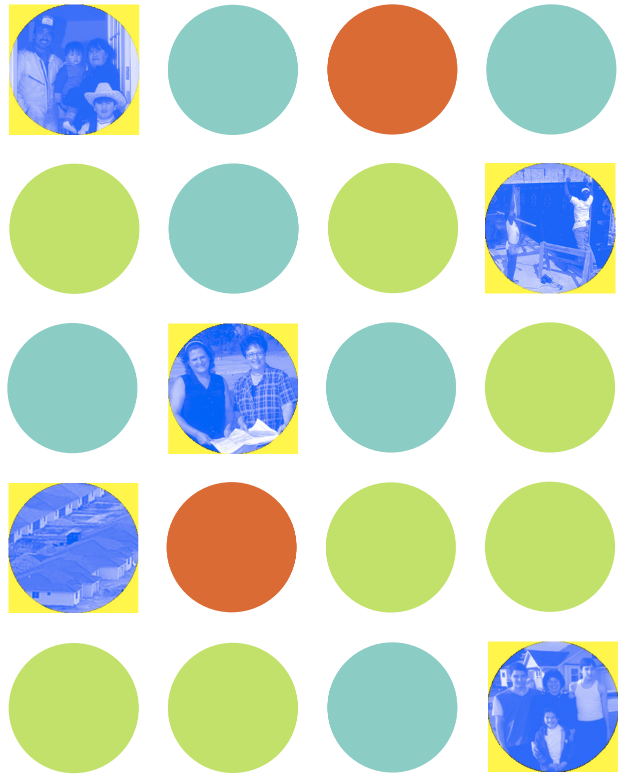
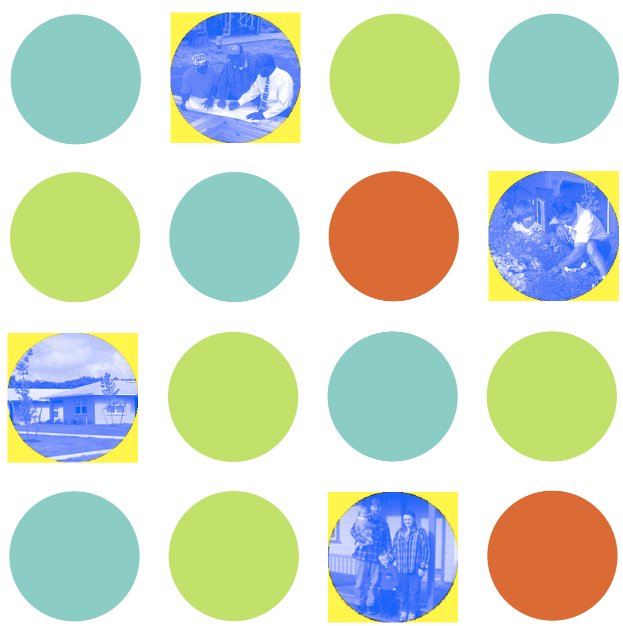


The Affordable Housing Study Commission

FINAL REPORT 2004



The Affordable Housing Study Commission

FINAL REPORT 2004

THE AFFORDABLE HOUSING STUDY COMMISSION
FINAL REPORT 2004
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THE AFFORDABLE HOUSING STUDY COMMISSION

Jeb Bush
Governor

Helen Feinberg
Chairperson

Members

Lloyd Boggio
Howie Carroll
Jill Collins
W. Scott Culp
Paul Curtis
Michael Davis
Santos G. De La Rosa
Agustin Dominguez
Dorothy Ellington
Robert Gregg
Priscilla L. Howard
Sharon Jenkins-Owens
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Barbara J. Lindstrom
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Ellen Ramsey
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George Romagnoli

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The Honorable Jeb Bush
Governor of Florida
The Capitol, Suite PL05
Tallahassee, Florida 32399-0001

The Honorable James E. "Jim" King, Jr.
President, Florida Senate
409 Capitol
Tallahassee, Florida 32399-1100

The Honorable Johnnie Byrd
Speaker, Florida House of Representatives
420 Capitol
Tallahassee, Florida 32399-1300

Dear Governor Bush, President King, and Speaker Byrd:

On behalf of the Affordable Housing Study Commission, I am pleased to submit our final report for 2003 – 2004. The report fulfills the requirements of section 420.609, *Florida Statutes*, and includes the Commission's recommendations to improve the delivery of Florida's affordable housing programs.

This year, the Commission focused on one major topic: housing needs of extremely low-income households – those earning below 30 percent of area median income. We learned that almost 10 percent of households in Florida fall in this category and approximately 60 percent of these households spend more than 50 percent of their income on housing expenses. The Commission noted in its deliberations that the subsidy required per unit to develop housing targeted to extremely low-income households is far greater than the amount required to serve other groups. Consequently, the Commission feels it is vitally important to access and preserve federal programs that provide rental assistance or operating subsidies to developments in Florida serving these households.

The Commission's recommendations to address the needs of extremely low-income households were grouped under the following headings: Farmworker Housing, Preservation, State level and Local level recommendations. The recommendations are intended to allow the State to maximize leveraging opportunities to receive or maintain federal funding for extremely low-income households while encouraging the continued development of affordable housing for low- and very low-income households.

Speaking for all members of the Commission, I extend our appreciation for the opportunity to serve the Citizens of Florida.

Sincerely,

Helen Hough Feinberg

Helen Hough Feinberg
Chair

THE AFFORDABLE HOUSING STUDY COMMISSION **2003-2004 MEMBERSHIP**

Helen H. Feinberg, Chairperson

Lloyd J. Boggio
Representing residential community developers

Howard C. Carroll
Representing the Florida League of Cities

Jill M. Collins
Regional planning councils

W. Scott Culp
Representing management and operation of rental housing development

Paul E. Curtis
Representing apartment development

Michael W. Davis
Representing very low and low-income persons

Santos G. De La Rosa
Representing very low-income persons

Augustin Dominguez
Representing a community-based organization with experience in housing development

Dorothy E. Ellington
Representing a local housing authority

Robert E. Gregg
Representing the housing interests of homeless persons

Priscilla L. Howard
Resident of the state

Sharon D. Jenkins-Owen
Representing statewide growth management organizations

Jane E. Johnson
Representing elderly persons' housing interests

Ann R. Kashmer
Representing the home mortgage lending profession

Barbara J. Lindstrom
Representing elderly persons' housing interests

Darlene N. Pifalo
Representing the real estate sales profession

Ellen M. Ramsey
Representing community-based organizations with a population of less than 50,000

George D. Romagnoli
Representing the Association of Counties

The following are Commissioners that served during the 2003 – 2004 study year and made a valuable contribution in this year's Commission work.

Isabel Carballo
Representing Regional Planning Councils

Carmen Monroy
Representing statewide growth management organizations

Barbara S. Revels
Representing residential home building industry

STAFF
Marcus Hepburn, *Director*
Michael Conrad
Brenda Smith
Alex Joyce-Peickert

Dawn McMillan, Final Report Design

THE AFFORDABLE HOUSING STUDY COMMISSION

Mission Statement

The Affordable Housing Study Commission recommends improvements to public policy to stimulate community development and revitalization and to promote the production, preservation and maintenance of safe, decent and affordable housing for all Floridians.

The Commission's Legislative Charge [1]

The commission is charged to analyze those solutions and programs which could begin to address the state's acute need for housing for the homeless; for very low-income, low-income, and moderate-income persons; and for elderly persons. This Commission's analysis is to include, but is not limited to:

- Educating the public and government officials to understand and appreciate the benefits of affordable housing
- Use of publicly owned lands and buildings as affordable housing sites;
- Coordination with federal initiatives, including development of an approved housing strategy;
- Streamlining the various state, regional, and local regulations, and housing and building codes governing the housing industry;
- Stimulation of public and private cooperative housing efforts;
- Implementation or expansion of the programs authorized under state law;
- Discovery and assessment of funding sources for low-cost housing construction and rehabilitation; and
- Development of such other solutions and programs as the commission deems appropriate.

In performing its analysis, the commission is also charged to consider both homeownership and rental housing as viable options for the provision of housing and to give consideration to various types of residential construction, including but not limited to, manufactured housing.

