FLORIDA LEGAL SERVICES, INC.

14260 WEST NEWBERRY ROAD #412, NEWBERRY, FL 32669 - PHONE: (407) 801-4350 - FAX: (407) 505-7327

ANTHONY MUSTO
PRESIDENT

CHRISTOPHER M. JONES
DIRECTOR

August 14, 2018

Sent Via E-mail: Marisa.Button@floridahousing.org

Florida Housing Finance Corporation
c/o Marisa Button
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Re: Public Comments on Income Averaging for
RFAs 2018-110, 2018-111, 2018-112 & 2018-113

Dear Ms. Button:

Please find below Florida Legal Services comments to the Florida Housing Finance Corporation's Income Averaging - Draft Policy. We support FHFC's willingness to implement income averaging as this new option has the potential to make the LIHTC program more accessible to extremely low-income households. We make the following recommendations for your consideration:

1. Implement income averaging in a way that takes into account housing Section 8 Voucher Program participants.
2. Implement income averaging in a way that holds tenants harmless.
3. Implement income averaging in a way that informs tenants of their rights and obligations.
4. Require unit parity.

Recommendation 1: Implement income averaging in a way that takes into account housing Section 8 Voucher Program participants.

The LIHTC housing is critical to Section 8 Voucher Program participants finding a safe affordable home where they can utilize a voucher. Vouchers play a significant role in housing extremely low income tenants. More than 16,000 LIHTC households in Florida utilize the Section 8 Voucher Program. If units are designated at 70% or 80% of area median income (AMI), LIHTC rents may begin to exceed voucher rents thereby pricing out voucher holders from those units. This is already happening in 34 Florida jurisdictions at various unit sizes:

County	FHFC 60% AMI 0 Bedroom Limit ($)	HUD FMR	FHFC 60% AMI 1 Bedroom Limit ($)	HUD FMR	FHFC 60% AMI 2 Bedroom Limit ($)	HUD FMR	FHFC 60% AMI 3 Bedroom Limit ($)	HUD FMR	FHFC 60% AMI 4 Bedroom Limit ($)	HUD FMR
Alachua County	750	648	803	725	963	894	1113	1174	1242	1326
Baker County	654	473	700	632	840	741	970	929	1083	1247
Bradford County	624	563	669	597	802	686	927	986	1035	1074
Brevard County	681	649	729	803	876	1018	1011	1405	1128	1726
Calhoun County	547	563	586	597	703	686	813	975	907	978
Clay County	735	604	787	775	945	947	1090	1248	1216	1590
Collier County	787	778	843	996	1012	1220	1170	1630	1305	1978
Columbia County	627	585	671	667	805	784	930	1026	1038	1095
DeSoto County	547	540	586	544	703	723	813	1012	907	1015
Dixie County	547	563	586	597	703	686	813	860	907	969
Duval County	735	604	787	775	945	947	1090	1248	1216	1590
Escambia County	685	702	734	706	880	846	1017	1186	1135	1490
Gilchrist County	750	648	803	725	963	894	1113	1174	1242	1326
Hamilton County	547	512	586	516	703	686	813	933	907	934
Hardee County	547	563	586	597	703	686	813	998	907	1157
Highlands County	547	504	586	594	703	790	813	1060	907	1107
Holmes County	547	581	586	597	703	686	813	860	907	1208
Indian River County	679	589	727	744	873	892	1008	1267	1125	1440
Jackson County	547	479	586	597	703	686	813	936	907	975
Lafayette County	549	563	588	597	705	686	814	998	909	1208
Levy County	547	533	586	537	703	686	813	940	907	1048
Liberty County	582	563	624	597	748	686	864	917	964	978
Madison County	547	445	586	597	703	686	813	887	907	978
Nassau County	735	604	787	775	945	947	1090	1248	1216	1590
Okeechobee County	547	565	586	569	703	746	813	988	907	1016
Santa Rosa County	685	702	734	706	880	846	1017	1186	1135	1490
St. Johns County	735	604	787	775	945	947	1090	1248	1216	1590
Sumter County	702	549	752	593	903	757	1042	1083	1162	1087
Suwannee County	547	563	586	597	703	686	813	998	907	1144
Taylor County	547	563	586	574	703	686	813	975	907	978
Union County	547	563	586	597	703	686	813	908	907	1208
Washington County	547	512	586	516	703	686	813	975	907	978

Table 1: Income & Rent Limits, Florida Housing Data Clearinghouse

In some jurisdictions, like Alachua, Baker, Bradford, Gilchrist and Sumter, even if the public housing authorities were to set the voucher payment standards at the maximum level of 110% of AMI, households utilizing Section 8 Vouchers are still being priced out of 0, 1 and 2 bedroom units. As such, we recommend that for LIHTC units that are using income averaging, the underwriter assume the acceptance of voucher holders in all units, including those designated at 70% and 80% of AMI. This will allow LIHTC properties to accept voucher tenants in all units.

Recommendation 2: Implement income averaging in a way that holds tenants harmless.

FHFC's approach of utilizing a floating unit, which is consistent with the position taken by the National Council of State Housing Agencies (NCSHA), is important to holding tenants harmless for increases in their household income. It is unclear in the proposed policy how this provision will interact with section 5.2 E.4 of the FHFC Manual, which permits rent increases during the term of lease when HUD issues new income limits. That low-income tenants can face an eviction mid-lease is patently unfair and inconsistent with Florida's landlord tenant law. In Florida, an eviction on your record is a nearly insurmountable negative mark on a tenant's screening record and makes it extremely difficult for a household to find future safe, affordable rental housing. As such, we recommend that FHFC implement income averaging in a way that holds tenants harmless.

Recommendation 3: Implement income averaging in a way that informs tenants of their rights and obligations.

Nothing in the proposed income averaging policy explains how tenants will be notified that they are in an income designated unit, what the rent is for that unit, or what notice is required in the event that a unit is re-designated due to the households increase in income. NCSHA "encourages states to indicate unit designations in the extended use agreement and the carryover allocation." *See* NCSHA's Housing Credit Income Averaging Frequently Asked Questions. For example, the Missouri Housing Development Commission's draft income averaging policy provides that "the AMI designation for each unit will remain fixed and will be recorded in the Land Use Restriction Agreement" and requires property management to maintain an updated list of designated units that must be made available during regular inspections of LIHTC units. As such, we recommend that FHFC require unit designations in the extended use agreement as well as the lease, so tenants are informed.

Recommendation 4: Require unit parity.

In the proposed rule, FHFC provides that income averaging will not be based on the number of bedrooms in a unit. This proposal is contrary to the National Council of State Housing Agencies recommendation to: "[r]equire unit parity in regards to bedroom size by income designation to prevent owners from designating larger units at higher income designations and smaller units at lower income designations." *See* NCSHA June 13, 2018 Letter to the IRS. For example, Rhode Island Housing will "require applicants to provide reasonable parity between different bedroom sizes at each targeted income band utilized in the development." As such, we recommend FHFC require unit parity as part of final income averaging policy.

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

Sincerely,

Natalie N. Maxwell, Esq.