

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
April 17, 2020
Action Items



FISCAL

Action

I. FISCAL

A. Unrestricted Net Position Designations

1. Background

- a) For financial statement presentation purposes, Florida Housing's net position falls into two primary categories: Restricted and Unrestricted. Restricted net position includes those assets on which constraints have been placed by law or external agreements or entities.
- b) Florida Housing's Board may "designate" net position within the Unrestricted Net Position balance for specific purposes. This designation means that the Board has directed the use of these assets for certain purposes.
- c) The designations may be modified by Board action at any time.
- d) There are currently three main categories of designations: demonstration and other initiatives; single family homebuyer loan program; and operating reserve.
- e) Examples of these designations by the Board have included:
 - (1) demonstration loan programs for such categories as victims of domestic violence and persons with special needs;
 - (2) allocation of funds to the SAIL program;
 - (3) all funds in the Single Family Escrow accounts for the single family homebuyer loan program. These accounts include cash, investments and loans remaining after bonds were fully defeased. Since these funds derive from the single family homebuyer loan program, they have historically been set aside for use within that program; and
 - (4) a housing credit servicing reserve (for future compliance monitoring fees) and budget stabilization. The amount of this designation currently provides for future compliance monitoring fees and approximately two years of operations.

2. Present Situation

- a) Staff is requesting the board approve the following general designations for presentation in the financial statements. The exact amounts for the 2019 financial statements are not final until closer to the end of the audit when the financial statements are prepared; however, estimates are provided.
- b) Single Family Homebuyer Loan Programs – approximately \$3.7 million. This includes all funds in the single family escrow and related accounts.
- c) Dedicated Reserve for Operations – approximately \$57.5 million. This designation includes a housing credit compliance monitoring reserve and operating budget stabilization.

FISCAL

Action

- d) Demonstration and Other Initiatives – approximately \$112.3 million. This includes funds for demonstration programs and to support other programs such as Multifamily Programs. This designation includes all net assets not designated for Single Family or Operations. Included in this projected balance is almost \$32.9 million that is committed to existing loans and to Requests for Applications.

3. **Recommendation**

- a) Staff recommends that the Board approve the designation categories of unrestricted net position as follows:
 - (1) Single Family Programs - \$3.7 million
 - (2) Dedicated Reserve for Operations - \$57.5 million
 - (3) Demonstration and Other Initiatives - remaining balance, estimated to be \$112.3 million.

LEGAL

Action

II. LEGAL

A. **Ambar Riverview, Ltd. v. Florida Housing Finance Corporation Appellate Case No.: 1D19-2668; DOAH Case No.: 19-1261BID; FHFC Case No.: 2019-014BP**

1. **Background**

- a) Florida Housing issued RFA 2018-111 in September 2018. Ambar Riverview, Ltd. (“Ambar”) and Las Brisas Trace, LP (“Las Brisas”) submitted applications in response. On February 1, 2019, Florida Housing’s Board of Directors (“Board”) found that while both Applicants were eligible for funding, Las Brisas would be selected for funding based on the criteria in the RFA. Ambar timely challenged Florida Housing’s selection of Las Brisas by filing a Notice of Intent to Protest and a Formal Written Protest and Petition for Formal Administrative Hearing. The Petition was referred to the Division of Administrative Hearings (“DOAH”) and assigned to an Administrative Law Judge (“ALJ”). Las Brisas timely intervened in the proceeding.
- b) Ambar alleged that the Application of Las Brisas should be ineligible or lose five points because the Principal Disclosure Form submitted by Las Brisas was not consistent with the requirements of the RFA and RFA guidance and instructions. The ALJ conducted an evidentiary hearing on April 10, 2019. In the Recommended Order, the ALJ found that the Principal Disclosure Form submitted by Las Brisas was acceptable and recommended that Florida Housing issue a Final Order dismissing Ambar’s challenge and award funding to Las Brisas. The Board adopted the Recommended Order as its Final Order on June 24, 2019. Ambar appealed this Final Order to the First District Court of Appeal. To date, that case remains pending.

2. **Present Situation**

- a) On March 26, 2020, counsel for Ambar and Florida Housing, with the advice and consent of their respective clients, executed a Settlement Agreement. Florida Housing agreed to award funding under RFA 2018-111 to Ambar and Ambar agreed to dismiss the pending appeal of Florida Housing’s Final Order. A copy of the Settlement Agreement is attached as [Exhibit A](#).
- b) The resolution of this matter through the Settlement Agreement avoids the time, expense, and uncertainty of litigation. According to the express terms of the Settlement Agreement, settlement of this matter will not have any precedential impact on future determinations by Florida Housing. Additionally, settlement will have no impact on any other applicants awarded funding under RFA 2018-111.

