



EVERGLADES COMMUNITY ASSOCIATION

"Affordable Housing for Working Families"

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Mr. Steven Auger
Executive Director
Florida Housing Finance Corporation
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301-1329

Re: Rulemaking for the Universal Cycle and SAIL (including SAIL Farmworker RFP)

Dear Mr. Auger:

I write to formally comment on the proposed rulemaking for the Universal Cycle and SAIL programs including the SAIL Farmworker RFP traditionally separate from the Universal Cycle application.

1. "Shell" Applications and Lottery Numbers

I am strongly concerned with the rapid increase in the number of applications submitted under the most recent Universal Cycle – and especially critical of those applications that in the end are not completed by the applicant. These incomplete applications have come to be known as "*shell*" applications among development entities.

The purpose of a vast majority of "*shell*" applications is the applicant's attempt to secure a lottery number in a system in which the award of Housing Credits and other funds are inevitably assigned by lottery numbers as a tie-breaker. I believe the use of '*shell*' applications for this purpose to be an abusive albeit 'legal' strategy that adds nothing to FHFC's mission of producing affordable housing.

There are other legitimate reasons "*shell*" applications are filed. For example, an applicant believes a 'curable' item is likely to be secured prior to the expiration of the cure deadline. Accordingly, the "*shell*" is filed and not completed if the threshold or scoring item is unable to be obtained. To me, it is reasonable to allow the shell to be

filed and furthers FHFC's public policy goal of having a diverse pool of varying geographic, size and type of projects.

The question to be answered by strategic rulemaking is how to allow the desirable uses of the *'shell'* or *'incomplete'* application in contrast to the more abusive uses. With apologies to Milton Friedman, the answer is simple: ***FHFC should not assign lottery numbers to projects until the end of the cure period.***

- (1). The current system causes applicants to behave contrary to market forces – that is, applicants seek to secure land and submit applications for projects not intended to be built. True market force approaches encourage applicants to measure the cost of applications versus the expected outcome, e.g. chance of award.
- (2). FHFC's current system "*artificially*" rewards applicants submitting multiple applications because past rules allow ranking to be unfairly disclosed prior to the true completion of the application process, e.g. the completion of cures. This negates (or certainly lessens) the true market forces involved in an applicant's decision-making.
- (3). Assignment of lottery numbers subsequent to the filing of all cures does not inhibit applicants to cure threshold items, scoring and to obtain final approvals such as zoning that sometimes take place between submission and cure. It does not in any way disrupt an applicant seeking to perfect their proposal.
- (4). Assignment of lottery numbers subsequent to cures does not inhibit an applicant from submitting multiple applications. For example, past remedies penalized excess proposals. This could indeed be argued contrary to public policy since it may score an arguably better proposal lower since it was the third or fifth from an applicant. I have little argument if FHFC selects the best affordable housing proposals even if all are from the same applicant.
- (5). Simply speaking, assignment of lottery numbers subsequent to cures allows an applicant to make a personal and corporate decision to expend funds to perfect as many bona fide proposals as they choose. Some argue it to be too expensive to perfect applications. It is also expensive for all to create more and more *'shell'* applications in order to secure lottery numbers. Under past rules, FHFC's *'intervention'* in the so-called market place, e.g. assignment of early lottery numbers, is the act that skews behavior, engenders gamesmanship and impacts the selection process.

There have been arguments made that small and nonprofit developers oppose the investment in application completion so having an early lottery number assignment hurts these participants. I, as a nonprofit developer, strongly disagree: such developers are generally working with no more than a few specific sites or target populations in mind. Our group typically invests significant funds in entitling a particular site for an eventual project. It is resubmitted annually until selected. It is not our practice to option a score

of sites in order to achieve one high lottery number – unless the current rule remains in place! In such instances, ECA too will become a *'rational'* actor under the FHFC's irrational system that rewards multiple, incomplete *'shell'* proposals.

2. *SAIL Loan Limitations as to Farmworkers, Commercial Fishing Workers and*

I strongly urge FHFC to revisit past efforts to limit SAIL loans to a maximum loan amount of \$70,000 per unit as it did in both the prior 2007 Universal Cycle and in the SAIL Farmworker RFP. In particular, I believe FHFC inadvertently usurped the Florida Legislature's intent to allow higher levels of SAIL funding for special populations and circumstances.

The SAIL statute [Section 420.507(22) F.S.] permits the following types of sponsors to apply for loans in excess of 25 percent of Total Development Cost:

- a. Non-profit and public sponsors which are able to secure grants, donations of land, or contributions from other sources collectively totaling at least 10 percent of Total Development Cost; and
- b. Sponsors that set aside at least 80 percent of their total units for residents qualifying as farmworkers, commercial fishing workers or homeless.

Part (a) above strongly signifies the Legislature envisioned projects receiving 90% SAIL and as little as 10% from other sources.

Though it is an admirable goal for FHFC to try to make SAIL funds assist more projects by lowering the maximum amount, it restricts the legislative intent in our opinion and is unduly burdensome as applied to special populations. In fact, it also circumvents the Legislature's intent that 10% of SAIL funds are set-aside to Farmworker/Fishing Worker and Homeless since these funds are typically not fully utilized in their commensurate rounds.

