



May 15th, 2020

Trey Price, Executive Director
Marisa Button, Director of Multifamily Programs
Florida Housing Finance Corporation
227 N. Bronough Street Suite 5000
Tallahassee, Florida 32301

Re: Comments to Rule Chapters 67-21 and 67-48 FAC

Dear Mr. Price and Ms. Button,

Thank you for the opportunity to comment on the draft Rule Chapter 67-21 and 67-48 FAC currently in development. We appreciate your consideration in the following matters.

- **Sale or Transfer:** In reference to the added language in 67-48.030 regarding the Sale or Transfer of a Housing Credit Development, Southport believes that the transfer requirements should be dictated by the original recorded agreements entered into by the parties and Rule in place at that time. We object to the proposed rule change that changes the transfer requirements to the rule in effect at the time of transfer request. Transfer or Sale at closing should be dictated by original recorded legal agreements entered by the parties and not by something else in effect years later.
- **25% Subcontractor Limitation:** Southport strongly supports Florida Housing's increase of the limit from 20% to 25%. Recently, the removal of the general contractor fees from this calculation has impacted a number of developments where the overage is very minimal and ranges between 1%-3%. In addition, the Rule(s) only contemplate exceptions for shell subcontractors on buildings of 5 or more stories up to 31%, however, Florida Housing should consider exceptions for **site contractors** on new construction developments as well due to the scope of work performed by these subcontractors.
- **Appraisal:** The Rule(s) state: "*An appraisal prepared by an appraiser selected by the Corporation indicating that the purchase price for the Development is reasonable and consistent with existing market conditions:*" Southport respectfully requests that this be the case with all underwriters and credit underwriting procedures. Market Value should be a value that underwriters/servicers can use in their review. Rehabilitation and preservation deals are being negatively impacted by the required use of the "as-is as currently restricted" values within the appraisals. We encourage FHFC to allow the market value and/or "as-is as renovated" value as those are the true value of the development being underwritten. These developments are often marketed and sold to the highest bidder. In some cases, developers are in fact paying market value for development, not a restricted amount. Furthermore, the "as-is as currently restricted" value is typically discounted for the myriad of immediate repairs that are required at these older assets.
- **Firm Commitment Deadline:** Southport respectfully requests that Florida Housing increase the current twelve (12) month deadline to receive firm loan commitment on SAIL, EHCL, and HOME loans to twenty-four (24) months. However, the ability to get to a firm loan commitment in a matter of 12 months is unrealistic in most cases. The developer does not have 12 months from invitation to

credit underwriting to get through underwriting and thus have a CUR approved by the board in turn issuing the Firm Commitment. Servicers for FHFC require all underwriting material (full plans, construction budget, final construction contract, 3rd parties, etc. to name a few) be submitted 60-90 days before a board meeting to ensure the report can be completed. FHFC has adopted a strict 30 days requirement for Board Agenda items and Board Meetings are only held every 6 weeks. In order to get to a firm commitment from a standing start upon invitation to credit underwriting on a new construction deal, a developer needs to order and wait for a full set of construction drawings to come in, go through the local permitting process which can't begin until the plans are done and go through underwriting with Florida Housing which includes third party reports which require plans. From there, the deals need to go through SBA, FDOT, SWFMD, army core permits, lender/investor credit committees. In addition, for rehabilitation/preservation developments the FHFC prescribed CNA process taking longer than expected proving to be very length and it is causing unforeseen delays in the completion of credit underwriting and the issuance of the credit underwriting reports. An example of current timing and how Developers really do not have 12 months to complete CUR and get to firm commitment:

New Construction Example Development:

- Invitation to CUR: June 28th, 2019
 - 12-month Firm Commitment Deadline: June 28th, 2020
 - FHFC Board meeting to meet Deadline: May 26th, 2020
 - Draft CUR due to FHFC no later than: April 27th, 2020
 - 100% Due Diligence items submitted to Servicer to meet deadline: February 27th, 2020
 - *full plans, construction budget, all 3rd party reports, construction contract, etc.*
 - Actual time from invitation to Due Diligence submission: 8 months
 - Actual time from invitation to CUR/firm commitment and/or Extension Request: 10 months
- **Firm Commitment Extension Fee:** While one can understand FHFC's use of the 1% extension fee as a deterrent of the use of the allowable six (6) month extension those fees cause gruesome economic impact to those deals utilizing the finance loan sources. Extension fees are an entire point, not includable in basis and the policy punishes the bond/SAIL deals which are least able to absorb the extra fees and require the most hurdles to get done.
 - **Local Government Contributions.:** We would like to encourage FHFC again strongly to not include the required minimum local government contribution as it relates to the SAIL RFA (or any other RFA). Because the SAIL RFA is not driven by the lottery, the local government contribution requirement does not make it easier or encourage large developers to submit numerous applications. The majority of local governments with a process in place to provide the minimum local contribution typically provide it for every applicant, so long as they meet threshold requirements; therefore, the minimum local government contribution requirement is not encouraging local governments to "get behind a project" or support the development. Instead, they provide it to all who apply.

It does, however, **provide a mechanism to prevent the development of affordable housing** by allowing local governments to decide NOT to provide the minimum local contribution to ANYONE who applies. This is not our opinion. This has been communicated to us expressly by numerous local governments around the state. Recently, we have run into several local governments that have an all-out moratorium on providing sign off on ANY of the required FHFC Application Forms, let alone establishing a process where they would provide a contribution of funds. We do not believe it is the intent of the Corporation to retain a process that allows jurisdictions to prevent new developments from proceeding simply because they are affordable housing, which is a regular occurrence under the current system. In last year's Small Medium County geographic RFA, no minimum local government contribution required and there were several applications from municipalities that historically had not been able to compete for funding. This was made possible because the local contribution was not required.

In addition to the use of the local contribution requirement as a weapon against the creation of affordable housing, the use of the local contribution for SAIL transactions is contrary to the very nature of the program. Generally, SAIL funds are awarded to developments that can best utilize the SAIL funds, as leveraging is a much more prevalent component of the SAIL competition. The developments that FHFC should fund with SAIL are deals with cheap land and the most efficient construction costs. These developments should not be passed over for less efficient transactions simply because they could not come up with the minimum contribution from the local governments. We want to have the most units funded in the most counties, as we can all agree that there is an overwhelming need for quality, safe, affordable housing throughout Florida.

This all is in addition to the fact that there is often insufficient time ahead of the SAIL RFA for some jurisdictions to facilitate the process of getting local funding approved that is necessary to provide the local contribution. Some local governments that already have a plan in place may be able to do so, but these are the same jurisdictions that routinely provide the minimum local contribution.

- **SAIL Funding - Minimum 5 Units Per Building Requirement:** There is no logical reason for this policy especially for acquisition/rehabilitation and/or acquisition/preservation developments. There are still properties that need rehabilitation which have 4 units or less per building. For many older deals smaller units per building was a development style for multifamily developments and was permitted at the time of construction. This could easily be enforced for any new construction, but at the very least existing units should not be kept from being rehabilitated with this restriction. We recommend that rehabilitation/preservation properties should be exempt from this policy.
- **Requirement of Payment & Performance Bond & Servicers to Collect Lien Waivers:** We respectfully suggest that the rule chapters clarify that when a General Contractor provides a payment and performance bond, then periodic construction draws are not withheld or delayed due to lien filings by a subcontractor or supplier. This is because the Florida lien laws provide that subcontractor and supplier liens are secured by the payment bond, not the project. The benefit of this rule change is that it prevents delays in the receipt of periodic construction draws and prevents delays in the payment of parties which are entitled to be paid. This, in turn, facilitates timely completion of construction. Subcontractors remain protected by the bond, but subcontractors will not be able to delay timely completion of a project.
Alternatively, FHFC could not require a payment and performance bond and the developers and contractors would in turn have to provide lien waivers for each construction draw.

Thank you for allowing us to comment on the current Rules. We appreciate your time and consideration in these manners. If you have any additional questions, please feel free to reach out at any time.

Sincerely,



Brianne Heffner
Vice President of Development