3. **Recommendation**

- a) Staff recommends that the Board adopt a Final Order approving and incorporating the Settlement Agreement and awarding funding under RFA 2018-111 to Ambar Riverview, Ltd.

LEGAL

Action

B. In re: Resolution 2020-007; Delegation of Authority

1. Background

- a) During the normal course of business, certain extensions of deadlines, waivers of rules, credit swaps, and waivers of the requirements in Requests for Applications, Carryover Agreements, Loan Documents, and regulatory agreements can only be granted by the Board during a normally scheduled meeting. Because such extensions and waivers are relatively uncommon, it generally creates only a minor burden on applicants and Florida Housing staff to prepare requests, petitions, and write-ups and to plan on addressing such requests and petitions every six weeks.

2. Present Situation

- a) On March 9, 2020, the Governor of the State of Florida issued Executive Order 20-52 in response to the COVID-19 Public Health Emergency. Among other things, this Order allows agencies to suspend provisions of rules and statutes that could hinder necessary action in coping with the emergency.
- b) On March 25, 2020, the President of the United States issued a Major Disaster Declaration for the State of Florida (DR-4486).
- c) Due to staffing shortages, local government capacity, economic uncertainty and other potential impacts on the affordable housing markets related to COVID-19, many developers, applicants and affordable housing stakeholders are or are expected to be facing significant hardships in meeting the various deadlines and requirements imposed by Florida Housing. As a result, staff anticipates receiving a significant increase in the number and urgency of requests for waivers of these deadlines and requirements.
- d) Going through the normal process of presenting all waiver requests at scheduled Board meetings would impede staff's ability to be able to respond quickly to rapidly changing conditions resulting from this Public Health Emergency.

3. Recommendation

- a) Staff recommends that the Board adopt Resolution 2020-007 delegating authority to the Executive Director to waive or modify deadlines and other requirements as described in the Resolution to the extent necessary to meet the emergency needs of those economically impacted by the Public Health Emergency.
- b) Staff also recommends that the Resolution take effect on April 17, 2020 and expire upon the determination by the Governor of Florida that the Public Health Emergency no longer exists, unless otherwise extended by the Board.

LEGAL

Action Supplement

I. LEGAL

A. **Berkeley Landing, Ltd v. Florida Housing Finance Corporation, DOAH Case No. 20-140BID, FHFC Case No. 2019-102BP (Intervenors Solaris Apartments, Ltd, Metro Grande III Associates, Ltd, Northside Property II, Ltd, HTG Bella Vista, LLC, and Brisas del Este Apartments, LLC.)**

Brisas del Este Apartments, LLC. v. Florida Housing Finance Corporation, DOAH Case No. 20-141BID, FHFC Case No. 2019-104BP (Intervenors Solaris Apartments, Ltd, Metro Grande III Associates, Ltd, Sierra Bay Partners, Ltd.)

Northside Property II, Ltd v. Florida Housing Finance Corporation, DOAH Case No. 20-142BID, FHFC Case No. 2019-106BP (Intervenors Solaris Apartments, Ltd, Sierra Bay Partners, Ltd.)

Homestead 26115, LLC v. Florida Housing Finance Corporation, DOAH Case No. 20-143BID, FHFC Case No. 2019-107BP (Intervenor Sierra Bay Partners, Ltd.)

HTG Bella Vista, LLC v. Florida Housing Finance Corporation, DOAH Case No. 20-145BID, FHFC Case No. 2019-109BP (Intervenors Solaris Apartments, Ltd, Sierra Bay Partners, Ltd, MHP Bembridge, LLC, and East Pointe Phase II, LLC.)

