

RECEIVED

19 AUG 30 PM 2: 15

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

FLORIDA HOUSING  
FINANCE CORPORATION

EDISON TERRACES, LLC

Petitioner,

FHFC Case No.: 2019-072VW

v.

APPLICATION NO. 2015-518C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-21.027(6)**

Petitioner, Edison Terraces, LLC, a Florida limited liability company (the "Petitioner") submits its Petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-21.027(6), F.A.C. (the "Rule"), to allow Petitioner to finalize the submission of its Final Cost Certification Application Package ("Form FCCAP") and submit same to the Corporation. In support of this Petition for Rule Waiver of Rule 67-21.027(6), F.A.C. (the "Petition"), Petitioner states as follows:

**A. Petitioner and the Development.**

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

Edison Terraces, LLC  
675 NW 56<sup>th</sup> Street, Bldg. C  
Miami, FL 33127  
Attention: Carol Gardner, President  
Telephone: (305) 757-3737  
Facsimile: (305) 757-5856  
Email: [cgardner@tedcmiami.org](mailto:cgardner@tedcmiami.org)

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Ste. 4100

Miami, FL 33131  
Telephone: (305) 347-7308  
Facsimile: (305) 347-7808  
Email: [gcohen@shutts.com](mailto:gcohen@shutts.com)

2. On December 17, 2015, Petitioner closed on the equity financing/syndication of non-competitive low income housing tax credits ("Credits") associated with the issuance of tax-exempt bonds by the Housing Authority of Miami-Dade County. In connection therewith, Petitioner submitted an application for Credits with Corporation on or about August 31, 2015, and was issued a "comfort" letter by the Corporation indicating that, upon submission of required cost certification documents, Petitioner would be allocated Credits in the approximate amount of \$624,459.

3. The Rule requires submission of the Final Cost Certification Application Package ("Form FCCAP") in order to itemize all expenses incurred in association with the construction or rehabilitation of a housing credit development. Form FCCAP is incorporated by reference into the Rule. The Rule (and Form FCCAP) both require that a General Contractor Cost Certification ("GCCC") be included in this submission package, together with a certified public accountant ("CPA") opinion letter and audit report for the GCCC. The GCCC instructions contained within Form FCCAP reiterate the foregoing requirements. The GCCC instructions set forth requirements and audit procedures to be followed by the CPA when performing the audit of the general contractor's cost certification. Included within the cost certification package is a "General Contractor Costs Certification - GC Certification" form to be executed by the general contractor and the CPA ("GC Certification"), certifying the accuracy of the costs incurred by the general contractor.

4. The rehabilitation of the 120-unit affordable housing development (known as Edison Terraces Apartments) has been completed. Pursuant to the provisions of Petitioner's

amended and restated operating agreement, receipt of the third and fourth capital contributions from the tax credit investor (totaling approximately \$1,370,000) is dependent upon finalization and submission of the audited cost certification, and receipt of Form 8609 from Corporation (issued after receipt and review of the Form FCCAP). Receipt of such remaining capital contributions by Petitioner is necessary in order to pay all expenses and obligations incurred in connection with the rehabilitation of the apartment complex.

5. Petitioner is in litigation with the general contractor regarding disputes over amounts owed under the construction contract. As a result, the general contractor is unwilling to execute the GC Certification, and other internal certificates and affidavits to be provided to the CPA in order to enable the CPA to issue its opinion letter and audit report.

**B. Rule from Which the Waiver is Sought.**

6. The relevant portion of the Rule for which this waiver is sought, provides as follows:

“(6) The Final Cost Certification Application Package (Form FCCAP) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer’s and General Contractor’s fees as described in Rule 67-21.026, F.A.C. Such form package shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files in Microsoft Excel spreadsheets for the HC Development Final Cost Certification (DFCC) and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries if requested by the Corporation, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter for both the DFCC and GCCC, an unmodified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit allocation will not be issued until such times as all required items are received and processed by the Corporation. The Final Certification Application Package (“Form FCCAP”) is adopted and incorporated herein by reference...”(emphasis added).

**C. Statute Implemented.**

7. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that governs the allocation of federal low-income housing tax credits. See §§ 420.5099, Florida Statutes (2018).

8. Pursuant to Chapter 120.542(1), Florida Statutes, “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

“Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.” Section 120.542(2), Florida Statutes.

9. In this instance, Petitioner meets the standards for a waiver.

**D. Justification for Petitioner’s Requested Waiver**

10. Petitioner’s CPA has completed nearly all of the work necessary for submission of Form FCCAP and advises that any missing information would not change the results of its report, but is unable (due to the litigation described above) to obtain the signature of the general contractor to the GCCC Certification and to certain other certificates and affidavits required by

the CPA of the general contractor. However, the CPA has advised Petitioner that nearly all accounting work necessary for submission of Form FCCAP (including the GCCC) has been completed, and that any differences noted as a result of its audit are immaterial. However, CPA cannot issue its opinion letter nor its audit report at this time, due to its inability to obtain requested documentation from the general contractor (who is, as noted above, in litigation with Petitioner).

11. Petitioner is requesting that Corporation waive the required submission of the GC Certification, and of the CPA's opinion letter and audit report for the GCCC. Petitioner will submit the CPA opinion letter and unmodified audit report for the DFCC.

12. The requested waiver will ensure the availability of tax credit equity financing which will otherwise be lost as a consequence of the delays and difficulties described herein.

**E. Conclusion**

13. The facts set forth in Sections 10 through 11 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the inability to obtain the general contractor's execution of the GC Certification and other documentation necessary in order for the CPA to issue its opinion letter and audit report with respect to the GCCC, and as a result Petitioner's inability to obtain the final equity installments from the tax credit investor which are dependent upon submission of the Form FCCAP and the issuance of Form 8609 by the Corporation.

14. As demonstrated above, the requested waiver serves the purposes of Section 420.5099, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households. Further, by granting the requested waiver, the Corporation

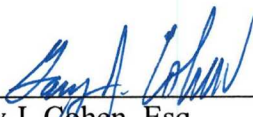
would recognize principles of fundamental fairness in the development of affordable rental housing.

15. The waiver being sought is permanent in nature. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant this Petition and all the relief requested therein;
- B. Grant a waiver of the Rule to permit submission of Form FCCAP without the GC Certification required therein, and without a certified public accountant opinion letter and audit report with respect to the GCCC; and
- C. Award such further relief as may be deemed appropriate.

Respectfully submitted,



---

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
Counsel for Edison Terraces, LLC  
200 S. Biscayne Blvd., Ste. 4100  
Miami, FL 33131  
Telephone: (305) 347-7308  
Fax: (305) 347-7808  
E-Mail: [gcohen@shutts.com](mailto:gcohen@shutts.com)

## CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 30<sup>th</sup> day of August, 2019.



---

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
Counsel for Edison Terraces, LLC  
200 S. Biscayne Blvd., Ste. 4100  
Miami, FL 33131  
Telephone: (305) 347-7308  
Fax: (305) 347-7808  
E-Mail: [gcohen@shutts.com](mailto:gcohen@shutts.com)