for emphasis).

- Florida Housing Multifamily staff members interviewed said they **did not** have any knowledge of Florida Housing staff members violating Florida Statutes and/or Florida Housing Policies regarding *Conflicts of Interest*, related to the processing of project deadlines and/or special requests for assistance or consideration from CEO Auger on the Osprey Pointe development.
- Director Muller:
 - Acknowledged that she had dinner with CEO Auger in December 2018 in Orlando preceding the Florida Housing Board Meeting; and
 - When asked whether Osprey Pointe was discussed during their conversation, she explained:

I was asking him the questions. Because it was this bigger discussion about preservation and appraisals and some of the different issues that I was working on. And so, at some point, I said, "Osprey Pointe, that's a preservation deal. Yes, that's a preservation deal." So, I said, "It seems like you had some kind of issue come up because I think I had seen an email or heard talk about it or so." Then I just asked him a bunch of questions, which is what I do with developers anyway. And Steve [Auger] was very good about answering my questions. I mean, you know, he is very a helpful person, but I never heard him advocate for anything in particular and my [sic]. One of things that I do at Florida Housing is, I think about policy, you know, how should we be doing things for the broader mission or objective or whatever it is we are working on. In this case, it would have been the preservation issue that I had been tasked to work on, but then I'm also [sic] developers do call me about this. Although, I can't say that Steve [Auger] ever called me during that two-year period. You know, he had somebody else communicating with the Multifamily folks appropriately – it seemed to me about process and whether we are being responsive to people. Ultimately in that discussion that came up because of all the questions I asked him. . .

I have never heard of CEO Auger approaching anybody here before his time ran out – his two-year time limit ran out. That dinner we had was back before that time limit ran out. We were having dinner as friends basically; and I believe Birdsong maybe submitted a letter of concern about its appraisal. That's my problem with the question. CEO Auger did not. Lisa Lacock used to be the person who was the main communicator. I don't know if she wrote that letter or not. I don't even know if I saw it or it was an email I think – maybe. Yeah, it probably would have been from her, but I am guessing.

○ [REDACTED]

[REDACTED]

[REDACTED] I do not know enough about appraisal to advocate for reassessing the value of any property. I likely, but cannot verify this because my memory is simply not good enough, said that

we might want to look at that appraisal because it sounded like there were some problems associated with it, along with some other ones, which we also talked about in the same conversation because it was a conversation about appraisals.

So, talking about problems with an appraisal is a different thing than saying we have to reassess the value of a property. One is a broad statement of, do we have problem with an appraisal, which is at least in part in great part about the value of it. It's a whole other thing to say something about the specifics about value and it's another thing to talk about whether an appraisal was done correctly and needs to be re-looked at.

- Regarding whether Director Muller could provide examples of other meetings with Florida Housing staff members that were held to discuss this issue, Ms. Muller stated:

Yes, we've had a series of meetings over the past nine months, with different groupings of folks, but most often with a group of people from Multifamily where we've had just internally talked about problems that we are hearing about with appraisals. Or where individuals from the outside came to us. So, the best example I can give you is Helen Feinberg, who assists us with bond developments. I think she is under contract with us and is an acknowledged expert. We also talk to people that are not under contract with us about the appraisal issue. Laura Cox, [Director of Asset Management and Guarantee Program] and I had a meeting with a developer named Mark Sween about a series of preservation issues and potential barriers. Appraisals was one of the things brought up in that generally. Staff met internally. My staff on appraisal staff associated with homeless deals has met with probably some Multifamily staff, but I couldn't tell you who because I was not part of those meetings.

Allegation 3: Regarding whether Florida Housing staff members may not have consistently applied rules governing the Multifamily Development process and that CEO Auger may have received special treatment on the Osprey Pointe development:

- Overall, the Florida Housing Multifamily staff members interviewed said that the rules have been consistently applied.
- None of the Florida Housing Multifamily staff members interviewed said that they were aware of any developers or CEO Auger/Osprey Pointe receiving special consideration regarding appraisals, deadlines or other matters.
- Administrator Nickerson stated, "In regard to Steve [Auger] and in general, I feel like our policies and RFAs are the way we apply the rules – have been fair."
- Construction Administrator Swindle stated the following (paraphrased):
 - His date of hire at Florida Housing was October 1, 2018, which was after CEO Auger's departure from Florida Housing.
 - Osprey Pointe was a Rehab acquisition, different type - not normal CNA.
 - He was aware they were having some issues and he was asked to look at it.
 - For HVAC issues, the current units are PTAC [Packaged Terminal Air Conditioner] and the developer wanted to change to a rooftop mount system, which went against the CNA provider's recommendations.
 - They went with the GLE's [GLE Associates, Inc., CNA provider] opinion on the HVAC and not CEO Auger's.
 - They probably used more caution due to CEO Auger being the former Executive Director of Florida Housing.