1. Background

- a) This case regards Request for Applications 2019-102, “Community Development Block Grant Disaster Recovery (“CDBG-DR”) to be Used in Conjunction with Tax-Exempt MMRB and Non-Competitive Housing Credits in Counties Deemed Hurricane Recovery Priorities” (“the RFA”). Petitioners and Intervenors all submitted applications in response to the RFA. On December 13, 2019, Florida Housing posted notice of its intended decision to award funding to several applicants, including Sierra Bay, Solaris, Metro Grande III, East Pointe, and Bembridge. The Board found that Brisas, Northside, Homestead (aka Beacon Place), and Bella Vista satisfied all mandatory and eligibility requirements but were not awarded funding based upon the ranking criteria in the RFA. The Board found that Berkeley was ineligible for funding for failure to include its Authorized Principal Representative in its Principal Disclosure Form and because two certification forms were not signed by its Authorized Principal Representative.
- b) Petitioners filed notices of intent to protest and formal written protests as required by section 120.57(3), Florida Statutes, challenging the Corporation’s scoring and ranking of Applicants for funding under the RFA. Florida Housing referred the petitions to the Division of Administrative Hearings for a formal hearing. All formal written protests filed by Petitioners were consolidated.
- c) The central issue here is whether Florida Housing’s decisions to award funding under the RFA are contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. More specifically, the issue is whether Florida Housing’s determination that the applications of Sierra Bay, Solaris, Metro Grande III, East Pointe, and Bembridge were eligible and whether Florida Housing’s determination that the application of Berkeley was ineligible was within the bounds described above.

LEGAL

Action Supplement

- (1) Berkeley Landing
 - (a) The RFA requires that the applicant identify an Authorized Principal Representative (APR) who must also be listed on the Principal Disclosure form. Berkeley identified Jennie Lagmay as the APR but did not list her as a Principal of the Applicant. The RFA also requires that the Application Certification and Acknowledgement form and the Site Control Certification form be signed by the APR. These forms were signed by Jonathan Wolf, who was not identified as the APR. Berkeley agreed that these were errors but contended that they should have been waived as minor irregularities. Florida Housing took the position that Berkeley should have remained ineligible.

- (2) Sierra Bay
 - (a) The RFA requires that if an eligible contract is included to demonstrate site control, that contract must include a statement that the buyer's remedy for default on the part of the seller includes specific performance. Sierra Bay concedes that its site control documentation did not meet this requirement and that it should be considered ineligible. Florida Housing agreed with this position.

- (3) Solaris
 - (a) The RFA requires that under certain conditions which are applicable to Solaris, the applicant must demonstrate that a Community Land Trust (CLT) is the land owner, and must provide documentation to show that the CLT has existed since June 28, 2018, that its articles of incorporation or bylaws must demonstrate that a purpose of the CLT is to provide or preserve affordable housing, and that the CLT must demonstrate ownership of certain property. Solaris provided the required documentation in its application, but Petitioner challenged whether the named CLT, Residential Options of Florida, was actually a CLT as defined in the RFA as of June 28, 2018. If Residential Options did not meet the definition of a CLT, Solaris would have been ineligible for funding. Florida Housing took the position that Solaris met the RFA requirements and should remain eligible.

- (4) Metro Grande III
 - (a) The RFA requires that as part of its demonstration of site control an applicant must include a "deed or certificate of title" showing who the landowner was. Metro Grande III did not include a deed or certificate of title with its application. The parties stipulated that the landowner was Miami-Dade County, and that the County had acquired the land through eminent domain and thus no deed or certificate of title existed. The application also included a lease and a landowner certification form that demonstrated that Miami-Dade County was the landowner, and Metro Grande III argued that the failure to include a deed or certificate of title should be waived as a minor irregularity. Florida Housing agreed and took the position that Metro Grande III should remain eligible.

LEGAL

Action Supplement

(5) Beacon Place

(a) The RFA requires that applicants in large counties receive at least two points for Transit Services. Beacon Place, an applicant from a large county, listed a Public Bus Rapid Transit Stop as its Transit Service. The RFA defines a Public Bus Rapid Transit Stop as a stop that includes, among other things, one route that has scheduled stops “at least every 20 minutes” between the hours of 7 am and 9 am. It was stipulated that the stop listed by Beacon Place had no scheduled stops between 7:01 am and 7:36 am. Beacon Place argued that if the phrase “every 20 minutes” were interpreted to mean one stop between 7:00 and 7:20, one stop between 7:20 and 7:40, and one stop between 7:40 and 8:00 its listed stop would meet that requirement. Florida Housing did not interpret the RFA that way and changed its initial position to agree that Beacon Place should have been found ineligible.

(6) East Pointe

(a) The RFA allows an applicant to receive a Proximity Funding Preference if it receives a certain number of proximity points. East Pointe claimed points for several community services, included proximity to a medical facility. Petitioners alleged that the listed medical facility did not meet the definition in the RFA because it did not provide medical services by appointment to persons under 19 years old. East Pointe argued that the definition required only that the facility provide services “by walk-in or by appointment” and that the listed facility did provide such services to any physically sick or injured person. Florida Housing agreed with East Pointe and took the position that it should remain eligible.