[1] Section 420.609, *Florida Statutes*

Executive Summary

During the 2003-04 study year, the Affordable Housing Study Commission examined the housing needs of extremely low-income households, including a special emphasis on farmworker housing. There are a little more than 670,000 of these extremely low-income households in Florida. These are households and families who earn less than 30 percent of the area median income. Many of these households pay more than 50 percent of their total household income for housing. Renter households are especially hard-hit with more than 75 percent severely cost-burdened. Elderly, disabled and single-parent renter households are disproportionately represented. What this means is that the most vulnerable households and families among us were facing a crisis of unprecedented proportions.

The Commission recognized that Florida is not alone in this crisis. An initial HUD study in 1999 raised awareness to the growing crisis in cost-burden for lower income households across the nation. A follow-up report in 2001 stated that conditions appear to be getting better due to higher employment rates and the number of worst-case housing dropped by more than half a million. That was good news. The dismal news was that benefits of increased employment had not benefited the lowest income group, the extremely low-income, and that, in fact, the situation was getting even worse. This was the challenge that the 2003-2004 Affordable Housing Study Commission faced in addressing the housing needs for extremely low-income households and families.

The Commission recognizes the difficulties in addressing the housing needs of these citizens. For one, the subsidy required per unit to develop housing targeted to extremely low-income households is far greater than the amount required to serve other higher income groups. Yet, if our goal is to serve the most needy among us – to help those who are least able to assist themselves – something must be done.

Contributing to this crisis is the fact that many subsidized housing units currently in use by extremely low-income households have already reached or are about to reach the end of their life as subsidized housing. Some experts have tagged the loss in Florida at more than 11,000 units over the past five years, yet no one knows the exact numbers. In other words, not only must solutions be found to produce more units for extremely low-income households, serious efforts must be undertaken to preserve existing housing affordable through rental assistance or other means to extremely low-income.

It is in this context that the 2003–2004 Affordable Housing Study Commission developed and offers the following recommendations to address the needs of extremely low-income families and households across our state. The Commission believes that these recommendations, if adopted and implemented, will assist in addressing the crisis by producing more units and afford protection to existing units affordable to the extremely low-income.

COMMISSION RECOMMENDATIONS

I. Farmworker Housing Recommendations

Recommendation

The Florida Housing Finance Corporation should coordinate the SAIL cycle for farmworker SAIL applications that are paired with the United States Department of Agriculture's Rural Development Program in a time frame sufficient to allow a commitment by the Corporation prior to the due date for the Rural Development applications. The SAIL farmworker commitment should be made to match the final loan maturity of the Rural Development program.

Recommendation

The Florida Housing Finance Corporation should establish a target for farmworker housing developments with a maximum number of units at 100 per development. The Corporation should restrict these farmworker developments, with amenities appropriate to farmworker developments, to specific locations, as defined by sub-county and local needs.

II. Local Government Recommendations

Recommendation

The Florida Legislature should amend Section 163.3177(6)(f)1.d., *Florida Statutes*, to require that the housing element of local government comprehensive plans assures the provision of future housing, including housing for extremely low-income families, and that estimates of existing and future demand/need and estimates of housing supply to meet the demand/need include extremely low-income households. Following amendment of the section, the Department of Community Affairs should adopt conforming revisions to Rule Chapter 9J-5, *Florida Administrative Code*.

Recommendation

The Florida Legislature should amend Section 420.9071, *Florida Statutes*, to incorporate a definition of "extremely low-income person or extremely low-income household" as meaning one or more natural persons or a family that has a total annual gross household income that does not exceed 30 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the non-metropolitan median for the state, whichever amount is greatest.

Recommendation

The Florida Legislature should amend Section 420.9075(9), *Florida Statutes*, to require the SHIP annual report to include information on assistance provided to extremely low-income households by the amount of dollars and the number of households assisted and served through a local housing strategy. In the case of counties, the requirement should provide for the reporting of this information at the county level only.

III. State Programs Recommendations

Recommendation

In targeting extremely low-income households in the housing credit program, the Florida Housing Finance Corporation should establish a single fixed annual income representing a typical extremely low-income household for the purposes of determining the maximum rate that may be charged, rather than apply a percentage of the area median income for each county. The Corporation should consider the use of minimum wage as a benchmark for targeting extremely low-income households.

Recommendation

Florida Housing Finance Corporation should consider raising the AMI cap for development applying for both SAIL and tax credits to ensure that affordable developments in lower AMI counties continue to be financially feasible and to promote the development of more units targeted to extremely low-income households in these counties.

Recommendation

The Florida Housing Finance Corporation should allow a portion of the State's HOME allocation to be used for Tenant-Based Rental Assistance (TBRA) for households with extremely low-incomes. The use of TBRA should be linked to local efforts to transition homeless persons (households) to permanent affordable housing.

Recommendation

The Florida Housing Finance Corporation and the Department of Community Affairs should make necessary changes in program reporting requirements to report annually on the number of extremely low-income persons (households) assisted and the amounts expended.

Recommendation

The Florida Housing Finance Corporation should eliminate the competitive criteria, known as "leveraging", related to the Corporation's allocated Housing Credit subsidy per housing unit. This will allow applicants in the Universal Cycle to request additional subsidy, without penalty, in order to meet the goal of serving more extremely low-income households while preserving the economic feasibility of developments.

Recommendation

The Florida Housing Finance Corporation should develop a deeper set-aside matrix for use within the Universal Cycle Application. To do this, the Corporation should use a greater number of matrix categories to reflect differing local economic underwriting conditions. This may include, but not be limited to such factors as area median income, land costs, construction cost, "Difficult-to-Develop Areas" , average operating expenses and average market occupancy.

IV. Public Housing Authority Recommendations

Recommendation

The Florida Legislature should amend Chapter 421, *Florida Statutes*, in order to allow public housing authorities in Florida to participate and compete in expanding the stock of affordable housing. (See Recommendations section of this report for statutory changes being recommended by the Commission.)

V. State Preservation Policy Recommendations

Recommendation
The State should adopt a state notification policy covering all publicly assisted housing of five units or more receiving project-based rental assistance. The notice policy should set a minimum notification period of twelve months prior to opt out or prepayment of mortgage. The notification policy should include notification to the Florida Housing Finance Corporation and other selected stakeholders with a potential role in preservation. This should include, but not be limited to, local government and the public housing authority(s).

Recommendation
The Florida Housing Finance Corporation should establish and maintain a list of potential purchasers of at-risk properties to be notified in the event of an opt-out or pre-payment notice.

Recommendation
The Department of Community Affairs and the Florida Housing Finance Corporation should strongly encourage the appropriate offices of the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture Rural Housing Services to give the Florida Housing Data Clearinghouse regular and timely access to information on federal housing programs, including tenant characteristics.

Recommendation
The Florida Housing Data Clearinghouse should establish and maintain a centralized database of affordable properties of five units or more receiving project-based rental assistance to enable policy-makers and affordable housing advocates the opportunity to act. Data should include, but not be limited to, type of subsidy, expected date of the expiration of the contract, and other relevant information.

Recommendation
The FHFC should incorporate *right of first refusal* conditions in all developments of five units or more that receive any state or federal housing assistance administered by the Corporation, where not inconsistent with federal law.

Recommendation
The State should explore the application of *right of first refusal* for developments of five units or more receiving new federally funded project-based rental assistance payments.

Recommendation
The Florida Housing Finance Corporation should use the SAIL program in combination with tax-exempt bonds to preserve developments serving the extremely low-income population. The Florida Housing Finance Corporation should lower the minimum threshold for rehabilitation costs, now set at 40 percent of the replacement value of the property, based on evidence that such reduction would encourage preservation.

Recommendation
The Florida Housing Finance Corporation should adopt a rule change that will target a portion of SAIL funds (through a tie-breaker or other means) to properties that receive project-based rental assistance.

Recommendation
The Florida Housing Finance Corporation should petition the United States Internal Revenue Service for a waiver of the Housing Credit Program Ten-Year Rule for properties acquired by non-profits that make a commitment to remain affordable for an extended period of time.

Recommendation
As part of its preservation policy, the State should consider a broadened definition of "preservation" which includes subsidized housing units and non-subsidized affordable housing in danger of being lost from the affordable housing inventory, while recognizing distinctions between the two categories of affordable housing.

