

**FLORIDA HOUSING FINANCE CORPORATION**  
**Board Meeting**  
August 5, 2016  
Action Items



## LEGAL

### *Action*

#### I. LEGAL

##### A. NATIONAL DEVELOPMENT FOUNDATION, INC., Petitioner, v. FLORIDA HOUSING FINANCE CORPORATION, Respondent. FHFC Case No. 2016-0018BP

###### 1. Background

- a) This case regards RFA 2016-101, HOME Financing to be Used for Rental Developments in Rural Areas (the “RFA”). On January 22, 2016, Florida Housing issued the RFA soliciting applications to award HOME financing. On May 6, 2016, Florida Housing posted a notice of its intended decision to award funding to five eligible applicants. National Development Foundation, Inc. (“NDF”) and four other applicants were deemed ineligible.
- b) Pursuant to section 120.57(3), Florida Statutes, NDF timely filed a formal written protest contesting the ineligibility of its application due to a funding shortfall in the Development Cost Pro Forma. NDF submitted a non-corporation funding proposal from National Lending Partners, Inc. (“NLP”). Florida Housing’s review committee found that NLP did not meet the definition of a Regulated Mortgage Lender in the RFA. NDF failed to submit a copy of NLP’s audited financial statements as required for funding proposals not from a Regulated Mortgage Lender. No material facts were in dispute and the matter was heard in an informal hearing by an Administrative Law Judge pursuant to the Administrative Law Judge Services Contract.
- c) The only issue in this case is whether Florida Housing’s review of NDF’s application was inconsistent with Florida Housing’s policies. Specifically, in a previous RFA, 2016-104, Florida Housing found the only applicant in that RFA, Grove Pointe Limited Partnership (“Grove Pointe”) ineligible for submitting a funding proposal from NLP which did not include audited financial statements. As there was only one applicant for funding in RFA 2016-104, the Board approved staff’s recommendation to allocate the remaining funding using the Returned Allocation provision in the RFA<sup>1</sup>. The Board authorized staff to issue an invitation to Grove Pointe to enter credit underwriting with the condition that Grove Pointe provide acceptable documentation from the mortgage lender with 21 days of the board meeting. In this case, NDF argues that its application should receive the same treatment as the Grove Pointe application.

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1. The Returned Allocation provision of RFA 2016-104 in Section Four(B)(2)(f), page 23 provides:

Funding that becomes available after the Board takes action on the Committee’s recommendations, due to an Applicant withdrawing its Application, an Applicant declining its invitation to enter credit underwriting, or an Applicant’s inability to satisfy a requirement outlined in this RFA, will be distributed as approved by the Board.

## LEGAL

### *Action*

#### 2. Present Situation

- a) A hearing was conducted on June 22, 2016, before Administrative Law Judge John G. Van Laningham at the Division of Administrative Hearings in Tallahassee, Florida. The parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on July 18, 2016. The Recommended Order recommended that Florida Housing:

[E]nter a final order (i) determining that NDF's failure to include with its application evidence of NLP[]'s ability to lend funds to NDF constitutes a minor irregularity and (ii) waiving the minor irregularity on the condition that NDF supply the missing information within 21 days after the entry of the final order; or, alternatively, stating the facts and circumstances upon which its discretionary decision *not* to waive the minor irregularity has been based, so that the outcome will not appear to be arbitrary or capricious, and also to enable a reviewing court to determine whether or not the agency's discretion was abused.

- b) A copy of the Recommended Order is attached as [Exhibit A](#).
- c) Florida Housing and NDF filed Joint Exceptions to the Recommended Order on July 25, 2016. The Joint Exceptions are to the second portion of the recommendation in which the waiver of the minor irregularity is conditioned on NDF supplying additional information. Florida Statutes 120.57(3)(f) prohibits an agency from considering post-application submittals which amend or supplement the application. A copy of the Joint Exceptions is attached as [Exhibit B](#).
- d) NDF separately filed its own Exceptions to the Recommended Order on July 27, 2016, a copy of which is attached as [Exhibit C](#). NDF takes exception to the alternative language in the second portion of the recommendation and the conclusions of law which appear to support that recommendation. NDF contends that to not waive the minor irregularity in this case while waiving it in the Grove Pointe case would be arbitrary and capricious.

#### 3. Recommendation

- a) Staff recommends that the Board adopt the Findings of Fact and the Conclusions of Law in the Recommended Order. Staff also recommends that the Joint Exceptions to the Recommendation be granted and the condition placed on the waiver of the minor irregularity be removed. Additionally, staff recommends that NDF's exceptions be granted and the alternative recommendation be removed.