- AD Levy said she has no concerns, because Florida Housing staff members were cognizant to not provide too harsh or too lenient treatment on the Osprey Pointe development, and regarding the project she stated the following (paraphrased):
 - The acquisition credits are based on "as-is" appraised value - theirs deducted \$1.2 million in immediate repairs.
 - Birdsong staff did not feel that was a true representation of the actual market value.
 - Birdsong staff submitted a letter asking Florida Housing staff to reconsider the post-rehab value.
 - Florida Housing told them it has never been done that way, and they were not comfortable using post-rehab value.
 - The CNA said things were needed for immediate repairs like tree trimming and painting.
 - Initially Birdsong staff and then Florida Housing staff did not agree with the appraiser, who said that they were "not going to budge" because the CNA had this number for immediate repairs.
 - Florida Housing staff and the underwriter decided to get a second appraisal, which did not deduct those repairs and it considered a second CNA from HUD as well as the initial CNA.
- When asked whether she had any concerns with how this was handled, AD Levy stated:

No. Ordering second appraisals is not something we like to do because we don't want developers to appraisal shop, but when there are circumstances where we're not sure whether the appraiser handled a specific situation properly or not. Then we would look for another opinion.

- AD Kennedy said they try to treat everyone the same with no special consideration; and he stated the following (paraphrased):
 - He was aware of two issues with Osprey Pointe: the Credit Underwriting Report - not changing anything except to allow change if needed; and the viability of the loan appraisal.
 - The senior staff of Florida Housing conducted a meeting to discuss the Osprey Pointe appraisal.
 - CEO Auger was present for the meeting on January 9, 2019.
 - Management all agreed that the issue was odd and needed attention.
 - All management made the decision to have a second/new appraisal.
 - It was not special treatment.
- Director Button stated:

I believe across the board, our policies have been consistently applied. I think Florida Housing has a culture of doing that and specifically in Multifamily Programs. Be it in Allocations or be it in Development. . .

What I have said to folks is that we are trying to get to "Yes" - to get these developments to the finish line, within the confines of what our rules say, what our RFAs have been developed as and continuing good policy going forward. So, in my opinion we try to get to "Yes" where we can and if we need to ask for accommodations or if it's something different than the rules and we have to go to the Board for approval, that's ultimately above our heads as well. . .

She also provided the following additional details (paraphrased):

- She was involved in one or two meetings with questions about appraisals of developments.
- They had "brainstorming sessions," with broad discussions of appraisal issues related to developmental/special needs - rental assistance, but once additional staff were hired for Multifamily positions, she did not attend these meetings.
- She remembers a broad issue, with a specific example to always ask if they would do this for anyone - especially if it is a new issue because they may be setting precedent, that would apply to everyone.

- Director Tatreau stated the following (paraphrased):
 - He thinks they are consistent in their approach with RFAs/rule waivers, as part of the process:
 - They receive requests for RFA/rule waivers, with some processed in the past.
 - They document and consider: the general solution; what the documents say; and if it is a reasonable request - whether Florida Housing will be harmed in the process.
 - The Board gives the final approval after the items are placed on the Consent Agenda.
 - Osprey Pointe may be the first to receive an approval for a second appraisal.
 - The credit underwriter and Multifamily staff thought the appraisal was erroneous with problems that were brought up by other developers.
 - Regarding whether CEO Auger received any special treatment, he said, "No." The only thing he knew of was the appraisal and the reserves. Before that, he said he was aware that Director Lacock, who works for Birdsong, had done all of the communication with staff - to include phone calls and emails. He further explained:

No. The only thing that I am aware of for Osprey Pointe is the second appraisal, which I think we talked about. Then Steve [Auger] had talked to me about that reserve issue and then half of that phone call I was made aware of an underwriting report that just went to the Board had a line in there saying that staff would be addressing that with an updated report post Board approval. I don't know if that has ever been done or not. . . sometimes, the thing is, it's been a while. There's been a number [sic] so, let me go back further back than that. Developers have their housing credit syndicator, a syndicator in the process. They have a lender, which may or may not be a HUD lender and certain processes have deadlines they have to abide by. And so, when it comes to HUD, it's slow, methodical, with hard deadlines. You can't [sic], it's not easy for HUD to change their deadlines. Like if our deadlines don't meet their's - they don't change their's, it's tough for us. So, in order to not lose a deal, in the past I think that we would put Board approval of underwriting report to the Board Package, with conditions post approval. I think one time, one of the Board Chairs said, "I don't like seeing a lot of these - subject to these approvals post Board. So, I want for you to try to eliminate as many of these as you can before coming to the Board." So, from that point on, we tried to accommodate that process. We had as little as possible subject to review after Board approval. But that was a request from one of the Chairs of the Board to change that process because otherwise we had done that in the past. I was told by another employee [AD Kennedy] that Steve [Auger] had asked either the underwriter or him [AD Kennedy] to put that request in to approve the replacements and reserves after Board approval and it was put in the Board package for the March 2019 Board meeting (see Attachment 17).

- GC Brown stated:

No. Nothing that would of, we wouldn't have done for anyone else. As a matter of fact, we probably had a bit of heightened scrutiny just because it was Steve [Auger]. To make sure that and this was on my insistence and Trey's [Price] insistence that we make very, very sure that we treat Ken Reecy and Steve Auger no differently than we would treat anyone else. Either way, to be very careful about that when we are dealing with them until the two-year ban was up. Neither Steve [Auger] nor Ken [Reecy] at any time during the two-year ban contacted me for any reason. I think they knew that it would not be, you know, didn't want to put me in that position. I saw them socially at the Board Meetings which they did not attend. They stayed outside of the Board Meeting; and it was "Hi, how are you doing?" beyond that they discussed absolutely no business with me for the entire ban.

- ED Trey Price said he was present during a meeting about an appraisal with Multifamily staff and CEO Auger, who had completed his two-year ban; and stated the following regarding whether there was any advantage or favoritism shown:

Absolutely not. I believe, he was treated as any other developer or representative of a developer would have been and I thought that we came to a fair and amenable, you know, conclusion/solution for the appraisal issue that would have been applied across the board to anyone else. . . I am not aware of any favorable treatment or unfavorable treatment. I think that Steve [Auger] and Birdsong have been treated as anyone else would have been treated in their case.

Regarding the Multifamily process, with the Board review and approval process, whether one person could influence Florida Housing staff in order to receive special consideration without the transparency and approval by the Board, ED Trey Price stated the following (paraphrased):

- You could ask Director Tatreau and see how much work that he put in to the Multifamily package for February 1st Board Meeting, which I imagine it was a good amount of work.
- [REDACTED]
- So, I find it a little hard to believe/incredulous; however, that anybody would have been able to pull one over on that many different people to have a Board item approved, of which, I know the Board members go through their package and I get questions.
- I'm sure I would have received questions if there would have been anything "untoward".

Response from CEO Auger

In an email dated April 15, 2019, OIG staff provided questions for CEO Auger to review and respond to pertaining to the matters included in this review. On April 18, 2019, CEO Auger provided a response to the questions via email, with the pertinent questions and his responses listed below in bold:

- Regarding whether he adhered to the required two-year ban as stated in Section 112.312(22), F.S. listed below:

(22) "Represent" or "representation" means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

CEO Auger stated, "**Yes.**"

- During the two years after his separation from Florida Housing (from January 5, 2017 – January 5, 2019):
 - When asked, "Did you discuss any of the Birdsong developments to include issues related with Osprey Pointe with Director Muller, around the time of the December Florida Housing Board Meeting in Orlando, FL?"

CEO Auger stated:

NO, not that I recall. I did have dinner with Nancy one evening around that December meeting, only because we are former co-workers at Florida Housing and remain friends. I did not initiate any discussions regarding any Birdsong developments, including Osprey Pointe. During our dinner, I recall responding to questions from Ms. Muller regarding general Florida Housing policies and procedures. It is my understanding that providing information at the request of a Florida Housing employee such as Ms. Muller is not considered "representation" as that term is defined in section 112.312(22), F.S.