About this Report

The report is divided into two principal sections. The first section is an introduction to the Commission and its work for 2003 – 2004. In that section, we hope to establish the critical need to address the housing needs for extremely low-income families and households in Florida. As the Commission discovered, we Floridians are not alone in that concern; over the past several years, more and more national attention has been brought to this heretofore forgotten and largely powerless segment of our citizenry. The Commission's intent is to educate the reader on extremely low-income households in Florida and the extent and severity of the problems they face. This will provide the context for the Commission's recommendations.

In the principal section of this report, the Commission presents its recommendations. These practicable and concrete recommendations are aimed at increasing the production of housing units affordable to extremely low-income households, including farmworker households. They also propose the beginnings of a state response for the preservation of housing stock currently affordable for that population.

For each recommendation or group of recommendations, we include a background statement and a rationale for the recommendation(s). The background statement explains the current situation and links it to improving the housing environment for extremely low-income households. The rationale explains the reasoning behind the recommendation and how it will accomplish the goal.

The Recommendations section closes with a statement on the Commission's 2004 – 2005 study topics. The Commission has chosen to continue examining the preservation issue and explore more in depth what other states and local governments are doing in response to the emerging preservation crisis. Our goal next year will be to complete the work we have begun this year on preservation and make practical recommendations for adopting a comprehensive state housing preservation policy. We believe we have begun that work with this year's recommendation and will complete the work next year.

For its second topic for 2004 –2005, the Commission will examine predatory and sub-prime lending in the state. Homeownership is at an all-time high in the nation and in Florida. Within this boom there is a dark side, however, as an increasing body of evidence suggests that lower income families and minorities are falling victim to unscrupulous lenders – this even in the face of recent state legislation to protect borrowers. The Commission intends to use the expertise and resources of the Commission to make practicable recommendations for improvements.

Introduction To The 2004 Report

The Affordable Housing Study Commission has focused its attention on a wide-variety of topics and issues since its creation in 1987. This has resulted in a broad array of recommendations ranging from the need for developing a comprehensive affordable housing policy (1998) or strategies for addressing the NIMBY issue (2001, 2002) to more specific recommendations such as adding a representative of public housing authorities to the Commission (1996) or impact fee proportionality (2002).

Through these efforts, one consistent and steady voice of the Commission has been to call attention to the pressing needs of those most affected by the lack of affordable housing. For example, as far back as 1996, the Commission called attention to the housing requirements of extremely low-income households (i.e., those earning less than 30 percent of the area median income).[1] The Commission noted that up to that time, it was the federal government that had met the needs of this group. Yet, facing federal devolution, the increasing loss of subsidized housing stock and other emerging trends, the Commission felt this group was in greatest risk and the State needed to consider taking action. While the Commission did not offer specific recommendations that year, events and conditions since have confirmed the Commission's earlier concern.

The Commission met in June, 2003, to approve the 2003 final report and identify a topic for the upcoming study season. The Commission chose to return to the issue of the extremely low-income and to formulate and offer concrete achievable recommendations. The Commission also chose to focus on recommendations for increased production of farmworker housing. Evidence strongly suggested that of the more than 200,000 farmworkers in the state, including migrant and seasonal farmworkers, almost all farmworker households have extremely low-incomes.

The issues surrounding this income category are many and complex. Nonetheless, the Commission notes that this lowest of income categories is made up of families and households, with more than their share of the elderly or the disabled on inadequate fixed incomes, or single-parent families with children – all desperately trying to make ends meet. Mirroring national profiles, extremely low-income households in Florida have a disproportionate representation of older households, the disabled and single-parent households.

THE NATIONAL CONTEXT: A WORSENING CRISIS

During the 1990's interest in the housing situation for the extremely low-income began to rise. A HUD 1999 report[2] focused on the rental crisis among the lower income groups and highlighted the following facts:

- Housing that is affordable to the lowest income continues to shrink.
- The concentration of worst case housing needs among the poorest families continues to rise.
- Worst case housing needs increased dramatically among minority households in the 1990's.

In 2001, in a follow-up report by HUD, there was seemingly good news, as the agency stated:

"Reversing a ten-year trend of increases, the number of renter households with worst case housing needs fell significantly between 1997 and 1999. The reduction of worst case needs resulted principally from increases in income among very low-income renters, rather than an expansion in the number of rental housing units affordable to them. Indeed, the long-term trend of reductions in the number of rental units affordable to extremely low-income and very low-income households actually accelerated between 1997 and 1999."[3]

The report found that worst case needs fell significantly between 1997 and 1999 because income growth among very low-income renters exceeded increases in the rents paid. Despite these signs, the report goes on to state that substantial shortages of affordable rental housing remain and that the shortage for extremely low-income households was, in fact, worsening at an accelerating rate.[4]

"The reduction in the number of households with worst case needs for rental assistance all occurred among renters with extremely low-incomes (below 30 percent of the area median income) as income growth reduced the number of such households. Nonetheless, as previously found, extremely low-income renters were much more likely to have worst case housing problems than those with higher incomes."[5]

The report concluded with the following highlights:

- "Nationally and within all regions but the South, needs fell most swiftly between 1997 and 1999 in non-metropolitan areas, the type of location where renters most often already received assistance. Worst case problems fell least in the central cities – the type of location where unassisted very low-income renters most often had severe problems."[6]

[1] Affordable Housing Study Commission Final Report, 1996, Tallahassee.
[2] HUD Worst Case Report, 1999.
[3] HUD Worst Case Report, 2001.
[4] Ibid, page i.
[5] Ibid, page 3.
[6] Ibid, page 7.

- "Losses of affordable rental units accelerated; the drop in worst case households thus occurred despite a worsening shortage of affordable and available units."[7]
- "As was the case nationally, in every region rental housing affordable to extremely low-income renters was in shorter supply than housing affordable to other income groups."[8]

Over the past several years, national advocacy groups have mounted a campaign to establish a national housing trust and to target the extremely low-income.[9]

PROFILE OF THE EXTREMELY LOW-INCOME IN FLORIDA

According to the 2000 Census, there are 6,179,511 households in Florida. Of these households, 38.4 percent of the households earn below 80 percent of the median household income. There are a total of 637,394 households that fall into the category of the extremely low-income. These comprise a total of a little less than 10 percent of the total number of households in the state (see Table 1).

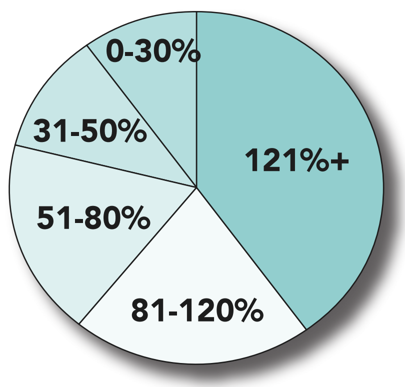
In regards to tenure for Florida households, a little more than 70 percent of all households are owner-occupied with about 29 percent being renter-occupied. For the extremely low-income, on the other hand, the situation is almost reversed. Among the extremely low-income tenureship rates fall to 47 percent for homeownership and the majority are renters (see Figure 2).

TABLE 1:
FLORIDA HOUSEHOLDS BY INCOME

	RENTER	OWNER	TOTAL	PERCENT
TOTAL HOUSEHOLDS	1,783,348	4,396,163	6,179,511	100%
BELOW MEDIAN	891,674	2,198,081	3,089,755	50%
BELOW 80% AMI	1,002,645	1,368,101	2,370,746	38.4%
BELOW 50% AMI	614,343	680,318	1,294,661	20.9%
BELOW 30% AMI	338,950	298,444	637,394	9.7%

Source: United States Census, 2000

FIGURE 1:
HOUSEHOLD INCOME DISTRIBUTION



Areas in chart represent a range of area median incomes (AMI). The chart demonstrates a graphic profile of Florida's household income distributions by AMIs.

[7] Ibid, page 8.
[8] Ibid, page 9.
[9] These groups, joined by a number of Florida advocacy groups, have promoted the adoption of a national housing trust fund that the adoption of an affordable housing policy, called the 30/30 Vision, whereby 30% of affordable housing resources should be targeted to those households and families earning less than 30% of the median income.