(7) Bembridge

(a) The RFA allows applicants to claim Proximity Points for grocery stores, pharmacies, public schools, and medical facilities, but also states that they will receive Proximity Points for “up to 3 services.” Bembridge claimed Proximity Points for four services. During its application scoring, Florida Housing awarded Proximity Points for the three services nearest the Development, and ignored the fourth service. Petitioners argued that Bembridge should have been awarded no Proximity Points and thus been found ineligible. Petitioners also argued that the Public Bus Stops listed by Bembridge did not meet the RFA definition but offered no evidence to support this contention. Florida Housing’s position was that its initial scoring decision was correct and that Bembridge should remain eligible.

2. Present Situation

a) A hearing was conducted on February 12, 2020, before Administrative Law Judge Lawrence P. Stevenson. All parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on April 6, 2020. The Recommended Order made the following recommendations:

(1) The Berkeley Application is ineligible for funding;

LEGAL

Action Supplement

- (2) The Sierra Bay Application is ineligible for funding;
 - (3) The Solaris Application is ineligible for funding;
 - (4) The Metro Grande III Application is eligible for funding;
 - (5) The Beacon Place Application is ineligible for funding;
 - (6) The East Pointe Application is eligible for funding and entitled to the Proximity Funding Preference; and
 - (7) The Bembridge Application is eligible for funding.
- b) A copy of the Recommended Order is attached as [Exhibit A](#).
- c) On April 9, Solaris and Florida Housing filed Exceptions to the Administrative Law Judge's recommendations regarding the Solaris Application. On April 13, Northside filed a Response to these Exceptions. Copies of the Exceptions and Response to Exceptions are attached as Exhibits [B](#), [C](#) and [D](#) respectively.
- d) Funding
- (1) Pursuant to Florida Housing's Subrecipient Agreement with DEO, Florida Housing retained a portion of the total \$140,000,000 dollars of CDBG-DR funding as program costs for administering the CDBG-DR program. Florida Housing recently analyzed the projected reimbursable costs of administering the CDBG-DR program, and has determined that it is reasonable to release approximately \$6,600,000 dollars to RFA 2019-102 for development funding that best meets the purpose of the CDBG-DR Workforce New Construction program.

3. Recommendation

- a) Staff recommends that the Board:
- (1) Grant the exceptions and amend or reject Findings of Fact Paragraphs 59, 60, 75, 78, 79, 80 and 81;
 - (2) Grant the exceptions and amend or reject Conclusions of Law Paragraphs 168, 170, and 171;
 - (3) Grant the exceptions and modify the Recommendation in the Recommended Order to find the Solaris application eligible for funding;
 - (4) Adopt the Findings of Fact, Conclusions of Law, and Recommendation of the Recommended Order, modified as requested in Florida Housing's exceptions to the Recommended Order;
 - (5) Assign the approximately \$6,600,000 in CDBG-DR administrative program funds to CDBG-DR development funding;
 - (6) Select the Northside application for funding as it is next in line in Miami-Dade County; and

LEGAL

Action Supplement

- (7) Select the Metro Grande III application for funding as it is the only remaining eligible application that can be fully funded with remaining CDBG-DR development funding. The Applications selected for funding are set forth on [Exhibit E](#).

MULTIFAMILY PROGRAMS – ALLOCATIONS

Action

III. MULTIFAMILY PROGRAMS – ALLOCATIONS

A. RFA 2020-302 Community Development Block Grant-Disaster Recovery (CDBG-DR) In Monroe County

1. Background

- a) On January 7, 2020, Florida Housing Finance Corporation (Florida Housing) issued RFA 2020-302. The RFA offered \$5,859,418 in Community Development Block Grant – Disaster Recovery (CDBG-DR) Program funding for construction of Workforce Housing (Development Funding) and \$1,076,011 in CDBG-DR Program funding for acquiring land that will be affordable in Perpetuity for Developments that help address the unmet Workforce Housing need in Monroe County (Land Acquisition Program Funding).
- b) The deadline for receipt of Applications was 3:00 p.m., Eastern Time, February 20, 2020.