- When asked, "Did you call/speak with or email any other Florida Housing staff members to request assistance with any of the Birdsong developments to include issues related with Osprey Pointe?"

CEO Auger stated: "NO."

- To the best of your knowledge:

- Have the rules have been consistently applied on Birdsong developments to include Osprey Pointe in the processing of RFA deadlines and/or special requests for assistance or consideration regarding appraisals, deadlines or other matters?

CEO Auger stated, "Yes."

- Have you or the owner/managers of Birdsong developments to include Osprey Pointe received special consideration or treatment regarding appraisals, deadlines or other matters due to your previous employment as the Executive Director of Florida Housing?

CEO Auger stated: "NO."

Allegation 4: [REDACTED]

In accordance with Section 112.3188, F.S.:

(1) the name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor:

(a) Has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or

(b) Has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty

may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

The Office of Inspector General thoroughly investigated the allegation and determined that there was no corroborating testimony from independent witnesses and no documentary evidence to support the allegation of [REDACTED]

[REDACTED] Therefore, based on a lack of corroborating evidence and conflicting statements, the allegation is **Not Supported**. However, in order to protect the name and identity of the complainant in accordance with section 112.3188, F.S., no further information can be disclosed in this report.

FLORIDA HOUSING GENERAL COUNSEL REVIEW

On May 17, 2019, Betty Zachem, Assistant General Counsel (AGC), stated the following:

A former executive director answering general questions from current staff, does not violate the two-year prohibition. F.S. 112.313(9) prohibits "personally represent[ing] another person or entity for compensation." Responding to staff inquiries regarding process and procedures would not generally violate that prohibition.

FINDINGS, ANALYSIS, AND CONCLUSIONS

Based on the investigation of the activities associated with CEO Auger and the Osprey Pointe development for the time period after the development was accepted into credit underwriting on June 19, 2017:

Allegation 1: Regarding whether Former Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Post-employment Restrictions*:

Findings:

- Staff interviewed were aware of the Florida Statutes and Florida Housing Policies and the regarding *Post-employment Restrictions*:
 - None were aware of any violations related to requests from CEO Auger on the processing of the Osprey Pointe development; and
 - None reported that they were contacted by CEO Auger prior to the end of his two-year ban.
- Director Muller and CEO Auger acknowledged they had dinner together as friends in December 2018 preceding the Board Meeting in Orlando:
 - Director Muller stated she was asking him questions, but she did not hear CEO Auger "advocate for anything in particular. . ."
 - CEO Auger stated he did not "initiate any discussions regarding any Birdsong developments, including Osprey Pointe. . ."
- GC Brown said he was aware of instances of Florida Housing staff contacting CEO Auger or Ken Reecy to ask procedural questions, and he explained:
 - It was "OK, for them to do that" because he was "not representing the entity before the agency in that context. . ."
 - To the best of his knowledge, "They never crossed any line in to representing the entity before the agency."
 - He understood that all of Birdsong's business with Florida Housing was conducted by Lisa Lacock and she was the only person from that organization that dealt with Multifamily staff.
- Florida Housing email correspondence did not reveal any violation of CEO Auger's two-year ban.

Analysis: There was no corroborating testimony from independent witnesses and no documentary evidence beyond speculation to support the allegation of whether former Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Post-employment Restrictions* related to CEO Auger, the Osprey Pointe development.

Conclusion: Based on a lack of corroborating evidence, the allegation of whether former Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Post-employment Restrictions* related to CEO Auger, the Osprey Pointe development is **Not Supported**⁷.

Allegation 2: Regarding whether current Florida Housing staff members may have violated Florida Statutes and/or Florida Housing Policies regarding *Conflicts of Interest* related to CEO Auger, the Osprey Pointe development:

Findings:

- Staff interviewed were aware of the Florida Housing Policies regarding *Conflicts of Interest*.
- None were aware of any violations related to requests from CEO Auger on the processing of the Osprey Pointe development.
- Director Muller and CEO Auger acknowledged they had dinner together as friends in December 2018 preceding the Board Meeting in Orlando:
 - Director Muller stated she was asking him questions, but she did not hear CEO Auger “advocate for anything in particular. . .”
 - CEO Auger stated he did not “initiate any discussions regarding any Birdsong developments, including Osprey Pointe. . .”
- GC Brown said he was aware of instances of Florida Housing staff contacting CEO Auger or Ken Reecy to ask procedural questions, and he explained:
 - It was “OK, for them to do that” because he was “not representing the entity before the agency in that context. . .”
 - To the best of his knowledge, “They never crossed any line in to representing the entity before the agency.”
 - He understood that all of Birdsong’s business with Florida Housing was conducted by Lisa Lacock and she was the only person from that organization that dealt with Multifamily staff.
- Florida Housing email correspondence did not reveal any current Florida Housing staff members had violated Florida Statutes and/or Florida Housing Policies regarding *Conflicts of Interest* related to CEO Auger, the Osprey Pointe development.

