

November 10, 2017

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

Re: Public Comments from the Housing Umbrella Group

Dear Florida Affordable Housing Workgroup Members:

The Housing Umbrella Group of Florida Legal Services, Inc. (“HUG”) is comprised of 175 legal services attorneys and law professors from across Florida who specialize in landlord-tenant issues and represent low-income tenants. We offer four recommendations to the Florida Affordable Housing Workgroup to increase affordable housing opportunities for low income tenants: (1) Maximize the utilization of tax credits to create additional housing units for extremely low income (“ELI”) households; (2) Eliminate admission barriers to Low Income Housing Tax Credit (“LIHTC”) housing for ELI households; (3) Eliminate barriers to continued occupancy in LIHTC housing and (4) Enact legislative protections for tenants and affordable housing funds. While it is our understanding that the Workgroup will ultimately be making recommendations to the Florida Legislature, many of our recommendations involve changes that can be made by Florida Finance Housing Corporation.

1. Maximize Utilization of Tax Credits to Preserve and Create Housing for Extremely Low Income Households.

One of the statutory criteria mandated by federal law in determining LIHTC priorities is a preference for projects serving the lowest-income tenants. According to the [2016 Rental Market Study](#), 157 developments with 12,132 affordable units are at risk of being lost from the affordable housing stock due to having HUD rental assistance contracts that are set to expire over the next 9 years. Many of these units are also part of Florida’s older housing stock that is further at risk of being lost from the affordable housing portfolio without capital investments to rehabilitate these aging properties.

As such, we urge FHFC to maximize the amount of tax credits to be used for preservation of existing communities with project-based federal rental assistance (“PBRA”), such as Project-Based Section 8. Federal PBRA subsidies are the primary subsidies which allow ELI households to pay approximately 30 percent of their income as rent. If federal PBRA subsidies are lost, there are no new PBRA subsidies available to replace them. They are lost forever. With an enormous demand for ELI housing and so few affordable ELI units available, it is imperative that as many PBRA units as possible remain in the housing inventory.

Because so many PBRA communities remain in danger of losing their PBRA subsidy (due to contract expiration, owner opt-out, foreclosure, or substandard building conditions), we urge that FHFC expand its preservation set-aside to 100 percent of the 9 percent credit allocation. This would greatly increase the effectiveness of the LIHTC program, as preservation requires far less subsidy per unit than new construction. In addition, it preserves scarce federal subsidies directed at ELI households which will otherwise be lost forever.

In addition, we urge FHFC to make the LIHTC program more accessible for mission-based nonprofits. Florida currently allocates more credits to for profit developers than many other states. Since mission-based nonprofits are the primary providers of long-term ELI housing there is a direct correlation between increasing their participation and maximizing the benefits for ELI households.

2. Eliminate Admission Barriers for Extremely Low Income Households.

As advocates for low-income tenants, we have found that LIHTC properties often have admission policies which prevent ELI households from accessing the housing. These policies deter many low-income households from applying. For many of those that do apply, they are rejected because of these policies. As such, we suggest FHFC require LIHTC applicants to have a written Tenant Selection Plan and that FHFC make these plans publicly available on their web site for programs that are ultimately awarded funding. We further suggest addressing these barriers as follows:

- **Limit Tenant Application Fees For ELI Units.** – In some areas of the state, application fees for LIHTC properties can be as high as \$85, and some projects require each adult on the application to pay the fee. The tenant must pay this even if he or she is ultimately rejected as a tenant. For a very low-income individual who already has a high rent burden, a fee this high will often prevent them from applying for the LIHTC unit. We recommend that FHFC provide additional points for LIHTC applicants who limit the application fee for ELI units to \$25 per unit.
- **Limit Security Deposits And Other Move-In Costs To One Month's Rent For ELI Units.** – Often landlords require a tenant to pay first month's rent, a security deposit and last month's rent, as well as key deposits and other miscellaneous fees before moving into a unit. Depending on the rent, the total move-in costs can exceed \$2,000. For an extremely low-income family, it is very difficult, if not impossible, to save up enough money to pay such a large amount. These costs prevent many families from accessing LIHTC housing. Therefore, we recommend that FHFC provide additional points for LIHTC applicants who limit the total move-in costs for ELI units to one month's rent.
- **Prohibit Unreasonable Criminal Background Checks.** – Some LIHTC landlords have sweeping criminal background policies which prohibit admission for anyone who has ever been arrested. Policies like that unreasonably prevent individuals with a distant criminal background from accessing housing, no matter how long ago the incident occurred and no matter how much their lives have since changed. More importantly many of these policies against renting to people with criminal histories run afoul of the Fair Housing Act. We recommend that in the extended use agreement, FHFC prohibit LIHTC developers from utilizing lifetime criminal history lookback periods as part of their Tenant Selection Plan. We further recommend that FHFC provide additional points for LIHTC applicants who agree to implement admission policies by which they will not consider criminal charges that are more than five years old.