FIGURE 2:
TENURESHIP IN FLORIDA

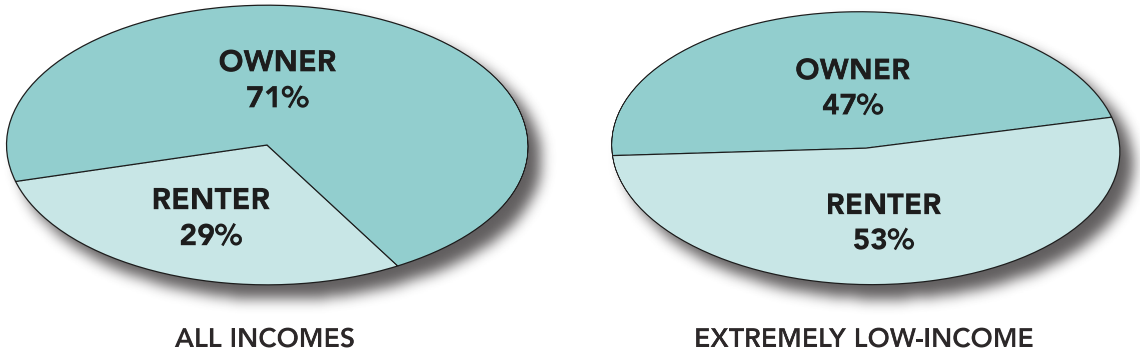


TABLE 2:
HOUSEHOLD STATISTICS

		TOTAL POPULATION		ELI (<30% AMI)	
STATUS		NUMBER	PERCENT	NUMBER	PERCENT
Renter Households	Married families	562,960	31.90%	51,022	15.25%
	Female headed families	336,580	19.07%	14,556	29.84%
	Elderly households	182,862	10.36%	68,634	20.51%
	In multi-family	1,134,367	63.61%	226,661	67%

TABLE 3:
COST BURDEN FOR EXTREMELY LOW-INCOME RENTER HOUSEHOLDS

	NUMBER	PERCENT
Cost burden of 50-75%	57,059	16.4%
Cost burden of 75%+	143,893	43.8%

Table 2 compares the totals of the Florida population to the extremely low-income. Of Florida households, approximately 32 percent are comprised of married families. For the extremely low-income, married families represent only 15 percent of the total. However, while female-head of households represent a little less that 20 percent of the total Florida household population, they represent almost 30 percent of the extremely low-income households. A similar shift or jump is exhibited among elderly households. In the general population, elderly households account for about 10 percent of the total number of households. However, among the extremely low-income, elderly households account for more than 20 percent of the total.

This disproportionate representation for these types of households among the extremely low-income also holds true for persons with disabilities. There are a total of 181,145 extremely low-income households in Florida that have at least one person with disabilities and that have a severe cost burden exceeding 50 percent.[10] Recent work with the Shimberg Center for Affordable Housing[11] notes that of extremely low-income households with a person(s) with disabilities, most pay 75 percent of their income or more for housing and have incomes below 20 percent of the area median income.

Overall, in Florida, the extremely low-income experience high to severe cost burden rates. More than 60 percent of extremely low-income renter households have a cost burden that exceeds 50 percent of the household income for housing costs.

[10] Ray, et al, 2004, page iii.

[11] Ray, Nguyen, Odell et al; Housing Needs and Household Characteristics of Persons with Disabilities in Florida: An Analysis of Census Data, January 2004. Funding provided by the Real Choice Partnership Project and the Americans With Disabilities Act Working Group, State of Florida.

FARMWORKER HOUSING RECOMMENDATIONS

Background and Rationale

Farmworkers play a significant role in the state's economy. Despite their important role, they are very poorly paid and a large percentage have extremely low-incomes. The U.S. Department of Agriculture (USDA) and its Rural Housing Service have several programs for farmworker housing that have been successfully used by farmworker housing developers in Florida. Likewise, the Florida Housing Finance Corporation has targeted set-asides in certain programs for farmworker housing. Testimony before the Commission indicated that while this targeting by the Corporation has proven to be effective in providing funds for farmworker housing, the process does tend to favor larger developments. A more responsive targeting would be to target smaller farmworker developments in specific locations where housing needs are high. Likewise, farmworker housing developers have found that multiple program subsidies greatly assist in the financing of farmworker development. However, program time lines sometimes operate to stymie coordination between multiple funding streams.

For example, the Florida Housing Finance Corporation's time line for issuing final rankings and commitment awards for the State Apartment Incentive Loan (SAIL) program normally occurs in the last half of the year. This program has a specific set-aside for farmworkers. The USDA's Rural Development also has a farmworker housing program. The agency publishes a Notice of Funds Availability in the first part of the calendar quarter and the pre-application deadline is normally around the middle of the second calendar quarter. These applications are ranked nationally. Points are given for leveraging funds from other sources. The Federal Government will award applications that succeed in getting state or local government funds toward the farmworker housing. However, with the current time lines, the state SAIL commitments for a development are not released or known early enough to be included in the scoring in Rural Development applications. Also, administering multiple program funds is simpler when the terms of the loans are similar.

The Commission offers the following recommendations. The Commission believes that these will enhance the fundability of farmworker housing developments by coordinating the time lines between the USDA Rural Development program and the Florida Housing Finance Corporation SAIL program. The recommendations will also create a niche for smaller-scale farmworker developments, help to ensure that awards for farmworker developments are located in proximity to needs, and that loan maturity criteria are similar.

Recommendation

The Florida Housing Finance Corporation should coordinate the SAIL cycle for farmworker SAIL applications that are paired with the United States Department of Agriculture's Rural Development Program in a time frame sufficient to allow a commitment by the Corporation prior to the due date for the Rural Development applications. The SAIL farmworker commitment should be made to match the final loan maturity of the Rural Development program.

Recommendation

The Florida Housing Finance Corporation should establish a target for farmworker housing developments with a maximum number of units at 100 per development. The Corporation should restrict these farmworker developments, with amenities appropriate to farmworker developments, to specific locations, as defined by sub-county and local needs.

LOCAL GOVERNMENT RECOMMENDATIONS

Background and Rationale

Provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, Part II, Chapter 163, *Florida Statutes*, requires all cities and counties to adopt a local comprehensive plan consistent with the Act. Rule 9J-5, *Florida Administrative Code*, establishes the minimum criteria for those plans. Each local plan has a housing element. The housing element requires each local government to ensure through its standards, goals and policies that safe, decent and sanitary housing is available for the current and anticipated population, including housing for farmworkers and people with special needs.

Local governments must analyze current conditions within their jurisdiction, including an assessment of the existing population by income category and the status of adequate housing. The minimum income categories that must be included in this analysis include low-income households (households below 80 percent of the applicable area median income) and very low-income households (households below 50 percent of the applicable area median income). There is no requirement for information on, or an analysis of, extremely low-income households in the jurisdiction.

In order to be responsive the needs of extremely low-income families and households and to create meaningful and effective policies, local governments should include information and an analysis of the extremely low-income within their jurisdiction.

The State Housing Initiatives Partnership (SHIP) program, administered through the Florida Housing Finance Corporation, has more than 120 local SHIP programs. All 67 of Florida's counties have a SHIP program, and each en-

titlement city also operates a SHIP program. The program receives dedicated funds from the Local Government Housing Trust Fund. Based on revenues collected from documentary stamp taxes, SHIP funding has steadily increased since 1993.[12] As with the income categories currently required for housing element analysis, the income categories required by SHIP do not currently include a consideration of extremely low-income or of extremely low-income households assisted.

The Commission offers the following recommendations for local governments to begin including considerations for the extremely low-income in their housing planning and housing program implementation.

Local government comprehensive plans and housing elements

Recommendation

The Florida Legislature should amend Section 163.3177(6)(f)1.d., *Florida Statutes*, to require that the housing element of local government comprehensive plans assures the provision of future housing, including housing for extremely low-income families, and that estimates of existing and future demand/need and estimates of housing supply to meet the demand/need include extremely low-income households. Following amendment of the section, the Department of Community Affairs should adopt conforming revisions to Rule Chapter 9J-5, *Florida Administrative Code*.

State Housing Initiatives Partnership Program (SHIP)—Local Programs

Recommendation

The Florida Legislature should amend Section 420.9071, *Florida Statutes*, to incorporate a definition of "extremely low-income person or extremely low-income household" as meaning one or more natural persons or a family that has a total annual gross household income that does not exceed 30 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the non-metropolitan median for the state, whichever amount is greatest.

Recommendation

The Florida Legislature should amend Section 420.9075(9), *Florida Statutes*, to require the SHIP annual report to include information on assistance provided to extremely low-income households by the amount of dollars and the number of households assisted and served through a local housing strategy. In the case of counties, the requirement should provide for the reporting of this information at the county level only.