Analysis: There was no corroborating testimony from independent witnesses and no documentary evidence beyond speculation to support the allegation of whether current Florida Housing staff members may have violated Florida Statutes and/or Florida Housing’s *Conflicts of Interest Policy* related to CEO Auger, the Osprey Pointe development.

Conclusion: The Florida Housing Conflict of Interest policy requires, “All employees have a duty to avoid conflicts of interest and the appearance of a conflict of interest. . .” Based on a lack of corroborating evidence, the allegation of current Florida Housing staff members creating a conflict of interest in violation of Florida Housing’s *Conflicts of Interest Policy* related to CEO Auger and the Osprey Pointe development is **Not Supported**.

Allegation 3: Regarding whether Florida Housing staff members may not have consistently applied rules governing the Multifamily development process and whether CEO Auger may have received special treatment on the Osprey Pointe development.

⁷ **Supported** is defined as a conclusion of fact where there is sufficient evidence to justify a reasonable conclusion that the actions occurred and where there were violations of law, policy, rule or contract to substantiate the allegation. **Not Supported** is defined as a conclusion of fact where the evidence does not substantiate the allegation.

Findings:

- The Florida Statutes, Florida Housing’s Policies, Strategic Plan, and Long Range Program Plan, along with the required Board review of changes to RFAs/Rules for Multifamily Development Projects are control measures to ensure that issues or concerns identified are addressed in a fair and consistent manner, without developers receiving special consideration that would not be provided to other developers with a similar situation.
- Florida Housing Multifamily staff interviewed said the rules have been consistently applied and they were not aware of any developers or CEO Auger/Osprey Pointe receiving special consideration regarding appraisals, deadlines or other matters, with some comments listed below:
 - AD Kennedy explained it was not special treatment because they conducted a meeting with senior staff and CEO Auger to discuss the Osprey Pointe appraisal; and all management agreed that the issue was odd, needed attention, and agreed to have a second/new appraisal.
 - Director Tatreau said that they receive requests for RFA/rule waivers, with some processed in the past; and they document and consider the general solution, what the documents say, and if it is a reasonable request - whether Florida Housing will be harmed in the process.
 - Director Button stated, “I believe across the board, our policies have been consistently applied. I think Florida Housing has a culture of doing that and specifically in Multifamily Programs. Be it in Allocations or be it in Development. . .”
- In addition, two of the staff members working on the Osprey Pointe development, Manager Miles and Construction Administrator Swindle, were hired after CEO Auger’s departure from Florida Housing; therefore, CEO Auger could not have used any previous working relationship with them to receive any special treatment on the Osprey Pointe development.

Analysis: There was no corroborating testimony from independent witnesses and no documentary evidence beyond speculation to support the allegation of whether Florida Housing staff members may not have consistently applied rules governing the Multifamily development process and whether CEO Auger may have received special treatment on the Osprey Pointe development.

Conclusion: Based on a lack of corroborating evidence, the allegation of whether Florida Housing staff members may not have consistently applied rules governing the Multifamily development process and whether CEO Auger may have received special treatment on the Osprey Pointe development is **Not Supported**.

Allegation 4: [REDACTED]

In accordance with section 112.3188, Florida Statutes (F.S.):

(1) the name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor:

(a) Has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or

(b) Has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty

may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local

official's staff without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

Analysis: The Office of Inspector General thoroughly investigated the allegation and determined that there was no corroborating testimony from independent witnesses and no documentary evidence to support the allegation of [REDACTED]

Conclusion: Therefore, based on a lack of corroborating evidence and conflicting statements, the allegation is **Not Supported**. However, in order to protect the name and identity of the complainant in accordance with section 112.3188, F.S., no further information can be disclosed in this report.

