3/31/2023

Jean Salmonsen
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

RE: Rule Chapters 67-21 and 67-48, F.A.C. eff. 7.6.22

Dear Ms. Salmonsen:

Thank you for the opportunity to submit feedback on Florida Housing Finance Corporations (FHFC) proposed RFA 2023-RUL 2023/2024 Rule Development [Chapter 67-21 - NON-COMPETITIVE AFFORDABLE MULTIFAMILY RENTAL HOUSING PROGRAMS (MMRB/HC)]. Lincoln Avenue Capital is a mission-driven affordable housing developer currently active in twenty-two states. Florida represents our most active state – we own 37 affordable communities across the state totaling more than 6600 apartments. Additionally, we have 572 units of new construction affordable housing currently underway in the state and anticipate beginning construction on at least one additional ground up new construction community as well as an additional acquisition rehabilitation project in Florida in 2023.

Per Unit Rehabilitation Expenditures (3.a)

Background: The proposed FHFC rules read as follows (Rule Chapter 67021, F.A.C. eff. 7.6.22)

67-21.0025(1): A minimum rehabilitation investment is required to assure meaningful, rather than simply cosmetic, rehabilitation of properties. In addition to the alteration, improvement or modification of an existing structure, Rehabilitation or Preservation costs during any 24-month period with respect to the Housing Credit Program must equal or exceed an average of $50,000 in hard rehabilitation costs per unit and are in addition to the 20% of the property's adjusted basis requirements and minimum qualified basis per low income unit set forth in Section 42(e)(3)(A)(ii) of the IRC ~~also includes what is stated in Section 42(e) of the IRC, except that for the purposes of Non-Competitive HC, the following is substituted for Section 42(e)(3)(A)(ii)(II): "II. The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $15,000 or more."~~ For purposes of this subsection, "hard rehabilitation costs" include site work, rehabilitation costs for physical improvements to the property, and construction contingency and do not include general contractor fees or overhead, general requirements, architect and engineering fees, permit fees, financing or soft costs, or developer fees.

Comment: We believe FHFC's policy objective with these proposed changes is to ensure that sufficient rehabilitation scope of work is undertaken to maintain a project up to reasonable standards during the 15-year compliance period. We concur that this is an important policy priority; however, we suggest that FHFC make several revisions to its proposed regulations, which we believe will achieve this policy goal while accommodating flexible circumstances. We observe that setting the minimum

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rehabilitation threshold at $50,000 will severely limit debt financing options for projects financed with tax exempt bonds. As FHFC is aware, one of the most common tax-exempt bond preservation transaction structures utilized in today's marketplace is the short-term cash-collateralized bond structure where the tax-exempt bonds are taken out with a taxable FHA 223(f) loan. FHA 223(f) loans have several desirable qualities for preservation transactions including low-interest rates, 35-year amortization and, unlikely the FHA 221(d)4 program, does not trigger Davis-Bacon wage scales. Unfortunately, FHA 223(f) loans per unit loan limits are far below the $50,000 rehab threshold. The current FHA 223(f) loan limit threshold in the highest cost adjustment areas is $45,854 per unit. Even accounting for tax credit equity, if FHFC were to enact this change it would effectively eliminate the ability for tax credit developers to utilize this preferential financing because acquisition costs for a typical Year 15 and/or Section 8 community in today's market place range between $70,000 and $150,000 per unit. The proposed minimum rehabilitation threshold also eliminates the ability of developers to utilize this structure in order to qualify for acquisition credits on a project that has a broken 10-year hold, which makes the resyndication of these communities infeasible and makes it much more likely that the affordability of these communities will not be preserved past the existing extended use period.

Furthermore, while many properties require significant rehabilitation scope of work, others that have been maintained well may require significantly less than $50,000 per door of rehab scope of work. We do not believe it is a responsible use of scarce financing resources to 'over-scope' rehabs if the Capital Needs Assessment (CNA) confirms that a lesser scope of work is appropriate.

Additionally, we observe that well maintained properties in desirable markets where there is significant rent advantage between subsidized units and comparable market units are most at risk to be lost from the program and will also command the highest acquisition prices. Setting the rehabilitation threshold too high for these assets will make them unfinanceable as affordable assets and will increase the likelihood that they will be sold to conventional buyers or converted either via the qualified contract process or at the end of a projects extended-use period. This is a highly undesirable outcome that should be avoided at all costs.

As such, we recommend revising the proposed regulations, lowering the rehabilitation threshold from $50,000 a door to the greater of $28,000 a door or the scope of work specified in the Capital Needs Assessment. We further recommend that the definition of "hard rehabilitation costs" include general contractor fees or overhead and general requirements. These are legitimate costs that are incorporated into industry standard contracts like the AIA construction contract. We concede that perhaps FHFC may consider excluding some percentage of these costs from the minimum rehab calculation in the event that there is an identity of interest between the contractor and the developer, but we do not think it is necessary or appropriate in 3rd party contracts.

