



THE AFFORDABLE HOUSING STUDY COMMISSION
Dedicated to Promoting Affordable Housing in Florida Since 1986

October 25, 2004

Jeb Bush
Governor

The Honorable Jeb Bush
Executive Office of the Governor
400 S. Monroe Street
The Capitol
Tallahassee, Florida 32399-0001

Helen Feinberg
Chair

RE: Affordable Housing Study Commission – Selected Recommendations for Storm Relief and Recovery

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Dear Governor,

Pursuant to a request made by Lieutenant Governor Jennings on October 1, 2004, the Affordable Housing Study Commission is pleased to provide certain additional recommendations to assist the State of Florida in its hurricane recovery efforts.

In developing the recommendations provided herein, the Commission has considered actions that can be taken by the Treasury and Congress to promote the production of affordable housing units in the State. We believe that several of these recommendations will dramatically improve the utility of the Housing Credit and tax exempt bond program as a resource to develop and rehabilitate affordable rental units. The State presently has the capacity to issue tax exempt bonds to finance affordable rental housing. However, economic conditions such as increases in construction costs, land costs and operating costs have adversely affected the ability of affordable housing providers to access this program without the availability of additional subsidy. We believe that our proposed changes will significantly expand the pool of eligible new construction and rehabilitation developments that may be financed in the State. Furthermore, we have identified a financing mechanism to assist homeowners affected by storms to repair their home or acquire a new home. In evaluating various options, the Commission has focused on strategies that would provide significant benefit with little or no cost to the federal government.

Consideration #1:

Designate disaster areas as Difficult Development Areas: Each year, HUD designates certain Metropolitan Statistical Areas (“MSAs”) as Difficult Development Areas (“DDAs”) for the Low Income Housing Tax Credit (“Housing Credit”) program pursuant to Section 42 of the Internal Revenue Code. An affordable housing development built in a DDA may claim housing credits on a greater percentage of the construction costs than if that development were not in a DDA.

In effect, the amount of Housing Credit equity received in connection with an affordable housing development in a DDA is approximately 30 percent greater than the Housing Credit equity received in other areas. As a practical matter, this additional subsidy opens up a wider range of financing tools to develop or rehabilitate affordable housing in DDAs. One of those tools is private activity bond authority, which is accompanied by "4%" Housing Credits when used to build or rehabilitate affordable rental housing. Recent dramatic increases in the costs of land and construction have put Florida at risk of losing access to these federal funds because the financing sources are insufficient to fund the costs of development. The additional subsidy in the form of Housing Credits received in DDAs helps to close this financing gap. The Commission believes that designating hurricane-hit areas as DDAs is an efficient means of facilitating the production of new deed restricted affordable housing units because funding mechanisms are already in place for the private activity bond program.

HUD is the agency responsible for determining whether a County or MSA qualifies as a Difficult Development Area. This determination is made by comparing the income of very low income households in an area to the prevailing rents in that area. The harder it is for very low income households to find suitable rental units, the more likely that the area will be designated a DDA. Unfortunately, we believe that HUD performed its analysis before the hurricanes hit Florida this year. Floridians who lost their jobs as a result of the storms will not be reflected in the HUD analysis, so median household incomes are likely overstated in the disaster areas. Also, fair market rents in hurricane-hit areas undoubtedly increased as the available supply of homes was drastically reduced by the hurricanes.

Although HUD has the authority to designate areas as DDAs, Congress has limited these designations to encompass no more than 20 percent of the nation's metro population. This means that under current rules, if HUD were to reassess Florida's hard hit areas and designate them as DDAs, other deserving areas in the country would lose their DDA status because of the 20 percent cap. The Commission believes that in the event of a disaster (such as the four storms affecting the State of Florida), it would be extremely valuable for Congress to grant the Secretary of HUD the authority to temporarily designate affected areas as DDAs in order to facilitate recovery. Because affordable housing providers may already develop Housing Credit properties in existing DDAs to the extent funding is available, and this proposal only seeks to expand the number of DDAs on a temporary basis, the Commission believes that this change would not have a material revenue impact on the Treasury. It is important to note that this proposal does not attempt to increase the existing cap on 9% Housing Credits and the Private Activity Bond allocation which will further limit any impact on revenues. Yet, this change would have a significant positive impact on the State of Florida in terms of facilitating the development, repair or replacement of affordable housing units.