[12] Under state statutes, about 15 percent of documentary stamp taxes go to the affordable housing. Of these housing funds approximately 70 percent are earmarked for local housing programs (i.e., SHIP).

STATE PROGRAM RECOMMENDATIONS THE USE OF MEDIAN INCOME

Background and Rationale

Median income is one of the most important and most frequently used terms in the affordable housing lexicon and has been used by housing statisticians, demographers and others for many decades. When applied to a given population, such as a county, household median income means that half of the households earn below that amount and half of the households earn above that amount. Median household income is not average income. Average income is simply the arithmetic mean calculated by summing all incomes and dividing by the total number of households. Median income provides a measure on how income is distributed within a given population and is a highly useful measure for understanding and shaping public policy on housing and a variety of other public policy issues. In the United States, 80 percent of the median income has long stood as the threshold for defining low-income. Median income must be properly applied to be most useful. For example, housing program policy-makers have long recognized the need to make adjustments in income levels for determining qualifications depending on family size.

Because it provides a subsidy in the form of construction equity to affordable housing developers, the Low-income Housing Tax Credit program is one of the most potent funding sources for the new production and rehabilitation of housing for extremely low-income households. The program uses the area median income (AMI) in each county in order to establish the rent structure. Presently, these local (county-level) median incomes range from a low of approximately $30,000 to a high of approximately $60,000.[13] The rents are calculated based on the amount that would be affordable to a given income category. "Affordability" is

defined as 30 percent of the applicable income level, adjusted based upon family size.[14] The Commission noted that minimum wage earners will likely fall in the extremely low-income category and that inter- or cross-county differences in income for these wage earners is usually minimal. In other words, there is minimal variation between the actual dollar incomes of minimum wage earners from one county to the next.

Under the Housing Credit Program, rents are based on the county area median income, so rents for a household making minimum wage in each county will greatly vary, depending on the area median income. Rents for an extremely low-income household in one county may be twice as much in another county.

The Commission notes that the Florida Housing Finance Corporation does not allow Low-income Housing Tax Credits to be combined with funding from the State Apartment Incentive Loan (SAIL) Program unless the area median income in a county is under $40,000. Florida Housing has found that in counties with area median incomes above $40,000, tax credits are generally the only subsidy needed to make affordable developments financially feasible. However, in counties with area median incomes lower than $40,000, tax credits alone do not lower the debt on an affordable development to the extent necessary to make the development financially feasible – and thus, developers tend to shy away from these areas without additional subsidy from the SAIL Program that helps lower the debt still further.

In summary, the Commission believes that administrative flexibility is needed in how median income is interpreted and applied in order to increase the level of affordability of units targeted to extremely low-income households. The following recommendations do not alter the use of median income as a measure, but allow reasonable adjustments to accomplish this policy objective.

[13] For example, Calhoun County has a median income of $33,100 whereas the median income for the Naples/Collier County area is $63,300.

[14] Typically, the 4-person family is considered the standard. Median income is lower than this standard for families smaller than 4-persons and higher than this standard for families with more than 4-persons.

Recommendation

In targeting extremely low-income households in the housing credit program, the Florida Housing Finance Corporation should establish a single fixed annual income representing a typical extremely low-income household for the purposes of determining the maximum rate that may be charged, rather than apply a percentage of the area median income for each County. The Corporation should consider the use of minimum wage as a benchmark for targeting extremely low-income households.

Recommendation

Florida Housing Finance Corporation should consider raising the area median income cap for developments applying for both SAIL and tax credits to ensure that affordable developments in lower area median income counties continue to be financially feasible and to promote the development of more units targeted to extremely low-income households in these counties.

STATE HOME PROGRAM TENANT-BASED RENTAL ASSISTANCE

Background and Rationale

Many states use the flexibility of the HOME program to provide tenant-based rental assistance. Under the HOME guidelines, a portion of the HOME allocation can be used for tenant-based rental assistance provided that such assistance for a household is limited to two years. Some states have used HOME tenant-based rental assistance to target difficult-to-assist homeless individuals and families – most of whom are extremely low-income. Typically, these state programs have linked the use of HOME tenant-based rental assistance to self-sufficiency

efforts and to supporting local continuums of care for the homeless.[15] In Florida, as elsewhere, homeless individuals and homeless families comprise a significant part of the extremely low-income population. Based on data released in June 2003, the homeless population on any given day numbers 72,600 persons.[16] The Commission estimates that this represents anywhere from ten to fifteen percent of the total extremely low-income household population.[17] Because of the flexibility of the program, HOME presents an attractive alternative to provide short-term rental assistance to extremely low-income persons, e.g., the homeless. The Commission believes that the State HOME program should allow a portion of its annual HOME allocation for use as tenant-based rental assistance for the homeless. This should model existing successful programs, stress transition to self-sufficiency, and be linked with local continuums of care and local public housing authority participation.

Recommendation

The Florida Housing Finance Corporation should allow a portion of the State HOME allocation to be used for tenant-based rental assistance for households with extremely low-incomes. The use of tenant-based rental assistance should be linked to local efforts to transition homeless persons (households) to permanent affordable housing.

STATE PROGRAM REPORTING RECOMMENDATIONS

Background and Rationale

The Florida Housing Finance Corporation is the state's housing production agency, with a variety of programs that serve lower income households. The Florida Department of Community Affairs is the state planning agency and administers several programs that, likewise, assist lower income families and households. In order to enhance the state's knowledge and ability to serve those most in need, such as the extremely low-income, it is vitally important to understand how annual resources are used to serve this population. This will help us understand both the present situation and will provide benchmarks against which we will be able to mark improvements. Therefore, the Commission believes that both these agencies should report on the numbers and extent to which their program activities affect the extremely low-income.

Recommendation

The Florida Housing Finance Corporation and the Department of Community Affairs should make necessary changes in program reporting requirements to report annually on the number of extremely low-income persons (households) assisted and the amounts expended.

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[15] COSDCA has published a number of articles on the use of state HOME funds for tenant-based rental assistance.

[16] These statistics are reported by the Florida Office on Homelessness, Florida Department of Children and Families, Tallahassee, Florida, 2004.

[17] Given the differences in reporting protocols and standards, it is difficult at best to make an accurate assessment of the relationship between the numbers of extremely low-income households reported in the U.S. Census, and the actual one-day counts of the homeless population in Florida. Suffice it to say that most, if not all the homeless, would fall into the ELI category, even if employed.

PUBLIC HOUSING AUTHORITY RECOMMENDATIONS

Background and Rationale

There are 120 public housing authorities in Florida. Most are full-service PHAs and administer public housing units, Section 8 vouchers, project-based Section 8 developments and other HUD programs. A few have limited operations and administer, for example, only Section 8 vouchers. Housing authorities in Florida, described in terms of the number of units they manage and the number of Section 8 vouchers they administer, range from massive agencies such as the Miami-Dade Housing Agency which administers more than twenty thousand units and vouchers, to small rural public housing authorities which administer less than one hundred Section 8 vouchers.[18]

Public housing authorities are the workhorse for meeting the needs of extremely low-income households, both in the nation and in this state. It is estimated that approximately seventy-five percent or more of housing authority residents meet extremely low-income guidelines. In fact, since 1996, United States HUD has required that of all Section 8 vouchers issued since that date, seventy-five percent must be to extremely low-income households. In total, the number of households served by public housing authorities in Florida is almost 130,000. This includes 41,000 households in public housing and more than 88,000 holding Section 8 vouchers. The total for Section 8 vouchers includes an estimated 2,350 that have been converted to project-based use.[19]

In Florida, public housing authorities are created under Chapter 421 of the Florida State Statutes. Public housing authorities operate independently of one another and are considered special districts. The statutes were first written in the 1930's and the last modification to the public housing authority statute was in 1953. As presently written, the statute does not reflect nor take advantage of changes in the provision of affordable housing that have taken place since that time. This includes a wide variety of programs, methods, and changes in housing development finance. All of this combined, makes it difficult, at best, for public housing authorities in Florida to undertake a more aggressive role in the development of new housing.

As we learn from the preservation issue, the problem is becoming more acute as public housing developments continue to age; approximately 90 percent of all public housing units were built before 1970. In fact, the only new public housing units in the state since 1990 are the result of units built under the HOPE VI program. Unfortunately, HOPE VI developments result in the replacement of only 50 percent of the number of original public housing units. On top of this shortcoming, all indications from Washington are that the funding situation is not going to get any better for housing production. Rather, major cuts are on the horizon from federal funding sources.

