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May 1, 2024

VIA EMAIL

Melissa Levy  
Managing Director of Multifamily Programs  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301

RE: Developer Experience

Dear Melissa:

This law firm represents McDowell Housing Partners.

As you know, the SAIL RFA 2023-213 required the applicants to demonstrate a certain level of “Developer Experience.” That experience allowed the “natural person Principal(s)” to demonstrate experience through the completion of qualifying developments since January 1, 2003. The RFA also gave applicants the ability to earn an additional 5 points if a certain type of Developer Experience was demonstrated. In defining the relevant experience, the RFA provided:

If the experience of a natural person Principal for a Developer entity listed in this Application was acquired from a previous affordable housing Developer entity, the natural person Principal must have also been a Principal of that previous Developer entity as the term Principal was defined by the Corporation at that time.

An issue arose during that RFA process regarding this provision that could have potentially led to unnecessary confusion and litigation. We would like to explain the issue and suggest a solution.

There have been a number of changes to the definition of “principal” since 2003. For example, the definition of “principal” in effect in the 2005 time frame provided:

“Principal” means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

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This definition appears to contemplate that applicants are partnerships or, possibly, corporations. It does not address an applicant that is a limited liability company, or other types of organizations discussed in the current definition of “principal.” In addition, this older definition only references “applicants” and we know that, at present, the term “principal” can be relevant to a developer or a management company.

If we were to look at subsequent definitions of “principal” that have appeared in the rule over the years, we could likely conceive of other examples that might not neatly fit into what the Corporation is seeking when it asks about Developer Experience.

In order to clarify and to avoid potential future litigation, we would suggest that future RFAs that include this Developer Experience section be amended. There are no doubt multiple ways to fix the issue, but one suggestion is to amend the provision above as follows:

If the experience of a natural person Principal for a Developer entity listed in this Application was acquired from a previous affordable housing Developer entity, the natural person Principal must have also been a Principal of that previous Developer entity as the term Principal was defined by the Corporation at that time or as it is defined on the date of the issuance of this RFA.

We would ask that this comment be considered and included in the file when the next version of this SAIL RFA is developed as well as any other RFA that has a similar provision. Again, we recognize that there are likely other ways to address this issue and we are happy to discuss it with you or others at Florida Housing at your convenience.

Thank you for your consideration.

Sincerely,



Michael J. Glazer

MJG/

Cc: Marisa Button  
Ethan Katz  
Chris Shear