2. Present Situation

- a) Florida Housing received 4 Applications in response to this RFA. The Review Committee members, designated by the Executive Director, were Rachael Grice, Multifamily Programs Coordinator (Chair), Liz Crane, Multifamily Programs Manager, and David Woodward, Federal Loan Program Manager. Each member of the Review Committee independently evaluated and scored their assigned portions of the submitted Applications, consulting with non-committee staff and legal counsel as necessary and appropriate.
- b) At its April 1, 2020 Review Committee meeting, the individual committee members presented their scores and the Committee carried out the funding selection process in accordance with Section Five, B. of the RFA. The individual scores are set forth on the RFA webpage and can be accessed [here](#).
- c) The RFA 2020-302 All Applications chart (provided as [Exhibit A](#)) lists the eligible and ineligible Applications. The eligible Applications (i.e., Applications that met all criteria to be eligible to be considered for funding) and the ineligible Applications are listed in assigned Application Number order.
- d) The Review Committee considered the following motions:
 - (1) A motion for the Review Committee to approve the scoring results as set out on Exhibit A and recommendations for funding as set out on [Exhibit B](#);
 - (2) A motion to recommend that the Board approve the scoring results as set out on Exhibit A and recommendations for funding as set out on Exhibit B.
- e) The motions passed unanimously.
- f) As outlined in the RFA, at the completion of all litigation and approval by the Board of all Recommended Orders with regard to this RFA, Florida Housing shall offer all Applicants within the funding range an invitation to enter credit

MULTIFAMILY PROGRAMS – ALLOCATIONS

Action

underwriting.

3. **Recommendation**

- a) Approve the Committee’s recommendations that the Board adopt the scoring results of the 4 Applications (set out on Exhibit A) and authorize the tentative selection of the 2 Applications (set out on Exhibit B) for funding.
- b) There is an unallocated balance of \$1,766,836 in CDBG-DR development funding and \$86,011 in CDBG-DR land acquisition funding, for a total of \$1,852,847 remaining. As provided in Section Five, B. of the RFA, any remaining funding will be distributed as approved by the Board.
- c) Staff additionally recommends that the final eligible Application 2020-448D be selected for funding. The funding request amount is a total of \$1,881,000. The remaining \$28,153 required to fully fund this Application would be drawn from the CDBG-DR funds set aside for Florida Housing’s anticipated costs to administer the CDBG-DR program.
- d) If no notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., staff will proceed to issue an invitation to enter credit underwriting to the Applications set out on the supplemental item.
- e) If a notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., then at the completion of all litigation, staff will present all Recommended Orders for Board approval prior to issuing invitations to enter credit underwriting to those Applicants in the funding range.

MULTIFAMILY PROGRAMS – ALLOCATIONS

Action

B. 2020 Rule Development

1. Background/Present Situation

- a) A rule development workshop was held on March 2, 2020 in order to solicit comments concerning the proposed changes to the 2020 Qualified Allocation Plan (QAP) and Rule Chapters 67-21 and 67-48, F.A.C.
- b) As a result of these workshop, staff has revised the rules governing the various multifamily programs. Staff would like to proceed with the rule development process for these rules and requests the Board's approval of the proposed Rules and QAP. The Notice of Proposed Rule (NOPR) for rule chapter 67-21, F.A.C. is attached as [Exhibit C](#), the NOPR for rule chapter 67-48, F.A.C. is attached as [Exhibit D](#), and the proposed 2020 QAP is attached as [Exhibit E](#).
- c) If the Board approves the proposed rules and QAP as presented, the NOPRs will be published in the April 21, 2020 edition of the Florida Administrative Register. The NOPRs will announce the Rule Hearings which are scheduled for May 19, 2020. Following review of the public comments received at the Rule Hearings and the comments received from the Joint Administrative Procedures Committee following its review of the NOPRs, staff will proceed as follows:
- d) If modification of the proposed rules is not required, staff will file the proposed rules for adoption.
- e) If modification of the proposed rules is required, staff will prepare the necessary Notice of Change (NOC) to incorporate all proposed modifications to the proposed rule and, if required, will submit the NOC for Board approval.

2. Recommendation

- a) Approve the proposed rules and QAP and authorize staff to file the rules for adoption if a NOC is not required and, if a NOC is required, authorize the Chair to determine whether a NOC makes material, substantive changes to the rule chapter. If the Chair determines that it does not, staff recommends that the Board approve such NOC without the requirement of another Board meeting. In the alternative, if the Chair determines that any NOC does make material, substantive changes to the rule chapter, staff recommends that a telephonic Board meeting be called to obtain Board approval for any required changes, with such changes to be ratified at the next regularly scheduled Board meeting.