The Commission is convinced that changes are needed. The state needs to move to create a more favorable environment for public housing authorities to access housing production programs. Statutory and regulatory barriers presently exist to prevent this from happening. The pro-

[18] The Shimberg Center conducted a study on behalf of the Florida Association of Housing Rehabilitation Officials in early 2004 that examined public housing authorities in Florida and various aspects of their operation. This report is: Public Housing Authorities in Florida: An Analysis of Selected Issues. By Williamson, Anne Lockwood, Virginia M. Battista, and Melanie Sberna, 2004. Shimberg Center for Affordable Housing, College of Design, Construction and Planning, University of Florida. Technical Note Series Publication No. 04-01.

[19] Ibid, page 20.

posed recommendation will go far towards removing these artificial regulatory barriers.[20] The proposed recommendation, which will amend the Florida law in regards to public housing authorities, will allow public housing authorities to get direct grant dollars for the production of new housing units. It will do so by permitting Florida housing authorities to create non-profit, for-profit and limited partnerships to access and compete for tax credits, mortgages, bonds and other financing vehicles for the production of affordable housing. This will dramatically alter the current situation where housing authorities are penalized under the guidelines and requirements of an antiquated statute.

The general recommendation of the Commission is that the Florida Legislature should amend Chapter 421, *Florida Statutes* to facilitate the preservation of housing stock for extremely low-income families maintained by public housing authorities. The Commission proposes the following statutory language to accomplish this.

Recommendation

The Florida Legislature should amend Chapter 421, *Florida Statutes*, as follows:

421.02 Finding and declaration of necessity.

(2) ~~Slum~~ Blight areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low-income be ~~relieved~~ revitalized solely through the operation of private enterprise ~~and that the construction of housing projects for persons of low-income, as herein defined, would therefore not be competitive with private enterprise~~.

421.08 Powers of authority.

(8) ~~To exercise all or any part or combination of powers herein grants. No provisions of law with respect to acquisition, operation, or disposition or property by other public bodies shall by applicable to an authority unless the Legislature shall specifically so state.~~ To create for profit and not-for-profit corporations, limited liability companies and such other business entities pursuant to the laws of the State of Florida in which housing authorities may hold an ownership interest or participate in their governance to engage in the development, acquisition, leasing, construction, rehabilitation, management or operation of multifamily and single family residential projects. These projects may include non-residential uses and may utilize public and private funds to serve individuals or families who meet the applicable income requirements of the state or federal program involved, whose income does not exceed 150 percent of the applicable area median income as established by the U.S. Department of Housing and Urban Development, and who, in the determination of the housing authority, lack sufficient income or assets to enable them to purchase or rent decent safe, and sanitary dwelling. These corporations, limited liability companies or other business entities are authorized and empowered to join partnerships, joint ventures, limited liability companies or otherwise engage with business entities in the development, acquisition, leasing, construction, rehabilitation, management or operation of such projects. The creation of such corporations, limited liability companies or other business entities by housing authorities for the purposes set forth in this chapter together with all proceedings, acts, and things theretofore undertaken, performed or done are hereby validated, ratified, confirmed, approved and declared legal in all respects.

421.09 Operation not for profit.

(1) It is the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its project at no higher rate than it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenue, income and receipts of the authority from whatever sources derived, will be sufficient:

(~~1~~ a) To pay, as the same shall become due, the principal and interest on the debentures of the authority;

(~~2~~ b) To meet the cost of, and to provide for, maintaining and operating the projects, including the cost of any insurance, and the administrative expenses of the authority; and (~~3~~ c) To create, during not less than the 6 years immediately succeeding its issuance of any debentures, a reserve sufficient to meet the largest principal and interest payments which will be due on such debentures in any one year thereafter, and to maintain such reserve.

(2) This section shall in no way prohibit or restrict the activities or operations of the business entities created pursuant to 421.08(8).

421.23 Liabilities of authority.

In no event shall the liabilities, whether ex contractu or ex delicto, of an authority arising from the operation of its housing projects, be payable from any funds other than the rents, fees or revenues of such projects and any grants or subsidies paid to such authority by the Federal Government, unless such other funds are lawfully pledged by the authority's governing board.

[20] Commission Chairperson Helen Feinberg provided testimony and recommendation to the Housing Select Committee on Affordable Housing and supported changes in Chapter 421 that were introduced into the 2004 Legislature. These changes were not adopted.

RESPONSIBLE LEVERAGING RECOMMENDATIONS

Background and Rationale

The Commission recognized the importance of both new production and preservation of existing units. For the new production side of the equation, the Commission focused on Florida Housing Finance Corporation programs to determine what changes, if any, could be made to encourage deeper targeting of program funds. The Commission notes that the Corporation has been making a concerted effort over the past several years to achieve higher production of units for very low-income households. The Commission also notes that the allocation of the Corporation's program resources is complex and the realignment of one program resource may render another resource unusable. In view of this, the Commission had two goals in considering programmatic changes to the Corporation's programs:

- Increase the targeting of extremely low-income households while maintaining economic feasibility of development proposals;
- Consider the impact on other programs and overall production of units in the state of Florida and avoid making recommendations that would harm the feasibility of programs that leverage federal funds.

Following discussion on various approaches, the Commission concluded that the Low-income Housing Tax Credit program (Housing Credits) was the program best able to serve extremely low-income households.

The U.S. Department of Treasury administers the program in accordance with provisions of Section 42 of the Internal Revenue Code. Each year, the state of Florida receives an allocation of Housing Credits equal to $1.75 for every Florida resident. The Housing Credit program is an appropriate program to fund the production of new deeply targeted units because the sale of tax credits to syndicators funds more than half of the costs to develop and construct a rental development. The significant equity generated from these housing credits minimizes the amount of debt that has to be raised to finance a project. Consequently, developers are able to lower the rent that they charge to tenants because their operating costs (i.e., debt service) are reduced.

The Florida Housing Finance Corporation administers the Low-income Housing Tax Credit program through the Universal Application Cycle. The application for Housing Credits includes stringent requirements for rental developments that will be funded under the program in order to maximize public purpose in each development and produce a quality product. In an effort to target very low-income and extremely low-income households, the Corporation has designed a matrix of various set asides that are applied depending upon the location of the project. The matrix includes categories from A to E and depending upon the category, requires developers to set aside a varying percentage of units at income levels of 30 percent, 35 percent, 40 percent and 50 percent of the area median income. The chart is designed to require higher percentage set asides for higher median incomes and conversely, to require lower percentage set asides for lower median incomes.

Florida Housing has designed the income targeting matrix recognizing that an increase in a set aside for lower income residents has an adverse impact on financial feasibility. A development with a high set aside of units serving households with income of 30 percent of AMI and below requires far more subsidy than a development with the same percentage set aside of units targeted to households with 60 percent of the area median income. Yet, because the program caps the amount of subsidy given to any one project, there is a limit to the amount of targeting of extremely low-income households that is economically feasible. Furthermore, because housing credit availability in any given year is limited, the policy dilemma is whether to serve more Floridians with a lower cost burden or fewer Floridians with a greater cost burden.

Likewise, the Commission recognized the challenge of fashioning uniform set aside criteria applicable to all developments across the State. This is so because the financial feasibility for rental developments is impacted by market factors, median income levels, land cost, expense levels, site issues and other factors – all hugely responsive to local and regional conditions. In response to these differences, Florida Housing has varied the set-aside requirements by creating the A through E location categories.

The Commission recognizes these challenging policy issues and spent much of the study year discussing and debating how to produce more units targeted to extremely low-income households. The Commission concluded that the following two recommended changes in the Universal Cycle would achieve the goal of producing more units targeted for extremely low-income households.

Recommendation

The Florida Housing Finance Corporation should eliminate the competitive criteria, known as " leveraging", related to the Corporation's allocated housing credit subsidy per housing unit. This will allow applicants in the Universal Cycle to request additional subsidy, without penalty, in order to meet the goal of serving more extremely low-income households while preserving the economic feasibility of developments.