- Prohibit Minimum Income Requirements For ELI tenants And Tenants With Tenant Based Rental Assistance (TBRA). – Some LIHTC properties have minimum income requirements (e.g., the tenant must have monthly income equal to 2.5 times the monthly rent in order to be eligible for admission). Unless landlords are required to make an exception for ELI tenants and tenants with TBRA (such as Section 8 Vouchers), these potential tenants will never qualify to live in the LIHTC unit. Moreover, such policies are contrary to the LIHTC program’s prohibition against denying an applicant simply because she is utilizing a Section 8 Voucher. Landlords should only be allowed to consider the tenant’s portion of the rent when applying the minimum income requirement.¹ We recommend that FHFC require in the extended use agreement that all LIHTC developers only apply a minimum income policy to that portion of the rent to be paid by the tenant.
- Limit Excessive, Confusing and Unregulated “Voluntary” Charges. – Many LIHTC developers are adding charges for additional services, such as cable and washer-dryer, which are labeled as voluntary and therefore unregulated by FHFC. However, our experience is that the option of not accepting these services is often not communicated to the tenants. In addition, many developers label these extra fees as “rent” and have filed evictions when the tenants do not pay them. FHFC should develop a uniform policy regulating voluntary, non-rent charges and mandate in the extended use agreement that these charges be fully disclosed to tenants in writing before leases are signed.

3. Eliminate Barriers to Continued Occupancy in Tax Credit Properties.

Many LIHTC properties utilize continued occupancy policies that result in ELI households unnecessarily losing their housing. Specifically, we suggest addressing these barriers as follows:

- Prohibiting Rental Increases During The Term Of The Lease. – Currently, Section 5.2 E.4 of the FHFC Manual permits rent increases during the term of lease when HUD issues new income limits, if so provided in the lease. Recently, in a brand-new LIHTC property in Fort Lauderdale, almost all of the residents received a rent increase notice with 5-6 months of moving into the building. Most of the residents could not afford another unexpected increase in their monthly expenses. We recommend that FHFC remove this provision to eliminate instability and uncertainty among vulnerable low-income residents who have little to no disposable income to pay such increases. We recommend that FHFC permit rent increases based on newly issued HUD income limits only on new leases and for lease renewals occurring after the date such new income limits were issued.
- Requiring Detailed Notice To Tenants For Non-Renewals of LIHTC Leases. – Pursuant to the LIHTC rules, a tenant’s lease can only be non-renewed pursuant to good cause. 26 U.S.C. § 42(h)(6)(E)(ii); Rev. Rul. 2004-82 at A-5 (July 30, 2004). Currently, the definition of good cause is not uniform and varies from property to property. In addition,

¹ Texas addressed this problem by amending its government code to prohibit LIHTC landlords from applying a minimum rent policy to voucher holders, unless it was limited to 2.5 times the tenant’s portion of the rent. See Texas Gov’t Code § 2306.269.

LIHTC properties in Florida are not required to disclose the nature of the purported good cause until after they have filed an eviction action against a tenant. This results in tenants losing their affordable housing without being given any justification by their landlord in order to avoid having an eviction filed against them. We recommend that FHFC require LIHTC landlords to provide detailed notices disclosing the good cause for non-renewal to any tenants they seek to not renew.

- Adopting a Standard Lease Addendum. – Tenants in LIHTC financed housing are afforded a series of protections not often found in market rate housing, e.g. the long-standing requirement that termination of tenancy must be for “good cause” and the extension of the Violence Against Women Act protections to all LIHTC units. Currently project owners have complete discretion to decide what standard lease form to use in the leasing of their properties. We have the opportunity to review leases from different project owners and find notable noncompliance issues. Our experience shows a great disparity in the way that the LIHTC program is referenced in leases throughout the state. The failure to require that a lease indicate that it is a LIHTC lease or enumerate the extra protections that attach to LIHTC units create problems for tenants, advocates, and courts trying to identify the property as a LIHTC property and the corresponding protections. In addition, we have observed a number of provisions inconsistent with fair housing or Florida law. Given the wide disparity and the general lack of any standard language, we strongly urge the FHFC to develop and require a uniform addendum for all leases for use in LIHTC properties.

4. Legislative Protections For Tenants and Affordable Housing Funds.

Finally, we believe the Affordable Housing Workgroup should include the following in its recommendations to the legislature:

- Modify The Circumstances Under Which Florida’s Requirement To Deposit Rent In Eviction Cases Is Triggered. – Current law requires a tenant to deposit unpaid rent into the court registry in an eviction case or else waive any and all defenses other than payment. This rent deposit requirement has produced a no-questions-asked eviction procedure that is easily and often abused by unscrupulous landlords. Under the current pay-to-play procedure, a tenant who does not deposit rent or is one-day late in depositing the rent into the registry will never be heard by a judge, and the landlord will be awarded a summary eviction order. The tenant never gets to appear before a judge and explain their side of the case. Requiring a hearing and decision on the merits—as mandated in most areas of the law—will prevent erroneous evictions and reduce unnecessary homelessness and its ripple effects. Concepts of fundamental fairness require Florida to change its law so that every tenant has an opportunity to be heard by a judge before an order of eviction can be entered.