# NATIONAL HOUSING TRUST FUND PROGRAM

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### II. NATIONAL HOUSING TRUST FUND PROGRAM

#### A. Request Approval of Florida's National Housing Trust Fund Allocation Plan

##### 1. Background

- a) The State of Florida has been allocated \$4,598,821 under the new federal National Housing Trust Fund (NHTF) program. The program was established under Title 1 of the Housing and Economic Recovery Act of 2008 as a block grant to the states. Funding for the program comes from a small percentage of new business generated by Fannie Mae and Freddie Mac. Funding for the program was suspended during the recession, but starting in 2015, these two entities were directed to begin setting aside funds for this purpose. Each year the funds will be turned over to U.S. HUD, which is the federal administrator of the program. HUD sets the allocation for each state based on a formula out of the \$173.6 million in national funding available for all states in the program. Unlike the other four programs mentioned above, which also flow to many local areas of the state, NHTF program funding will be administered at the state level only.
- b) The broad purpose of the program is to increase and preserve the supply of rental housing for extremely low income (ELI) households by providing an ongoing, dedicated federal source of capital for development of housing. The bulk of the program is targeted toward rental housing, although up to 10 percent may be used for homeownership activities. Properties which receive NHTF funding must remain affordable for a minimum of 30 years.
- c) Each state is required to develop a new NHTF allocation plan that is then incorporated into its Consolidated Plan and associated Annual Action Plan. These existing plans provide the outline for the state's priorities and allocation approaches for the programs listed above. The Plan must specify how the funds will be distributed to eligible applicants; the range of activities to be funded, including the estimated amount that will benefit extremely low-income households, and the State's plans to minimize displacement of persons and to assist any persons displaced as a result of this funding.

##### 2. Present Situation

- a) The proposed plan was developed through a process of citizen engagement and participation. On February 24, 2016, Florida Housing held an NHTF workshop in Tampa to outline program requirements and initial implementation ideas. The workshop was well attended and Florida Housing staff received comments from developers; academics; advocates for extremely low-income households, homeless persons and persons with disabilities; local government officials; providers of supportive housing and services, and concerned citizens.
- b) On April 28, 2016, Florida Housing held another workshop to answer questions and receive comments on the first draft of the NHTF allocation plan, which was made available for public review before the meeting. The workshop was held at Florida Housing's offices in Tallahassee and also was available by teleconference.

## NATIONAL HOUSING TRUST FUND PROGRAM

### *Action*

- c) As a result of engagement with interested stakeholders, the proposed plan calls for units supported with NHTF funding to be integrated into “general occupancy” developments that serve family and elders at or below 60% of area median income (our most common set-aside units). The total number of NHTF-funded units in each property would be very low, and would serve ELI special needs and/or homeless households. This means that the NHTF-financed units will add a few ELI units to the other ELI units already required in general occupancy properties. NHTF funding will be blended with other program financing, such as Bonds/SAIL or Low Income Housing Tax Credits, to finance general occupancy properties that include these units.
- d) The integrated approach is part of a supportive housing strategy that Florida Housing has been implementing for a number of years. The strategy responds to a national movement to ensure access to units that are integrated into the community (including apartment communities), thus allowing persons with special needs to have the choice of housing options; to provide them opportunities to interact with the broader community through employment and other activities; and to ensure that they have opportunities to live and interact with neighbors outside of their special needs group.
- e) On June 28, 2016, the final 30-day public review and comment period was announced, ending with a telephonic public hearing held on July 28, 2016. To assist the public in its review of the proposed allocation plan, the plan has been available on Florida Housing’s website. The proposed plan is provided for Board review in [Exhibit A](#).
- f) The final plan and associated documents must be submitted to HUD for review and approval by August 16, 2016. Once HUD approves the plan, Florida Housing will be able to access the funding as needed.

### **3. Recommendation**

- a) Approve the proposed NHTF Allocation Plan and authorize staff to integrate this funding into appropriate Requests for Applications in the 2016-2017 funding cycle.

## PROFESSIONAL SERVICES SELECTION (PSS)

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### III. PROFESSIONAL SERVICES SELECTION (PSS)

#### A. Request for Proposals (RFP) 2016-05, Content Management System

##### 1. Background

- a) Since early 2015, staff have been working with vendors in a multi-phase project to redevelop and redesign the Corporation's website. In the initial phase, Florida Housing worked with BowStern, LLC to obtain an in-depth review of the Corporation's and other HFA websites and recommendations as to how the redeveloped website should be organized and structured. In April 2016, Florida Housing entered into a contract with SGS Technologie, LLC for Phase II of the project, which focuses on the new website's design, development and hosting services.

##### 2. Present Situation

- a) A critical component of Phase II is the procurement and implementation of a web content management system (WCMS) software that will allow SGS Technologie, LLC and staff to collaborate on the creation, modification, and effective ongoing management of digital content on the website. A WCMS is a software system that provides website authoring, collaboration, and administration tools designed to allow users with little knowledge of web programming languages or markup languages to create and manage website content with relative ease, and will be used long-term after the design and implementation engagement.

##### 3. Recommendation

- a) Authorize staff to begin the RFP process and establish a review committee to make recommendations to the Board on a web content management solution.