Recommendation

The Florida Housing Finance Corporation should develop a deeper set-aside matrix for use within the Universal Application Cycle. To do this, the Corporation should use a greater number of matrix categories to reflect differing local economic underwriting conditions. This may include, but not be limited to such factors as area median income, land costs, construction cost, "Difficult-to-Develop Areas" (DDA), average operating expenses and average market occupancy.

STATE PRESERVATION POLICY RECOMMENDATIONS

Background on Preservation

The Commission notes that our nation's affordable housing advocates and experts are becoming increasingly alarmed at America's shrinking affordable housing stock. Nationally, there are more than 1.6 million Section 8 subsidized apartments.[21] But the contracts that govern as many as 1.5 million of these rent-restricted apartments are set to expire by 2008. This means that tens of thousands of currently affordable housing units may be converted to market-rate units each year between now and 2008. Experts estimate that when subsidized apartments are converted to market-rate, average rent may increase by 45 percent, making the converted apartments unaffordable to low-income tenants. Meanwhile, the federal commitment to affordable housing is waning as evidenced by recent steps taken to end the HOPE VI program and reduce Section 8 vouchers. According to an analysis by the National Housing Trust, HUD subsidized fully 300,000 fewer units in 2003 than it did in 1995.[22]

The hardest hit by the shortage of affordable housing are extremely low-income families, or those making less than 30 percent of the area's median income. According to the National Low-income Housing Coalition, 58 percent of extremely low-income families pay more than half of their income on housing.[23] That represents 16.7 million Americans, many of them children; and according to the National Council of State Housing Agencies, from 1997 to 1999, there were 750,000 fewer apartments affordable to extremely low-income families, a decline of 13 percent.[24] Put another way, for every 100 extremely low-income households, there are currently only 43 units affordable and available to them.[25] Meanwhile, construction of multifamily units, which are generally more affordable, has dropped by half between the 1970's and the 1990's[26] and 13,000 fewer were constructed in 2003 than in 2002.[27] The federal government's Millennial Housing Commission concludes that, "The most serious housing problem in America is the mismatch between the number of extremely low-income renter households and the number of units available to them with acceptable quality and affordable rents."[28]

In recent years the federal government has accelerated the shift of responsibility for affordable housing to the states.[29] While there is debate about the merits of such a policy, the reality is that states now face increased demand to provide adequate affordable housing to their residents. Several states have recognized that an integral part of any state's affordable housing policy is to ensure that as few affordable units are lost as possible. Preservation of an existing property is almost always less expensive than new construction, especially in the case of heavily subsidized housing.[30] According to Charles Elsesser, a housing law expert at Florida Legal Services who provided testimony to the Commission, "preservation… can be shown as the most cost effective means of increasing the affordable housing stock."[31] While Florida has a relatively well-funded affordable housing production budget thanks to the William E. Sadowski Act of 1992, Florida has only limited preservation policies in place.

The Housing Element of Florida's comprehensive planning requirements for local governments (9J-5.010, *Florida Administrative Code*) requires local governments to prepare an inventory of any "renter-occupied housing developments currently using federal, state or local subsidies." However, there is no instruction for what to do with the data and no centralized comprehensive database of expiring affordable housing is kept at the state level. Likewise, the inventory does not contain information on the type of sub-

[21] Bodaken, Michael. "Taking the right steps to preserve affordable housing: The correct path lies just ahead." July 2003. Affordable Housing Finance. Pg 6. <http://www.nhtinc.org/documents/Guest_Commentary.pdf>.

[22] "Changes to Project-Based Multifamily Units in HUD's Inventory Between 1995 and 2003: Number of Affordable Project-Based Units Declines by 300,000". Apr. 2004. National Housing Trust. <http://www.nhtinc.org/documents/PB_Inventory.pdf>.

[23] Crowley, Sheila. Speech. National Low-income Housing Coalition. U.S. House of Representatives Committee on Appropriations Subcommittee on VA, HUD and Independent Agencies, Washington D.C.. 25 Mar. 2004. <http://www.nlihc.org/news/032504test.html>.

[24] Hadley, Katherine G. Speech. Commissioner, Minnesota Housing Finance Agency on behalf of The National Council of State Housing Agencies. Senate Banking Committee, Subcommittee on Housing and Transportation, Washington D.C.. 9 Oct. 2002. <http://www.ncsha.org/uploads/Testimony_Preservation_100902.pdf>.

[25] Crowley, Sheila.

[26] Bodaken, Michael. "The Increasing Shortage of Affordable Rental Housing in America: Action Items for Preservation." Housing Facts & Findings 4. 2002. <http://www.fanniemaefoundation.org/programs/hff/v4i4-preservation.shtml>.

[27] "The State of the Nation's Housing". 2004. Joint Center for Housing Studies of Harvard University. <http://www.jchs.harvard.edu/publications/markets/son2004.pdf>.

[28] Millennial Housing Commission Final Report. Pg. 44. 23 July 2002. <http://www.mhc.gov/MHCReport.pdf>.

[29] "Stemming The Tide: A Handbook on Preserving Multifamily Subsidized Housing". Local Initiatives Support Corporation. Sept. 2002. <http://www.knowledgeplex.org/showdoc.html?kpid=2158>.

[30] Rypkema, Donovan. "Historic Preservation and Affordable Housing: The Missed Connection." National Trust for Historic Preservation. Aug, 2002. <http://www.nationaltrust.org/issues/housing/Missed_Connection.pdf>.

[31] Elsesser, Charles. "Suggested Ideas for Improving Florida's Preservation of At-Risk Affordable Housing". May 2004.

sidies nor of the expected end dates of subsidy contracts. In a spring 2004 article for *Housing News* of the Florida Housing Coalition, affordable housing specialist Melanie Green highlighted the challenge Florida faces,

> *"Florida has no collective way to determine the loss of affordable rental housing units…By not having centralized data with regard to the changing nature of affordable housing, policy makers, advocates, and developers have no specific information that would lead to better decision making regarding the loss and future of affordable housing across the state…"*[32]

Even with the lack of clear data on the number of affordable units in the state – particularly assisted or subsidized units, there is, nonetheless, strong evidence that housing affordability is a serious problem in Florida. According to an analysis of Florida by the National Low-income Housing Coalition, an ELI worker can afford to pay only $380 each month on housing but the actual Fair Market Rent for a two bedroom apartment is $740 a month.[33] A full time minimum wage worker, making $5.15 per hour, can only afford $268 a month in housing costs, so they would have to work 111 hours each week to afford a two bedroom apartment. A full time Florida worker must be paid $14.26 per hour, or 277 percent of the minimum wage, in order to spend less than 30 percent of their income on housing. Since Florida's economy relies heavily on minimum wage industries, such as tourism, service and agriculture, the State has a special obligation to monitor housing affordability and make needed changes to strengthen preservation.

Based on analysis of policy options suggested by housing experts and examples of other states' initiatives, the Affordable Housing Study Commission has prepared a number of recommendations to assist the State in developing a more comprehensive policy on preservation. The Commission's general recommendation is that the State begin this process. As a first step in that direction, the Commission developed a series of specific and achievable recommendations in the areas of: (1) notification policy; (2) *right of first refusal*; (3) steps for Florida Housing Finance Corporation programs; and, (4) a broadened definition of "preservation" as it applies to existing affordable housing stock throughout the state.

Notification Policy

When owners of federally assisted affordable housing decide not to renew or to prepay their rent-restricted federally subsidized loan, all affected parties should have ample prior notification so there is time to attempt preservation of the affected units. Current HUD regulations require owners to provide a one-year notification to tenants and a four-month notification to state and federal HUD offices in advance of non-renewal or prepayment of a federal housing loan. HUD also requires owners to comply with any additional state and local requirements, and many states have added requirements to notify local governments and state-determined qualified buyers who agree to maintain affordability.

Right of First Refusal

Several states, such as California, have adopted *right of first refusal* provisions as a preservation measure. Under these *right of first refusal* provisions, certain qualified buyers are guaranteed an exclusive window of time to submit bids to the owner before the owner can offer the property to the general market. Qualified buyers must agree to maintain the affordability of the units. Typically, the price is determined by two independent appraisals of the property's fair market value. If a qualified buyer submits a satisfactory bid then the owner must sell to them, thereby maintaining the long-term affordability of properties. The Commission believes that Florida should adopt policies to establish *right of first refusal* for any projects using state funds. This should only apply when the owner intends to convert an affordable property to market use; the property should first be offered to any non-profit or for-profit entity that agrees to maintain the affordability provisions. Consistent with these above observations, the Commission believes that the State should introduce and strengthen *right of first refusal* provisions for affordable housing developments in Florida.

