

May 4, 2018

Via e-mail: [CDBG-DR@deo.myflorida.com](mailto:CDBG-DR@deo.myflorida.com)  
Florida Department of Economic Opportunity  
107 East Madison Street  
Tallahassee, Florida 32399

**Re: Public Comments on the Draft 2018 State of Florida CDBG-DR Action Plan**

To Whom It May Concern:

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 five recommendations regarding the Draft 2018 State of Florida CDBG-DR Action Plan (“Action Plan”) to increase affordable housing opportunities for low-income tenants:

1. Ensure that renters are included in Florida’s long-term disaster recovery efforts.
2. Preserve existing affordable housing units.
3. Provide for long-term affordability of rental units created with CDBG-DR funding.
4. Ensure that CDBG-DR Funds are distributed in a way to affirmatively further fair housing.
5. Increase the opportunity for citizen participation in the Action Plan.

**Recommendation No. 1: Ensure that renters are included in Florida’s long-term disaster recovery efforts.** Florida experienced a significant growth in renter households from 2000 to 2015.<sup>1</sup> “Florida has added over 852,000 rental units since 2000, but fewer than 134,000 were affordable units.”<sup>2</sup> Prior to Hurricane Irma, Florida only had 89 affordable rental units for every 100 low income households (those with incomes at  $\leq 60$  % of area median income). In higher cost areas of the state there are even fewer units for low income households. For example, in Miami-Dade and Monroe counties, there are only 47 affordable rental units for every 100 low income households (those with incomes at  $\leq 60$  % of area median income). The affordable housing shortage is even more stark for extremely low income households (those with incomes at  $\leq 30$  % of area median income) with only 32 affordable rental units for every 100 extremely low income households. Since the devastation caused by Hurricane Irma, the affordable housing crisis has grown.

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<sup>1</sup> Affordable Housing Workgroup Final Report, available online at:  
<http://www.floridahousing.org/about-florida-housing/workgroup-on-affordable-housing>

<sup>2</sup> See [Florida’s Affordable Rental Housing Needs: An Update](#) by The Shimberg Center for Housing Studies.

First, to ensure that renters at all income levels are taken into account during this recovery, we further recommend that the action plan maintain the current threshold for income targeting for CDBG-DR funds to make sure that the people who are most in need of housing are able to obtain housing. Currently, 70% of CDBG-DR funds must be used for the benefit of low and moderate income (LMI) people and communities. As estimated by the State of Florida, the federal disaster recovery funds being directed to the state will not meet all of the affordable housing need. Therefore, it is important that these dollars be directed in a way that provides maximum recovery benefits. The program budget contained in the Action Plan focuses on assisting renter households through the Workforce Affordable Rental New Construction Program. However, the Action Plan does not define what constitutes workforce housing. Florida's wages, especially for low-income workers, have not kept up with the price of housing. According to a 2017 report by the National Low Income Housing Coalition, "In Florida, the Fair Market Rent (FMR) for a two-bedroom apartment is \$1,075. In order to afford this level of rent and utilities — without paying more than 30% of income on housing — a household must earn \$3,584 monthly or \$43,007 annually."<sup>3</sup> In other words, a household would need at least 2.6 minimum wage workers to afford that two-bedroom apartment. In reality, there are several markets in Florida where that would not be enough income to afford a two bedroom rental, including those areas most impacted by Hurricane Irma. In addition, several impacted populations may not be able to work, including seniors and people with disabilities. Additionally, the Action Plan does not make clear that such housing will be affordable to LMI households. The state proposes to use LIHTC funds to develop this rental housing. However, one of the statutory criteria mandated by federal law in determining LIHTC priorities is a preference for projects serving the lowest-income tenants.

Second, it is critical that the Action Plan allocate resources equitably between homeowners and renters. Several state disaster recovery resources have already been directed at assisting homeowners. For example, Florida has made special allocations under its State Housing Initiatives Partnership program (SHIP), to provide assistance to homeowners post-disaster. However, the SHIP program prioritizes assistance for homeowners by requiring that 65 percent of allocated funds be spent on homeownership activities. While jurisdictions can use the SHIP program for rental assistance, that program flexibility is underutilized by most local jurisdictions. Because units housing low-income households, many of whom are renters, represent 75% of the units damaged by Hurricane Irma, it is important that the CDBG-DR allocations recognize the needs of renter households.

