

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MBCDC: The Allen, LLC,

FHFC Case No.: 2020-030VW

**ORDER GRANTING WAIVER FROM RULE 67-48.004(3)(i),
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on May 28, 2020. Florida Housing Finance Corporation (“Florida Housing”) received the Revised Petition for Waiver of Rule 67-32, *Florida Administrative Code*, on May 12, 2020, from MBCDC: The Allen, LLC (“Petitioner”), followed by a second Revised Petition (“Petition”). The Notice of the Petition was published on May 13, 2020, in Volume 46, Number 94, of the *Florida Administrative Register*. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (“Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner successfully applied successfully applied for an allocation of Elderly Housing Community Loan (“EHCL”) funds in the 2008

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Adm. Planning / DATE 6/11/2020

application period to assist in the rehabilitation of The Allen apartments, a 39-unit elderly, affordable housing development in Miami Beach, Florida (the “Development”)

3. Rule 67-32.006(8), *Florida Administrative Code* (2008)(the “Rule”), provides in relevant part:

Any violation of the terms and conditions required by Rule Chapter 67-32, F.A.C., or the loan documents constitutes a default under the loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

4. Petitioner requests a waiver from the above Rule which requires compliance with its EHCL loan documents so that it may be allowed to submit its EHCL financial certification within nine months of the end of its September 30, 2019 fiscal year rather than the financial certification deadline described in Paragraph 15.(g)(i) of its EHCL Loan Agreement.

5. The Development is also funded under federal programs which require financial reporting, including an annual audit, within nine months. Petitioner is one of the eleven entities owned by the non-profit Miami Beach Development Corporation. To support its request for waiver, Petitioner asserts that its financial certification under the EHCL program depends on financial reporting supplied by audits from its sister entities. Petitioner asserts that because of the difference in EHCL and federal financial reporting

deadline, its cannot meet the EHCL financial certification deadline and is subject to audit finding for non-compliance. To support its petition, Petitioner asserts that waiver of the Rule will allow Petitioner to timely file its EHCL financial certification for its 2019 fiscal year so that it does not receive audit findings for non-compliance, therefore, not jeopardizing additional funding requests.

6. Section 120.542(2), *Florida Statutes*, provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

7. Granting the requested waiver would not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing.

8. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

9. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-32.006(8), *Florida Administrative Code*, that requires compliance with its EHCL loan documents is hereby **GRANTED** so that Petitioner be allowed to submit its EHCL financial certification within nine months of the end of its September 30, 2019 fiscal year rather than the financial certification deadline described in Paragraph 15.(g)(i) of its EHCL Loan Agreement.

DONE and ORDERED this 11th day of June, 2020.



Florida Housing Finance Corporation

By: _____

Chairperson

Copies furnished to:

Hugh R. Brown, General Counsel
Hugh.Brown@floridahousing.org

Marisa Button, Director of Multifamily Programs
Marisa.Button@floridahousing.org

Shahrzad Emami, Esquire
Legal Services of Greater Miami, Inc.
semami@legalservicesmiami.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.