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**Subject:** RE: Principal disclosure and warm body guarantor issues

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Melissa, Marisa, Ethan, good morning, hope you enjoyed the holiday weekend. Thank you again for your work on Rule 67-21.0025. We'll be joining tomorrow's Rule workshop via the Webinar and are looking forward to it. There were a few points from our mark-up that aren't in the current draft and that we wanted to flag, as well as their rationale. Changes are in bold underline below, and I've reattached our mark-up to the last draft that FHFC had provided.

- 1) 67-21.0025(7)(f) – We included the lead in “**Notwithstanding anything to the contrary herein, prospective** Applicants requesting Non-Competitive Housing Credits...” so it's clear that the language in 67-21.0025(7) (“unless otherwise approved by the Corporation for Applicants requesting Non-Competitive Housing Credits only, all Applicants must also comply with paragraphs (c) and (d) below”) doesn't trump the exception in (f).
- 2) 67-21.0025(7)(f)(2) & (3) – We added “Affiliates” to the requirements of (f)(2) & (3) (For (3): “The Applicant, **its Affiliates** or its disclosed Principals collectively own or have owned a controlling interest in at least 25 affordable housing projects...”). The reason we would like to include “Affiliates” is because for Nuveen and other institutional investors, affordable projects often are held in a fund structure, and it's possible that a particular fund and its Principals won't have a controlling interest in 25 affordable projects but its affiliated entities and funds will. The core experience of having a controlling interest in at least 25 affordable projects still would apply to the platform and shared services (development, asset management, property management, security, etc). We therefore are hopeful that “Applicants” could be included to capture funds within the platform that don't necessarily own 25 affordable projects themselves.
- 3) 67-21.0025(4) – As discussed above, for Nuveen and other institutional investors, affordable projects often are held in a fund structure. Investor members are purely passive, similar to investors in limited partner entities formed by tax syndicators, from whom disclosure is not required. In addition, fund investors generally resist having their passive investments in funds disclosed. We therefore proposed carving out from (4) entities that own less than a 10% indirect non-controlling interest in the Applicant to reduce the burden of disclosing passive minority fund investors (“The Applicant discloses all non-natural person Principals of all entities at all Principal disclosure levels; **provided, that, such disclosure shall not be required for entities that own less than a 10% indirect non-controlling interest in the Applicant**”).
- 4) 67-21.0025(4)(a), (b) & (c) – Similarly, in (4)(a), (b) and (c), rather than requiring disclosure of “[a]ll natural person board members or executive officers of each entity”, “[a]ll natural person(s) who control day-to-day management of each entity” and “[a] natural person who possesses the authority to legally bind each entity”, we proposed disclosure of “[a]ll natural person board members or executive officers of ~~each the~~ entity **that controls day-to-day management and decisions of the Applicant**”. Again, given the fund structure, it would be difficult disclose “[a]ll natural person board members or executive officers” of the passive investor members of the funds, who are similarly situated to the investor members of the limited

partner entities formed by tax syndicators and resist disclosure of their passive investments in funds. Rather, we're hoping that disclosure can be narrowed to entities that actually exert control over the project and are not passive minority investors.

We're hoping the above issues can be further discussed during the workshop, particularly because they'll likely apply to other large institutional owner/operators of affordable housing as well. Looking forward to connecting, and thank you again.

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### **67-21.0025 Miscellaneous Criteria.**

(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 \$40,000 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. For purposes of this subsection, "hard rehabilitation costs" include site improvements, off-site improvements, 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.

(2) For purposes of this rule chapter, in accordance with Section 42 of the IRC, a for-profit entity wholly owned by one or more qualified non-profit organizations will constitute a Non-Profit entity. The purpose of the Non-Profit must be, in part, to foster low-income housing and such purpose must be reflected in the Articles of Incorporation of the Non-Profit entity. A Non-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit Corporation; and shall materially participate in the development and operation of the Development throughout the total affordability period as stated in the MMRB Land Use Restriction Agreement and the Extended Use Agreement, as applicable. If an Applicant applies to the Corporation as a Non-Profit entity but does not qualify as such, the Application will fail threshold.

(3) Total Development Cost includes the following:

(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties, of which the total cost cannot exceed the appraised value of the real property as determined in the Credit Underwriting process.

