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Sent: Tuesday, June 11, 2024 1:26 PM
To: Melissa Levy <Melissa.Levy@floridahousing.org>; Marisa Button <Marisa.Button@floridahousing.org>
Cc: Hollie Croft <hollie.croft@nelsonmullins.com>
Subject: Comments to Principal Disclosure Rule Changes

Good afternoon, Melissa,

We want to thank FHFC for the proposed rule changes. Below are comments for FHFC's consideration.

The proposed rule contains four separate requirements that an Applicant must meet in order to be exempt from paragraphs (c) through (e) of 67-21.0025(7), F.A.C. and participate in non-competitive local bond transactions without needing to file a rule waiver to apply to FHFC for the 4% HC.

The first requirement that no natural person Principal own more than a 10% interest in the Applicant entity. This requirement unnecessarily restricts participation by entities that include a JV. There could be potential structures where one of the owners of the Applicant entity is an investment fund, REIT, etc., but the other owners could be individuals who own a significant percentage of the Applicant (more than 10%). This requirement would impede joint ventures between individual developers and the large institutional developers that would fall under the new rule.

The second requirement for a collective net worth of \$250 million is onerous and arbitrary. The net worth of the Applicant and its disclosed Principals is not relevant to their ability to participate in 4%HC. The financial wherewithal of an Applicant and its Principals is thoroughly vetted by the underwriter for the locally-issued bonds. We would suggest this be deleted as a requirement altogether. However, shall the Corporation keep this requirement, we echo the comments made during the May 29th workshop that "Affiliates" should be included in clause (f)(2.) and would also suggest that the amount be significantly lowered as \$250 million seems arbitrary.

The third requirement for at least 25 affordable housing projects where the Applicant or its disclosed Principals must have a controlling interest is not necessary. Ownership of various developments, even as many as 25, does not reflect experience in the development of a project. Additionally, experience has never been a requirement for 4% HC transaction and should not be now an additional barrier to entry for developers that are utilizing this new rule because they cannot meet FHFC's principal disclosure requirements. However, shall the Corporation keep this requirement, we echo the comments made during the workshop that "Affiliates" should be included in clause (f)(2.) and would also suggest that the number of projects be decreased.

Lastly, the requirement to disclose all non-natural person Principals of all entities at all Principal disclosure levels does not work for pension funds, REITs, and similar structures which are the intended users of this new rule. In these types of entities there are almost always passive investors that own the interest through various entities (not individually). Passive investors do not actively participate in the transactions. Other agencies, HUD in particular, has long recognized the concept of passive participants, which are excluded from HUD's review of principals. In a REIT, for example, there could be hundreds of investors that are not natural persons that would need to be disclosed. For the same reasons as we have discussed with FHFC on numerous occasions, such disclosure would be impractical. We believe a good approach, using HUD as a guide, would be to narrow the disclosure of non-natural persons to the entities that exercise control over the development and the natural person principals of such entities as we have marked in our suggested language below. As a solution to FHFC's desire to know all of the entities in the structure, perhaps a certification by the disclosed Principal that some of its members are passive participants, similar to HUD's LLCI certification. While a complete list of entities investing in REITs, Funds, etc., is not feasible, the certificate would allow FHFC the opportunity to know that (i) there are non-natural persons in the structure that are passive participants/investors and are not being disclosed and (ii) would give FHFC the ability to effect consequences against an Applicant that has made intentional misrepresentations in the investor certification.

We again greatly appreciate FHFC's willingness to make this much-needed change to the rule, which will help further minimize the need for rule waivers. We would also like to have a call with you and Marisa this week to discuss these comments and provide additional feedback and answer any questions. Thank you!

Proposed Changes:

(f) Prospective Applicants requesting Non-Competitive Housing Credits are 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 utilizing tax exempt bonds or Housing Credits; or~~
 - b. ~~At least 50% of the total units receive federal, state, or local rental subsidies; and~~
4. The Applicant discloses all controlling non-natural person Principals of all entities at all Principal disclosure levels and:
 - a. All natural person board members or executive officers of each controlling entity;
 - b. All natural person(s) who control day-to-day management of each controlling entity; and
 - c. A natural person who possesses the authority to legally bind each controlling entity.



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