Steve Auger
Executive Director
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, FL 32301

Re: 2013 Universal Application Comments

Dear Mr. Auger:

The Florida Legal Services Housing Umbrella Group ("HUG") is comprised of over 150 legal services attorneys and law professors from across Florida who specialize in landlord-tenant issues and represent low-income tenants. We offer these comments for the 2013 Low Income Housing Tax Credit ("LIHTC") rule-making cycle in the hopes of achieving **three major goals:**

1. **Maximize the utilization of tax credits to create additional housing units for Extremely Low Income ("ELI") households** (*page 1*).

2. **Eliminate admission barriers to LIHTC housing for ELI households** (*page 4*).

3. **Support the proposed changes to the Florida Housing Finance Corporation ("FHFC") Universal Design And Visitability Manual** (*page 6*) .

Please consider these comments and contact us if you have any questions about them.

1. Maximize Utilization of Tax Credits to Create Additional 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. We would like to direct our initial comments at several ways in which the allocation process can be better directed to serve the lowest-income tenants.

- First, 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. As you are aware, 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.

We commend FHFC for its 2011 LIHTC rule-making which set aside 35 percent of the LIHTC allocation for preservation of federally subsidized housing, including PBRA communities where 90 percent or more of the units received federal subsidy. 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 in 2013, FHFC expand its preservation set-aside to 100 percent of the 9 percent credit allocation. This would greatly increase the effectiveness of the LIHTCs, as preservation requires far less subsidy per unit than new construction. In addition, it preserves for Florida households scarce federal subsidies directed at ELI households which will otherwise be lost forever.

● Second, with respect to any portion of the 2013 LIHTC allocation not set aside for preservation, we believe the current ELI set-aside system does not guarantee that the number of new ELI units will increase. We propose the following for increasing the number of "new" ELI units in the upcoming cycle:

Currently, the 9 percent LIHTC allocation for new construction requires that a percentage of the total new construction units be set aside for ELI households. However, in many properties, a significant number of ELI units are occupied by households with Tenant-Based Rental Assistance ("TBRA"), such as Section 8 vouchers, obtained from a local public housing agency ("PHA"). While federal law requires LIHTC properties to accept Section 8 vouchers, FHFC policies should promote the use of vouchers in *non-ELI* units so that ELI units will be available to ELI families that are not already benefitting from TBRA. As a general rule, when TBRA is used to fulfill the ELI set-aside, there is no net increase in the number of ELI units in the community. We suggest that a policy promoting the use of TBRA in non-ELI units would increase the number of ELI units available to ELI families while still allowing LIHTC property owners to comply with the legal requirements to accept TBRA.

In addition, when LIHTC projects are underwritten, the rent received from the ELI set-aside units is set at an ELI level. However, if TBRA is used, the actual rent to the owner is significantly higher. The current FHFC ELI set-aside rules only restrict the portion of the rent paid by the tenant, not the total contract rent received by the landlord from the PHA. A landlord can obtain a higher rent from the PHA, while the tenant's portion of the rent remains under Section 8 standard (roughly 30% of income). This can significantly increase the rent to the owner over the amount indicated in the underwriting.

For example, a new construction LIHTC building in Miami-Dade County with 300 2-bedroom units with a 30-unit (10%) ELI set-aside would be underwritten with a projected rent to owner in those 30 units at approximately $362 (ELI 2 BR monthly rent $444 (Miami-Dade County) less 2 BR utility allowance $81 (MDPHA) = $362 as the maximum unsubsidized ELI rent). This would result in underwriting a projected monthly rent to owner of $10,882 for those 30 units.

However, if those same LIHTC units are rented to ELI households who have TBRA, the total rents collected by the owner could be as high as the local PHA payment standard. If, for example, the contract rent for those same TBRA units in Miami-Dade is set at the Miami-Dade PHA payment standard, the total contract rent would be $1,013. This would result in projected monthly rent to owner of $30,390 for those 30 units, which brings in an additional $19,508 of rental income per month over that indicated in the underwriting. Thus each year the project would take in an additional $234,096 beyond the amount projected in the underwriting.[1]

On its face, the LIHTC ELI set-aside indicates that the state is creating many new, additional ELI units. However, that is simply not always the case. Rather, the LIHTC program is creating higher-income units which are transformed into ELI units through already existing tenant-based Section 8 vouchers, while LIHTC landlords collect market-rate contract rents for those ELI units. When ELI units are fully occupied by voucher holders, no new ELI units are created and the total number of ELI units remains unchanged.

In order to encourage developers to increase the number of *additional* ELI units created with LIHTC we would propose an additional point structure by which developers would receive up to 5 points for further restricting the rents in their ELI units such that the "contract rent" or "rent to owner" is restricted to 30% of the family's monthly income. This would not restrict owners from accepting voucher holders. Indeed, they are required to do so. It would simply not permit them to count families receiving TBRA as part of their ELI set-aside.