Third, the Action Plan needs to allocate funding for Tenant-Based Rental Assistance (TBRA). The Action Plan provides funding for new construction for rental housing but does

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<sup>3</sup> See, 2017 Florida Out Of Reach Report, available for download at: <http://nlihc.org/oor/florida>.

little to address the needs of tenants who were displaced due to hurricane damage and are in need of housing now. Prior to the damage caused by Hurricane Irma, Florida was already experiencing an affordable rental housing shortage in several of the counties most impacted by the storm.<sup>4</sup> As such, we recommend providing TBRA that can be extended for up to 48 months while renters wait for new affordable rental housing to be constructed and the rehabilitation of existing rental units.

Fourth, the Action Plan should provide low income renters with the ability to return to their communities. The Action Plan provides funding for land acquisition for affordable workforce housing as well as home buyout programs. However, there is no discussion as to what will happen to tenants displaced by such programs. We recommend that the Action Plan provide a right of first refusal to tenants displaced by land acquisition programs as well as one for one replacement of rental units lost by such activities.

**Recommendation No. 2: Preserve existing affordable housing units.**

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.<sup>5</sup> 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. In the Action Plan, the only attempt at assessing the damage caused to federally subsidized housing units appears to be letters that were sent to PHAs and to which no PHAs responded. However, the majority of federally subsidized housing units, such as Project Based Section 8 properties, are owned and operated by private housing providers. As such, we recommend that the state obtain a copy of the Preliminary Disaster Assessment for Florida and the Affected Portfolio List/and Tracking Reports for HUD-funded properties in Florida to make an accurate assessment of the impact on HUD-funded properties.

The Action Plan designates funding for new construction under the LIHTC program, but there doesn't appear to be any set asides for using the LIHTC program for rehabilitation to preserve affordable rental housing. Florida currently utilizes 15% of its LIHTC funding for preservation, and preservation requires far less subsidy per unit than new construction. Therefore, the Action Plan should set aside at least 15% of the LIHTC funding for preservation to rehabilitate existing affordable housing units.

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<sup>4</sup> See e.g., [Florida's Affordable Rental Housing Needs: An Update](#) by The Shimberg Center for Housing Studies; [Affordable Rental Housing Trends: Orlando Area](#) by The Shimberg Center for Housing Studies; [Affordable Rental Housing Trends: South Florida](#) by The Shimberg Center for Housing Studies.

<sup>5</sup> 2016 Rental Market Study, available online at [http://www.shimberg.ufl.edu/publications/Full\\_RMSwcov\\_2016.pdf](http://www.shimberg.ufl.edu/publications/Full_RMSwcov_2016.pdf).

As the Action Plan recognizes, mobile homes are an important source of affordable housing in Florida. While mobile homeowners may qualify for the Housing Repair Program, the proposed eligibility requirements will exclude many from qualifying, thereby potentially forcing these affordable homeowners into the already tight rental market. First, the requirement that mobile homes be less than five years old to qualify will exclude many mobile homeowners as only about 25% of Florida's mobile homes were built after 1994. Second, the Action Plan caps the maximum amount of repair cost for mobile homes at \$5,000. However, some of these mobile homes may be worth \$30,000 - \$50,000 (especially in the Florida Keys), and costs of repairs may be more than \$5,000, but worth making. Third, the eligibility requirement that these homeowners must have maintained flood insurance on the damaged property at the time of the disaster will exclude many mobile homeowners from eligibility. Many mobile home residents typically do not have a mortgage and therefore are not required to maintain such insurance. Given the realities faced by low-income mobile homeowners, we recommend that the state amend the mobile homeowner eligibility requirements for the Housing Repair Program so that more mobile homeowners may qualify for this crucial assistance.

**Recommendation No. 3: Provide for long-term affordability of rental units created with CDBG-DR funding.**

The Action Plan only requires a 20-year affordability period for rental housing rehabilitated under the Housing Repair Program. Yet, the current affordability restriction for Low Income Housing Tax Credit (LIHTC) properties in Florida is 50 years. There's no reason why the affordability restrictions for affordable rental housing developed with CDBG-DR funds should be less than 50 years. We recommend that the Action Plan require 50-year affordability period to address long-term affordability and maximize the federal investment.