***Recommendation #1:** The Commission recommends that the State work with HUD and the appropriate committees in Congress to grant special consideration of the hurricane impacted areas in our State as DDAs. It is the Commission's understanding that the Florida Housing Finance Corporation has recommended that affected areas in the State be granted DDA status and we are in agreement with Florida Housing that this change would provide a means to efficiently develop or rehabilitate affordable housing units.*

Consideration #2:

Improve the Economic Viability of Rehabilitation Financings under the Housing Credit Program: Federal housing credits are among the most valuable sources of subsidy presently available to fund the construction or rehabilitation of affordable housing. In many areas of the State, significant public purpose could be achieved by rehabilitating existing housing stock that may be in disrepair. However, the "10 Year Rule" serves as a serious impediment to the usage of housing

credits for the purpose of rehabilitating multifamily units and deed restricting them as affordable. Except in limited circumstances, this rule prohibits properties that have had more than one owner in the last 10 years from being eligible to receive housing credits on the acquisition cost of a development. The only subsidy that is generated on properties that are not “10 Year Rule eligible” is the housing credit equity relating to rehabilitation costs, and this funding source is rarely sufficient to encourage the redevelopment of these properties.

Section 42 of the Internal Revenue Code (the “Code”) allows the Treasury to grant waivers from the “10 Year Rule” in certain situations. One such situation is when doing so would allow the Federal Government to: a) avoid an insurance claim under FHA or RD, or b) avoid the loss of affordable housing stock. The Commission sees significant potential value in granting relief from the “10 year rule” for areas that have been severely affected by the storms. While the Treasury appears to have the authority to grant waivers in certain circumstances, the Code does not appear to allow waivers to be granted for any purpose other than those specifically identified. Therefore, a waiver of the “10 Year Rule” for selected geographic areas would require Congressional action.

Because Florida’s dynamic real estate market has been very attractive for institutional investors in multifamily properties in the recent past, there are relatively few developments on the market that are “10 Year Rule eligible.” The Commission asserts that a waiver of this rule would be appropriate in that it would encourage the renovation and repair of housing stock at a time when many units throughout Florida have been damaged. It is our belief that this change would be considered “revenue neutral” because no additional funding is being requested. The State would simply be asking to have the choice of using its existing funding sources for a larger pool of qualifying properties.

***Recommendation #2:** The Affordable Housing Study Commission recommends that the State request legislation permitting a waiver of the “10 Year Rule” under the Housing Credit program for federally declared disaster areas within Florida in order to encourage the acquisition and rehabilitation of affordable housing units.*

Consideration #3:

Relief from First Time Homebuyer Requirement for Single Family Mortgage Revenue Bonds:

State and local agencies in Florida offer first time homebuyers below-market mortgage financing as well as down payment assistance through the issuance of single family mortgage revenue bonds. The program has income and purchase price limits and restricts participation to individuals and families that have not owned a home within the past three years (an exception to this restriction exists for loans made in federally designated targeted areas and Qualified Rehabilitation Loans and Home Improvement Loans which have very specific requirements). The public purpose associated with this program is to assist individuals and families in the achievement of home ownership. Yet, with thousands of victims in Florida that have damaged or destroyed homes, there is a present need in the State to help those affected to repair their home or buy a new home. The Commission feels that significant public purpose would be served by providing an exemption from the first time homebuyer requirement for those whose homes have been damaged or destroyed by the storms. We believe that the currently available mortgage revenue bond capacity will adequately meet the demand of both first time homebuyers and hurricane victims. Section 143(k)(11) provided relief from the first time homebuyer requirement (as well as certain purchase price and income limits) for residences located in an area determined by the President to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. However, that section only applies to bonds issued in 1997 and 1998.

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The single family program also presently allows existing homeowners to access Home Improvement Loans in amounts up to \$15,000 to rehabilitate an existing residence. This limit was established many years ago and the program has a low level of utility for this purpose. The Commission believes that the program would be more useful if the limit were raised to an amount that is reflective of increases in construction prices.

It is the understanding of the Commission that the first time homebuyer requirement has previously been waived following a disaster. Furthermore, we are of the opinion that the proposed changes would be viewed as "revenue neutral" since there is no request for an increase in the volume cap for private activity bond authority. With these changes we would simply be expanding the pool of eligible borrowers under the program.

***Recommendation #3:** The Commission recommends that the State request legislative relief for a period of two years from: a) the first time home buyer requirement for individuals and families whose homes have been damaged by the storms, and b) the \$15,000 limit on Home Improvement Loans. For example, legislative relief from the first time home buyer requirement could be achieved by amending section 143(k)(11) to apply to bonds issued in 2005 and 2006. The Commission suggests that the dollar limit on Home Improvement Loans be increased to \$100,000.*

The Commission appreciates the opportunity to present its recommendations for federal legislative changes that could significantly increase affordable housing opportunities for those affected by the recent storms. If you have any questions regarding these recommendations, please do not hesitate to contact me.

Sincerely,



Helen Hough Feinberg
Affordable Housing Study Commission Chair

cc: The Honorable Toni Jennings, Lieutenant Governor
The Honorable James E. "Jim" King, Jr., President of the Senate
The Honorable Johnnie Byrd, Speaker of the House
Thaddeus Cohen, Secretary, Department of Community Affairs
Orlando Cabrera, Executive Director, Florida Housing Finance Corporation