In addition, many low-income tenants are rent-burdened and paying a significant percentage of their income as rent. They are often living paycheck-to-paycheck. One setback can force the tenant to make difficult choices. During Irma, low-income tenants had to spend money to evacuate or purchase food and supplies to weather the storm. Many low-income tenants lost income because they could not work during and

immediately after the storm. This caused many tenants to fall behind on their rent for October. Unfortunately, Florida's current rent deposit requirement applies in an eviction proceeding even if the property has damage after the storm and the unit needs repairs. While state law allows a tenant to withhold rent if they follow the proper procedures, few tenants do it correctly and many judges still require the tenant to deposit the withheld rent with the court to defend the eviction. The workgroup should look at whether it makes sense to enforce the rent deposit requirement in the aftermath of a disaster. The rent deposit requirement is also why it is critical that all disaster-related financial support programs, such as Disaster Food Stamps and Disaster Unemployment, be in place and administered immediately after the storm. Without immediate financial assistance, families may be evicted and become homeless while waiting for the assistance.

- Adopt Tenant Protections For Survivors Of Domestic Violence. – Domestic and sexual violence are a significant cause of homelessness. Among homeless mothers and children, more than 80% previously experienced such violence. However, victims of domestic and sexual violence who must leave their rental housing in order to protect themselves and their children from further violence face large financial losses from early termination fees, loss of their security deposit, and continuing debt for the remainder of the lease. This unnecessary debt appearing on their credit reports and negative tenant references further impair their ability to secure another place to live, both immediately and well into the future. Faced with these financial losses, they are simply forced to choose between their fiscal and physical safety. Enabling tenant survivors the option of breaking their lease to protect their families goes a long way to providing their safety and preventing homelessness. Their present inability to get their rental deposit back and use it to secure a safe place to live often results in homelessness, or other precarious housing situations.
- Adopt Legislation To Define Landlord And Tenant Obligations In Disaster Preparations For A Rental Property. – Although Florida law requires landlords to assure that the properties they rent are habitable, there is no statutory requirement that when faced with an impending disaster, they take any precautionary measures to make the property safe for the tenants residing there. During the recent spate of hurricanes affecting South Florida, many low-income tenants were either advised that tenants were responsible for securing their units against hurricane damage or were explicitly prohibited from taking any such measures, even if the landlord refused to safeguard the property. Tenants have no obligation under Florida law to safeguard the landlord's property and low-income tenants lack the funds to purchase the necessary supplies. Florida statutes should establish minimum standards and duties on the part of landlords to protect the safety and property of their tenants in preparation for and anticipation of an oncoming disaster, including but not limited to requiring landlords to take reasonable efforts to secure rental properties, such as removing loose items in the common areas and installing window and door protections, in the event of an impending hurricane.

After the storm, many communities were without power. This is especially difficult for elderly and disabled tenants. The government needs to examine the obligations of landlords who provide housing to elderly and disabled tenants, especially the multi-level buildings. Many tenants in these properties were trapped in apartments on higher level floors without the ability to leave, or access food, water and ice. See WLRN,

[“At Senior Complex in Coconut Grove, Residents Say Back-Up Generator Failed”](#) and Miami Herald, September 13, 2017, [“No Power, No Place to go for Thousands of South Florida Elderly after Irma.”](#) In another situation, a property which recently received Low-Income Housing Tax Credits and local bonds to rehabilitate the property, found the property condemned after Irma. The residents were living in the parking lot for nearly two weeks after the storm. This group should examine whether elderly and disabled rental housing should be required to have back-up generators to prevent a tragedy in one of these buildings. And, for those properties which have received funding from FHFC, they should be required to have plans in place before the storm to address what will happen to residents if the property is damaged and unlivable.

- Assure That The Full Amount Of The Sadowski State Affordable Housing Trust Fund Is Used For Affordable Housing Purposes. – The state affordable housing trust fund was created to provide funds for affordable housing programs throughout Florida. The Trust Fund receives money created by a tax on documentary stamps, and generates approximately \$300 million each year. Unfortunately, over the past 15 years, the legislature has taken about \$1.4 billion from the fund and applied it to state general revenue. Just last session, \$154 million of the fund was taken and put into general revenue. The need for affordable housing in our state continues to grow. The entire amount created by the documentary stamps should be applied to its intended purpose, which is the creation and maintenance of affordable housing.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact us.

Sincerely,

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