Farmworker SAIL funds (through the RFP process) have in recent years targeted innovative farmworker housing including units produced with USDA Rural Development Section 514-516 funds. In our experience, the \$70,000 per unit SAIL limitation restricts development utilizing these funds. For example, the maximum RD 514-516 loan-grant combination per project is \$3,000,000 regardless if it is 100 units in size or 20 units in size. [RD 514 loan funds are 1% loans and bring with it project-based Rental Assistance. RD funding is an invaluable resource since the RA value may well exceed the \$3,000,000 loan-grant combination over the term of the loan. For example, ECA is developing a 100-unit HC + RD project in Okeechobee. Based on average rents of \$450 per unit and tenant RA payments equivalent to 50% of rent charged, the RA benefit over 31 years is \$8,370,000. Regardless of project size, the benefit is significant.]

In combining \$3,000,000 in RD with SAIL at the recent limitation of \$70,000 per unit, a magical, mathematical project size results. For example:

Typical Cost per Apartment Unit:	\$150,000
SAIL Maximum per Unit	<u>70,000</u>
RD balance per Unit	\$ 80,000

If RD maximum loan is \$3,000,000, the optimal project size is $\$3,000,000/80,000$ or 37 units. In high impact fee counties such as Collier (Immokalee), typical cost per apartment costs may rise to \$175,000 lowering the optimal project size falls to 28 units. Projects simply need to be larger.

These small-sized projects take similar development effort as larger communities, cannot be built cost-effectively at comparable per square foot costs and are inefficiently managed requiring part-time staffing et al. To remedy this hardship, ECA has on occasions 'phased' development in which three or more small-sized projects are grouped together on one original parcel to form a larger, more manageable community. Unfortunately, even then the law of unintended consequences leads to three LLCs, three clubhouses, three tot lots et al in order to satiate FHFC's scoring criteria....

FHFC should not limit SAIL developments serving the targeted populations to the \$70,000 per unit rule. It does not reflect legislative intent. There is no practical need to limit these funds since farmworker (and perhaps other set-aside category funds) set-aside categories are not fully utilized. I would not disagree, however, with FHFC's rules that prioritized projects that either leveraged more outside funds or used less SAIL funds per unit in individual set-asides. Such a strategy certainly seems fair and promotes the good stewardship.

3. *Farmworker Housing Credits plus SAIL*

I believe the prior year Universal Cycle established that successful Farmworker Housing Credit projects received automatic SAIL funds or vice versa. Frankly, this was a healthy change from requiring past approaches that required a project to win both outright. It is my understanding that this combination will be limited to those jurisdictions with low area median income.

I recommend FHFC reconsider its draft rule. The emphasis placed on low area median income counties is indeed sound in its implementation to those generally need throughout Florida. In higher AMI counties, persons are eligible at higher incomes and projects can utilize 1st mortgages from private sources in many instances. This logic, however, is faulty among farmworkers (or frankly commercial fishing workers or homeless). Farmworkers do not earn statistically significant higher incomes in Miami-Dade, Collier of Hillsborough than in Hendry, Okeechobee and other low-income counties. Yes, perhaps on the margin, a handful of agricultural employees could theoretically earn 60% of the Miami-Dade or Collier AMI, but Shimberg Center studies and all other relevant

data collected by ECA do not show the earnings of farmworker families to be linked to area AMI. For example, in Main Street Village in Immokalee, our RD + HOME project does not and could not collect Collier 50% rents. Similarly, piece rate tomato wages are identical in Palmetto, Arcadia, Wauchula, Immokalee and Homestead – each in counties having vastly differing AMIs.

I urge FHFC to allow HC Farmworker deals to mix SAIL and HCs in the same manner as the prior year. Lower SAIL loan costs result in rents more affordable to the targeted population. **FHFC may also wish to consider an alternative by allowing HC Farmworker applicants to seek SAIL monies in the Farmworker SAIL RFP.** Though I favor this approach less than the prior year Universal Cycle rule, it is better than allowing unused set-aside SAIL funds from rolling over into the general pool. In so doing, FHFC could make a Farmworker SAIL RFP award to a group seeking credits in the Universal Cycle contingent on the winning HCs. The HC applicant simply would submit a traditional 1st mortgage firm commitment as a placeholder and subsequently substitute SAIL if it won HCs.

4. Farmworker SAIL RFP Set-Aside Funds.

I further recommend FHFC implement a protocol to allow Farmworker, Commercial Fishing Worker and Homeless monies to remain “set-aside” for a longer period. On an annual and cumulative basis, tremendous resources set-aside under legislative intent have been allowed to roll over to the general pool. This is attributable in part to nonprofit capacity, low for-profit developer interest and a hard to serve population. It is also attributable to FHFC’s policies and rules allowing such funds to rollover so quickly.

Two strategies should be considered: (1) allow set-aside funds for target populations to remain targeted for up to three years before rolling over into the general pool; and (2) holding two RFPs in a 12-month period. This model recently worked in the recent FHRP and SHADP programs in which two RFPs were held to use 100% of the funds. In that case, sponsors gained application experience, some gained zoning approvals in the interim and a competitive process emerged. Considerations noted in Items 2 and 3 above also would better expend these set-aside funds.

I hope these suggestions help guide your analysis. Serving special populations is a difficult and ever-changing challenge. Florida agriculture and its workers are undergoing rapid change due to changes in the suburbanization or rural communities, rising construction costs and gentrification and rising rental pricing in existing apartment units. FHFC’s innovation continues to be critical.

Sincerely,

Steven Kirk

Steven Kirk
President