(b) The cost of site preparation, demolition, and development.

(c) Any expenses relating to the issuance of Tax-exempt Bonds or Taxable Bonds related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, Developer Fee, and the Corporation. However, fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against the Corporation with respect to a Development shall not be included in Total Development Cost.

(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Development.

(f) The cost of the construction, rehabilitation, and equipping of the Development.

(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services.

(h) Expenses in connection with initial occupancy of the Development.

(i) Allowances for contingency reserves and any anticipated operating reserves as recommended by the Credit Underwriter and approved by the Corporation.

(j) The cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the Corporation's bonds, for the construction or Rehabilitation of the Development.

(4) In determining the income standards of Eligible Persons for its various programs, the Corporation shall take into account the following factors:

(a) Requirements mandated by federal law.

(b) Variations in circumstances in the different areas of the state.

(c) Whether the determination is for rental housing.

(d) The need for family size adjustments to accomplish the purposes set forth in this rule chapter.

With respect to the HC Program, an Eligible Person shall mean a Family having a combined income which meets the income eligibility requirements of the HC Program and Section 42 of the IRC.

(5) Financial Beneficiary and Affiliate, as defined in Rule 67-21.002, F.A.C., do not include third party lenders, third party management agents or companies, third party service providers, Housing Credit Syndicators, credit enhancers regulated by a state or federal agency, or contractors whose total fees are within the limit described in this rule chapter.

(6) For computing any period of time allowed by this rule chapter, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal

holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

(7) For all Applications, disclosure of the Principals of the Applicant must comply with paragraphs (a) and (b) below, and unless otherwise approved by the Corporation for Applicants requesting Non-Competitive Housing Credits only, all Applicants must also comply with paragraphs (c) and (d) below.

(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 or a non-profit as defined in Section 42(h)(5)(C), subsection 501(c)(3) or subsection 501(c)(4) of the IRC, all of the Principals must be natural persons. A non-profit entity may be identified at the third principal disclosure level if the non-profit wholly owns a real estate development subsidiary identified at the second principal disclosure level; and

(d) If any of the entities identified in paragraph (c) above are a trust or a non-profit, the Applicant must disclose all of the Principals of the trust or a non-profit (fourth principal disclosure level), all of whom must be natural persons.

(e) Applicants requesting Non-Competitive Housing Credits only that request approval from the Corporation to allow for disclosure of natural person Principals below the third disclosure level must send written request to the Corporation which details the reason for the request, including any substantial hardship which prevents the Applicant from complying with paragraphs (c) and (d) of this subsection.

(f) ~~Prospective~~Notwithstanding anything to the contrary herein, prospective Applicants requesting Non-Competitive Housing Credits only ~~may request approval from the Corporation to shall~~ be relieved of the principal disclosures required in paragraphs (c) through (e) of this subsection if the following criteria are met:

1. The Applicant has no entities at any principal disclosure level where any natural person Principal owns more than a 10% interest in the entity;

2. The Applicant, its Affiliates or its disclosed Principals collectively have a net worth of at least \$250 million;

3. The Applicant, its Affiliates or its disclosed Principals collectively own or have owned a controlling interest in at least 25 affordable housing projects where:

a. At least 50% of the total units are Low Income units and financed in whole or part utilizing tax-exempt bonds or Housing Credits; or

b. At least 50% of the total units or their residents receive federal, state, or local rental subsidies; and

4. The Applicant discloses all non-natural person Principals of all entities at all Principal disclosure levels; provided, that, such disclosure shall not be required for entities that own less than a 10% indirect non-controlling interest in the Applicant; and:

a. All natural person board members or executive officers of ~~each~~the entity;

~~b. All natural person(s) who control that controls~~ day-to-day management ~~of each entity;~~ and decisions of the Applicant; and

eb. A natural person who possesses the authority to legally bind each entity.

(8) Disclosure of the Principals of each Developer must comply with the following:

(a) The Applicant must disclose all of the Principals of the Developer (first principal disclosure level); and

(b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level).

*Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.509, 420.5099 FS. History—New 7-16-13, Amended 2-2-15, 9-15-16, Repromulgated 5-24-17, Amended 7-8-18, 7-11-19, Repromulgated 6-23-20, 5-18-21, 7-6-22, Amended 6-28-23.*