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Marisa Button  
Director of Multifamily Housing  
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227 N. Bronough Street, Suite 5000  
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Re: Comment on Draft RFAs for SAIL (2021-205), Miami-Dade Housing Credits (RFA 2021-203), Large Six County Housing Credits (2021-202), and Medium and Small County Housing Credits (2021-201)

Dear Marisa:

Thank you for the opportunity to comment on provisions of the draft RFA 2021-205, for SAIL and Tax-Exempt Bonds. I submit these comments not on behalf of any applicant or developer, but as an attorney who routinely handles litigation involving Florida Housing applications.

One of the issues I commented on at the July 13 workshop for RFA 2021-205 concerned the number of Community Services an applicant can identify for purposes of achieving a proximity score. This comment also applies to the Geographic Housing Credit RFAs 2021-201, 2021-202, and 2021-203. My suggestion, as will be explained in this comment letter, is for the Corporation to spell out in the RFAs the consequence for applicants who identify more than three Community Services for proximity scoring purposes. Clearly stating the consequence would bring more certainty to the process and potentially avoid litigation.

As it has for several years now, the Corporation identifies four Community Services that can be selected for purposes of proximity scoring (in addition to transit scoring): Grocery Store, Medical Facility, Pharmacy, and Public School. Page 30 of 183 of the 7-2-21 draft RFA 2021-205 states that these four Community Services are available to all Demographics, but also indicates that an applicant can only select up to three of the Community Services.

As you know, for many years, Public School could only be selected by applicants choosing the Family demographic, and Pharmacy could only be selected for Elderly housing applicants. So, applicants were necessarily limited to three Community Services. The RFAs were revised a year or two ago to allow applicants to select from among all four Community Services without regard to Demographic selection, and that ability is being carried over. More recently, some RFAs allowed applicants to select all four Community Services, and not be limited to three.

Now that the Corporation plans to again limit applicants to select a maximum of three Community Services, I believe the Corporation should spell out in the RFA the consequence of an applicant selecting more than three Community Services. There are many possible options, including: outright rejection of the application for failure to adhere to the RFA instructions on a material requirement; loss of all Community Service proximity points; or scoring of only three of the claimed four services, using either a “first three listed” approach, random selection of the three to be scored, scoring only the three lowest point services or the three highest point services, or some other approach.

I don’t necessarily advocate for any particular remedy when an applicant selects all four Community Services. However, I personally believe that scoring only three of the four claimed services, using whatever method to select the three, renders the instruction to select only three services meaningless, as there is no penalty, and thus no real consequence, for exceeding the maximum number. Any process for reducing an applicant’s selected four Community Services to three services has the appearance of allowing the amendment of an applicant, or, worse yet, has the appearance of the Corporation amending an application on behalf of an applicant.

Outright rejection of an applicant for claiming too many Community Services may seem a harsh remedy. Loss of all Community Service proximity points seems the most logical remedy, and is consistent with the Corporation’s approach to other material errors in an application. Of course, loss of Community Service points may result in an applicant being deemed ineligible for consideration, or not satisfying the Proximity Funding Preference if it does not achieve the required minimum proximity score.

In this RFA, though, as with some other RFAs, some applicants are entitled to proximity points based on a PHA proximity point boost or RD 515 point boost, and I do not advocate the loss of those point boosts. Other current draft RFAs expressly exempt applicants seeking to satisfy a particular funding goal, such as Revitalization, SunRail, or Local Government Area of Opportunity, from having to achieve certain minimum proximity scores to satisfy eligibility requirements or Proximity Funding Preference. I do not advocate for loss of eligibility or preferences for those applicants satisfying the specified goals if they claim more than three Community Services (unless they are competing for funding outside of the goal).

Choosing an appropriate remedy for an applicant who selects more than three Community Services is the Corporation’s policy choice. You have the opportunity to make that choice now, and to add clarity to the process. I urge you to do so.

Thank you again for the opportunity to submit comments.

Sincerely,



M. Christopher Bryan