INSPECTOR GENERAL COMMENTS

Inspector General Hirst recommends Florida Housing Management:

- conduct a review of the policy related to post-employment;
- implement a formal exit process which would provide written guidance to exiting staff of the statutory two-year post-employment restrictions;
- conduct a sufficiency review of the *Conflicts of Interest* policy, which states specifically, "All Employees have a duty to avoid conflicts of interest and the appearance of a conflict of interest, and a duty to disclose and rectify any such conflicts that may occur in the scope of their employment. . ."; and
- create additional training with scenario-based examples to reinforce and further convey the requirements of the *Conflict of Interest* policy.

Furthermore, prior to the receipt of this complaint:

- OIG staff had initiated an audit of the Multifamily Program, which was selected as a result of the 2018 Annual Risk Assessment.
- ED Trey Price requested a comprehensive audit of the Multifamily Program be included as part of the 2019 Annual Audit Plan.
- Two other reviews of this program have been conducted since 2015 (OIG Project Numbers: 2015-10 Management Review of the RFA Intake Process; and 2016-23 Carlisle Management Review).

This report will be forwarded to the Executive Director and the Florida Housing Board of Directors for review and action deemed appropriate.

CERTIFICATIONS

This investigation was completed in accordance with accreditation standards established by The Commission for Florida Law Enforcement Accreditation and has been conducted in compliance with the "Quality Standards for Investigations" found within the *Principles and Standards for the Office of Inspector General*.

Melanie Yipp Director of Investigations
Name, Title, Office of Inspector General

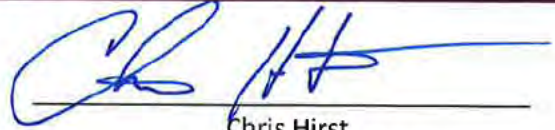
APPROVALS



Melanie Yopp
Director of Investigations

7/17/19

Date



Chris Hirst
Inspector General

6-17-19

Date

From: Chris Hirst
Sent: Wednesday, July 10, 2019 8:52 AM
To: Melanie Yopp <Melanie.Yopp@floridahousing.org>
Subject: Fwd: Confidential - WB Response

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: July 8, 2019 at 1:24:51 PM EDT
To: "chris.hirst@floridahousing.org" <chris.hirst@floridahousing.org>
Subject: Confidential - WB Response

Dear Chris,

The WB states that I have been truthful and honest throughout this process and am fearful of retaliation and losing my job.

Thanks,

WB

**Office of Inspector General
Investigative Report
Case Number 190328-01WB**

INSPECTOR GENERAL ADDENDUM

In accordance with Section 112.3189 (9)(a), Florida Statute (F.S.), a copy of the Florida Housing Finance Corporation, Office of Inspector General Investigative Report was provided to the Whistle-blower (WB). The WB responded via email on July 8, 2019. The Inspector General acknowledges receipt of the WB's response, and would like to reiterate the following information as stated in a footnote on page seven of the original report:

The WB's Act, §112.3187-112.31895, F.S., is intended to protect current employees, former employees, or applicants for employment with state agencies or independent contractors from retaliatory action. Whistle-blower designation is determined by the OIG in consultation with the Governor's Chief Inspector General's office. If a complaint meets whistle-blower criteria, the whistle-blower's identity is protected from release and an investigation is conducted pursuant to §112.3189, F.S.

Pertinent parts of the WB's Act, §112.3187-112.31895, F.S., are listed below:

112.3187 (2) LEGISLATIVE INTENT.—It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

(3) DEFINITIONS. . .

(c) "Adverse personnel action" means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor. . .

(4) ACTIONS PROHIBITED.—

(a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.

(b) An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section. . .

(5) NATURE OF INFORMATION DISCLOSED.—The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor. . .

(7) EMPLOYEES AND PERSONS PROTECTED.—This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower's hotline or the hotline of the Medicaid Fraud Control Unit of the Department of Legal Affairs; or employees who file any written complaint to their supervisory officials or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as agency inspector general under s. [112.3189\(1\)](#), or to the Florida Commission on Human Relations. The provisions of this section may not be used by a person while he or she is under the care, custody, or control of the state correctional system or, after release from the care, custody, or control of the state correctional system, with respect to circumstances that occurred during any period of incarceration. No remedy or other protection under ss. [112.3187-112.31895](#) applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under ss. [112.3187-112.31895](#) is being sought. . .