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[32] Green, Melanie. "Next Steps for Preservation". *Housing News*. Spring 2004. Vol. 20. Num. 1.

[33] "Out of Reach 2003: America's Housing Wage Climbs, Florida Statistics." National Low-income Housing Coalition. 2003. <http://www.nlihc.org/oor2003/data.php?getstate=on&state percent5B percent5D=FL>.

Florida Housing Finance Corporation

As the State housing production agency, the Florida Housing Finance Corporation plays one of the largest potential roles in the development and adoption of preservation policy for Florida. The Commission believes that developments funded under the SAIL program should be evaluated in regards to continued affordability. The Corporation is also a major interface with the federal Internal Revenue Service (IRS), in that IRS regulations cover the use of housing credit dollars. The Commission believes that the Housing Corporation should consider taking several sensible steps to promote preservation and remove existing impediments.

A Broadened Definition of Preservation

While preservation is usually taken in the context of preserving housing stock that uses housing subsidies for construction and operation, there is a larger stock of affordable housing that currently serves lower income residents that is not subsidized. Yet, for some of the same reasons that the existing subsidized stock is being threatened, many parts of that larger affordable housing stock is likewise threatened with being converted, demolished or otherwise removed from the affordable housing inventory. The Harvard Joint Center for Housing Studies estimates that 16 percent of unregulated affordable units became unaffordable during a period of the 1990's.[34] The Commission recognizes this fact and believes that the Commission also recognizes that there are important distinctions between these two components of the housing stock and individual strategies and solutions will have to be devised for each. With this understood, the Commission believes that discussion, debate and deliberations on preservation should take place using this broader definition.

The Commission offers the following specific recommendations on preservation.

A STATE NOTIFICATION POLICY ON PRESERVATION

Recommendation

The State should adopt a state notification policy covering all publicly assisted housing of five units or more receiving project-based rental assistance. The notice policy should set a minimum notification period of twelve months prior to opt-out or prepayment of mortgage. The notification policy should include notification of the Florida Housing Finance Corporation and other selected stakeholders with a potential role in preservation. This should include, but not be limited to, the local government and the public housing authority(s).

[34] Bodaken, Michael. "Saving America's Affordable Homes." *Enterprise Quarterly*. Spring/Summer 2002. Pp. 4-5. <http://www.nhtinc.org/documents/savehomes.pdf>.

NOTIFICATION OF POTENTIAL PURCHASERS

Recommendation

The Florida Housing Finance Corporation should establish and maintain a list of potential purchasers of at-risk properties to be notified in the event of an opt-out or pre-payment notice.

ACCESS TO DATA FROM HUD

Recommendation

The Department of Community Affairs and the Florida Housing Finance Corporation should strongly encourage the appropriate offices of the U.S. Department of Housing and Urban Development and the United States Department of Agriculture Rural Housing Services to give the Florida Housing Data Clearinghouse regular and timely access to information on federal housing programs, including tenant characteristics.

THE FLORIDA HOUSING DATA CLEARINGHOUSE

Recommendation

The Florida Housing Data Clearinghouse should establish and maintain a centralized database of affordable properties of five units or more receiving project-based rental assistance to enable policy-makers and affordable housing advocates the opportunity to act. Data should include, but

not be limited to, type of subsidy, expected date of the expiration of the contract, and other relevant information.

RIGHT OF FIRST REFUSAL

Recommendation–Future State Administered Funding

The Florida Housing Finance Corporation should incorporate *right of first refusal* conditions in all developments of five units or more that receive any state or federal housing assistance administered by the Corporation, where not inconsistent with federal law.

Recommendation – Future Federal Funding

The State should explore the application of *right of first refusal* for developments of five units or more receiving new federally funded project-based rental assistance payments.

SENSIBLE PRESERVATION STEPS FOR THE FLORIDA HOUSING FINANCE CORPORATION

Recommendation

The Florida Housing Finance Corporation should amend its rules to facilitate the preservation of units that receive federal rental assistance.

SAIL AND PRESERVATION

Background and Rationale

Florida Housing Finance Corporation programs have generally been used for the production of new housing units. However, with the expiration of subsidy contracts related to developments with project-based rental assistance, the Commission believes that it is an opportune time to evaluate means of encouraging the maintenance and continuation of these developments as affordable.

The Commission notes that some developers have successfully used tax-exempt bonds (both private activity bonds and 501(c)(3) bonds) to finance the acquisition and rehabilitation of housing developments with existing project-based rental assistance. Tax-exempt bonds are recognized as a relatively shallow subsidy and are a readily available resource. For several reasons, these bonds are attractive financing vehicles for preserving existing developments. First, the cost to finance an existing development can be significantly less than that of new construction. And, second, a development that has project-based rental assistance has an existing revenue stream that approximates market rents. The Commission also notes that additional subsidy over and above the tax-exempt bonds may be needed to rehabilitate developments with expiring federal project-based rental assistance. In order to encourage non-profit and for-profit affordable housing providers to acquire and/or maintain the affordability of developments with project-based rental assistance, the Commission offers the following recommendations.

Recommendation

The Florida Housing Finance Corporation should use the State Apartment Incentive Loan (SAIL) program in combination with tax-exempt bonds to preserve developments serving the extremely low-income population. The Florida Housing Finance Corporation should lower the minimum threshold for rehabilitation costs, now set at 40 percent of the replacement value of the property, based on evidence that such reduction would encourage preservation.

Recommendation

The Florida Housing Finance Corporation should adopt a rule change that will target a portion of SAIL funds (through a tie-breaker or other means) to properties that receive project-based rental assistance.

THE INTERNAL REVENUE SERVICE AND THE HOUSING CREDIT TEN-YEAR RULE

One means of preserving affordable housing involves the conversion of market rate products to affordable use. Federal low-income housing tax credits made available in conjunction with private activity bonds are a useful tool in financing the acquisition and rehabilitation of these developments. The use of bonds and housing credits in financing these developments allows both the physical asset and the level of affordability to be preserved for a continued period.

Yet, as presently configured, there are obstacles to using this strategy. One of the most important impediments is the IRS Ten-Year Rule which imposes certain requirements on the use of federal housing dollars.

The Ten Year Rule requires that the prior owner must have owned the existing development for at least 10 years in order for the acquisition cost of the property to be eligible for housing credits. There is an exception for non-profit ownership during the ten-year period. The IRS has the ability to grant waivers from the rule on a case-by-case exception basis. The Commission believes that if such a waiver could be granted for preservation purposes, there would be a significant increase in preservation opportunities in Florida.

Recommendation

The Florida Housing Finance Corporation should petition the United States Internal Revenue Service for a waiver of the housing credit Ten-Year Rule for properties acquired by non-profits that make a commitment to remain affordable for an extended period of time.

STATE PRESERVATION POLICY AND BROADENED DEFINITION FOR PRESERVATION

Recommendation

As part of its preservation policy, the State should consider a broadened definition of preservation which includes subsidized housing units and non-subsidized affordable housing in danger of being lost from the affordable housing inventory, while recognizing distinctions between the two categories of affordable housing.






2004–2005 Study Agenda

TOPIC ONE – A COMPREHENSIVE STATE PRESERVATION POLICY

The Commission will continue its work on the preservation of existing housing stock. This will include the federally subsidized housing, expiring tax credit deals and the roll-off of project-based Section 8 properties. It is the intent of the Commission to examine successful efforts of other states and locales and complete its work on recommending the steps toward building a comprehensive state preservation policy. This will include, but not be limited to, such items as: increasing the effectiveness of notification policies; expanding the availability of financing opportunities and financing incentives for preservation purposes; effective strategies for instituting *right of first refusal* in existing and future housing development contracts; and other strategies that would contribute to an effective state preservation policy.

TOPIC TWO – ADDRESSING SUBPRIME AND PREDATORY LENDING

As homeownership rates reach record levels, serious problems are emerging as unscrupulous lenders are taking advantage of borrowers, particularly low-income families and minorities. According to a report by the Woodstock Institute, using Chicago Metro data, subprime loans are twenty-eight times more likely to default than those getting lower-cost prime-rate mortgages. The Commission will be working towards recommendations that will educate the public on standard lending and credit practices and help stem or eliminate abuses.

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