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. Prior to Hurricane Irma's arrival, 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. We recommend that the Action Plan require affordable housing rental units that are constructed or rehabilitated with CDBG-DR funds to have disaster plans in place describing who is responsible for hurricane preparations and what will happen to residents if the property is damaged and unlivable as a result of a natural disaster.

Many affordable housing properties, such as LIHTC units, have admission policies which prevent LMI households from accessing the housing and are designed to screen people out of

affordable housing. These include policies such as charging application fees as high as \$85 for each adult applying; requiring applicants to pay a security deposit, first and last month's rent, and miscellaneous fees up front; minimum income requirements for tenants with rental assistance; unreasonable criminal and credit background checks; and "voluntary" charges that are not disclosed to tenants as such but are labeled as rent and used to evict tenants for not paying the "voluntary" charge. In addition to screening people out, these policies deter many households from applying for affordable housing for which they qualify. Reducing the admissions barriers to affordable rental housing is necessary to ensure that LMI households are able to access this housing. We recommend that any developments funded with CDBG-DR funds be required to have a written Tenant Selection Plan and that these plans are made publicly available on the CDBG-DR web site for programs that are ultimately awarded funding.

Many LIHTC properties utilize continued occupancy policies that result in households unnecessarily losing their housing. First, Section 5.2 E.4 of the Florida Housing Finance Corporation Manual permits rent increases during the term of lease when HUD issues new income limits, if so provided in the lease. Many LMI renters are already rent burdened such that an unexpected increases in their monthly rent during the middle of their lease term can lead to eviction or homelessness. Second, 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, 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 any LIHTC units funded with CDBG-DR funds be prohibited from increasing rent during the term of the lease and required to provide detailed notice to tenants for non-renewal of leases.

**Recommendation No. 4: Ensure that CDBG-DR Funds are distributed in a way to affirmatively further fair housing.**

Pursuant to existing federal law, the state has an obligation to ensure that funds distributed under this program affirmatively further fair housing. Florida's fair housing statute does not currently prohibit discrimination based on source of income, thereby allowing housing providers to refuse to rent to people who receive assistance with paying their rent. LIHTC properties are already prohibited from refusing to rent to Section 8 Housing Choice Voucher participants.<sup>6</sup> Such a requirement ensures that low-income families have access to affordable housing in more areas and are not forced to live in housing in high poverty and/or low opportunity areas. We recommend that the Action Plan prohibit recipients of federal and state disaster recovery funds from refusing to rent to tenants based on their source of income.

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<sup>6</sup> 26 U.S.C. § 42(h)(6)(B).

To address its Limited English Proficient (LEP) populations in the impacted counties, Florida should develop a detailed Language Action Plan (LAP), which would address outreach techniques to inform LEP communities of their right to access this important program. As part of the LAP, Florida should look to HUD guidelines suggesting that vital program materials be translated. Across the twelve counties hit hardest by Hurricane Irma, there are LEP communities in addition to Spanish. We recommend that resources be made available to LEP communities to allow substantive public comment from the communities impacted and likely to apply for assistance.

We commend the state for including people with disabilities as one of the groups prioritized for assistance in the Action Plan. However, to allow persons with disabilities access to and an opportunity to provide input into the Action Plan, both the Action Plan and DEO's website (where the Action Plan is posted), must be in compliance with Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). Approximately 13.7% of persons in Florida have a disability. Of persons with disabilities who are of working age, 25.8% live in poverty. We recommend that DEO take immediate steps to make its website and the Action Plan compliant with both Section 504 and the ADA so that the thousands of Floridians with disabilities who are impacted by DEO's proposal have equal access in providing input.

**Recommendation No. 5: Increase the opportunity for citizen participation in the Action Plan.** Hurricane Irma was a massive storm impacting most of the state. While we understand the state of Florida is only required to provide a 14-day public comment period, we recommend extending the deadline past May 4, 2018, to increase the ability of people to participate in the process. We also recommend holding public hearings in multiple locations throughout the state to increase the ability of individuals to participate in the citizen comment period.

Thank you for considering our comments and recommendations.

Respectfully,

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