Corporation Approved CNA Provider (3.e.2)

<u>Background</u>: The proposed FHFC rules read as follows (Rule Chapter 67021, F.A.C. eff. 7.6.22)

(2) 67-21.014(2)(h): For a Development utilizing Corporation-issued MMRB that has rehabilitation with or without acquisition, a CNA, prepared in accordance with generally accepted industry investment grade standards as reflected in the Non-Competitive Application, shall be ordered by the Credit Underwriter from a Corporation-approved CNA provider. Its findings shall be used to determine the amount of rehabilitation that will be carried out and to set replacement reserves.

Comment: Per our previous comment, we support the additional step of requiring the Credit Underwriter to select from a list FHFC-approved CNA providers. We believe it is important that FHFC have confidence in the quality of the Capital Needs Assessment and to have agency vetoing providers that do not meet FHFC's standards.

We further suggest that if FHFC maintains an approved list of CNA providers it would be preferential to allow the developer to select their preferred provider. For repeat preservation developers, there are distinct advantages to having familiarity with the work product of individual CNA providers overtime and past experiences they may have with the provider would hopefully inform a better work product in the future.

Principle Disclosure Level (8.c)

Background: The current FHFC rules read as follows (Rule Chapter 67-48, F.A.C. eff. 7.6.22).

"(8) Unless otherwise stated in a competitive solicitation, disclosure of the Principals of the Applicant must comply with the following: (a) The Applicant must disclose all of the Principals of the Applicant (first principal disclosure level). For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required; (b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level); (c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, all of the Principals must be natural persons; and (d) If any of the entities identified in (c) above are a trust, the Applicant must disclose all of the Principals of the trust (fourth principal disclosure level), all of whom must be natural persons."

Per these rules, all Principals of the Applicant that are disclosed by the third principal disclosure level (item 8.c above) must be natural persons with the exception of entities identified as a trust in which case the natural persons must be identified by the fourth principal disclosure level.

Comment: Over the past several years, best practices for development company guarantee structures have evolved as have the potential sources of capital to finance affordable rental housing. It is now common for many organizations to utilize multi-tiered partnership structures that exceed the three principle disclosure levels currently allowed in the FHFC regulations. There are several reasons why these structures have evolved including to make allowances for:

- Structures with more meaningful economics for joint-venture partnerships with emerging developers and/or MWBE entities;
- Employee participation in development economics;
- Structures utilized by institutional, mission-driven and/or philanthropic capital (e.g. pension-funds, charitable foundation, etc.);
- 1031 investments in affordable housing where organizational structures already exist;
- Estate planning and generational changes in organizational ownership.

Additionally, many developers seek to utilize more efficient guarantor entities that allow them to appropriately manage risk while freeing up working capital for additional affordable housing transactions. These layered structures allow owners to build more equity in their guarantor entities which is a high priority for syndicators and investors as they underwrite the capacity of a developer. We observe that these structures are vetted by syndicators and lenders to ensure they provide appropriate capitalization throughout the life cycle of a partnership. Unfortunately, the current regulations constrain the ability to utilize some of these structures and approaches.

As such, we recommend that FHFC revise the regulations to insert an four additional levels of principal disclosure in which the 7th level requires all principles identified be a natural person, unless any of the entities identified is a trust, in which case the Applicant must disclose all of the Principals of the trust (fifth principal disclosure level), all of whom must be natural persons. Furthermore, we suggest FHFC reconsider its current rules around disclosure when ownership changes. We certainly agree that a major change of ownership should be disclosed to FHFC; however, we suggest that disclosure should not be required where changes of ownership do not exceed 10% of the ownership entity prior to the closing of the transaction. This will reduce administrative burdens on developers and FHFC when there are minor changes from entities without controlling interests. A prime example would be when developers set up employee equity participation in transactions, where the final participation may evolve during the closing process (e.g. an employee leaves the company).

Conclusion

Lincoln Avenue Capital appreciates the work of FHFC on its RFA 2023-RUL 2023/2024 Rule Development. We welcome the opportunity to discuss them with you further at your leisure and/or answer any questions you may have regarding our feedback. I can be reached at 860-287-1635 or tamdur@lincolnavecap.com.

Regards,

Thom Amdur
Senior Vice President, Policy & Impact

About Lincoln Avenue Capital

Lincoln Avenue Capital is one of the nation’s fastest-growing developers, investors, and operators of affordable and workforce housing, providing high-quality, sustainable homes for lower- and moderate-income individuals, seniors, and families nationwide. LAC is a mission-driven organization that serves residents across 22 states, with a portfolio of 119 properties comprising 22,000+ units.

Cc: Marisa Button