We would propose a graduated scale as follows:

40% of ELI set-aside units are rent-restricted without TBRA - 2 points
80% of ELI set-aside units are rent-restricted without TBRA - 4 points
100% of ELI set-aside units are rent-restricted without TBRA - 5 points

● Third, we urge FHFC to make the tax credit program more accessible for mission-based nonprofits. We agree with and endorse the changes proposed by the Florida Housing Coalition to maximize the utilization of the program by true mission-based nonprofits. We concur with their finding that the current system places mission-based nonprofit organizations at a distinct disadvantage to the for-profit sector, and in particular to large for-profit developers. 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.

[1] It could be argued that such income creates a certain cushion for unexpected deficiencies. However, it is not increasing the number of ELI units, which was the original purpose.

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 admission policies include unreasonable criminal background checks, excessive application fees, large security deposits, and minimum income requirements for Section 8 voucher holders. These policies deter many low-income households from applying, and many of those that do apply are rejected because of these polices.

We have attached to this letter a flier from a Miami-Dade LIHTC project which amply demonstrates the problem. The applicant family must pay $85 per adult simply to apply, plus a security deposit of up to two months' rent, an additional $135 for an access card (plus $50 for each additional card), $35 for cable, plus $45 for monthly cable fees and $45 for monthly washer-dryer fees. In addition, it provides minimum income requirements which would exclude all ELI households. None of these charges or policies are monitored by FHFC or calculated into the affordability of the project. Indeed, they are apparently invisible to FHFC, despite the fact that they dramatically reduce the affordability of LIHTC properties, particularly for families with the lowest incomes.[2] In this area, perhaps more than any other, there is a need for gathering data in order to inform policy development. We strongly recommend that FHFC utilize its data-gathering and monitoring function to determine the various admission policies employed by the various developers to assist in the development of responses to bring these policies under control.

In addition, we suggest the following specific ways to improve access to LIHTC housing.

- **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 the 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 an additional two points for developers 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. Sometimes the security deposit alone can be as high as two months' rent, as

[2] We conducted an informal phone survey of admission fees in at eight different LIHTC developments in eight separate Florida Counties. We found a wide disparity of fees. Application fees ranged from $0 to $75-80. Deposits likewise varied tremendously. Washer-drier fees also ranged widely from $25 to $46. Three of the developments stated that they had minimum income requirements which, if applied across the board, would eliminate any ELI households.

demonstrated in the attached flier. Depending on the rent, the total move-in costs can amount to more than $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 an additional two points for developers 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 charged with a felony. 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. What is more, these kinds of sweeping policies have a greater impact on racial minorities. The need to reign in unreasonable criminal background checks has been recognized by the secretary of HUD, Shaun Donavan. In a recent letter to all directors of public housing authorities, Secretary Donovan wrote, "As President Obama recently made clear, this is an Administration that believes in the importance of second chances – that people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future. Part of that support means helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." We recommend that FHFC provide an additional two points for developers 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 Which Exclude Section 8 Voucher Holders** – Some LIHTC properties have minimum income requirements (e.g., the tenant must have monthly income equal to 2.5 times the monthly in order to be eligible for admission). Unless landlords are required to make an exception for ELI tenants and tenants with TBRA, the landlords should only be allowed to consider the tenant's portion of the rent when applying the minimum income requirement. Otherwise, a family with TBRA will never qualify to live in the LIHTC unit.[3] 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). 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.

● **Minimize Excessive, Confusing and Unregulated "Voluntary" Charges, Particularly for the Lowest-Income Tenants.** – 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

[3] Without an exception, minimum income requirements also frustrate the federal prohibition against denying an applicant simply because he/she is utilizing a Section 8 voucher.

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. Proposed Changes to the Universal Design and Visitability Manual

We previously indicated our support for the comments and proposal submitted by Jacksonville Area Legal Aid regarding the necessity of adding an accessible path requirement to the FHFC Universal Design and Visitability Manual for all new construction units, elderly developments, and rehabilitation units. We reiterate that support and incorporate those comments and proposals herein.

We also support the proposed revisions to the manual posted on May 31, 2012. These changes require all units funded by FHFC to comply with the Fair Housing Act, the Americans With Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1983. With respect to Section 504, the required universal design features are in addition to the provision of Section 504 that five percent of all units are fully handicapped-accessible, and two percent of all units have features for the sensory-impaired. The proposed revisions provide clarity to builders and developers on their obligations under fair housing laws, and most importantly, the changes put forth by FHFC represent a commendable effort to provide fair low-income housing choice for disabled individuals.

If you have any questions, please do not hesitate to contact us.

Sincerely,

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cc: Florida Housing Finance Corporation Board