U.S. DEPARTMENT OF THE TREASURY

AFFORDABLE HOUSING HOW-TO GUIDE:

How to Use State and Local Fiscal Recovery Funds for Affordable Housing Production and Preservation

In partnership with the U.S. Department of Housing and Urban Development

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The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program, a part of the American Rescue Plan, delivers $350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 pandemic. Recipient governments have a once in a generation opportunity to invest these SLFRF dollars to boost the supply of affordable housing. Under the program's final rule, "Development, repair, and operation of affordable housing and services or programs to increase long-term housing security" is an enumerated eligible use to respond to the negative economic impacts of the pandemic on households and communities.

To assist recipients in implementing these funds for affordable housing, the Department of the Treasury and the Department of Housing and Urban Development have prepared this guide, which provides a summary of updated guidance related to SLFRF recipients' ability to use SLFRF funds to invest in affordable housing. The guidance, which can be found in Final Rule FAQs 2.14 and 4.9, clarifies and expands on the framework in the SLFRF final rule. This "how-to" guide provides examples of how recipients can combine and "layer" SLFRF with other sources of funding to maximize resources and meet housing needs.

SLFRF Affordable Housing Updates at a Glance:

- **Expanded Presumptive Eligibility.** SLFRF permits funds to be used, among other uses, to combat the public health and negative economic impacts (PH-NEI) of the pandemic. Treasury has updated its guidance to clarify two presumptively eligible ways to use SLFRF to fund affordable housing investments under the final rule.[1]

    - **Option 1:** SLFRF funds used for affordable housing projects under the PH-NEI eligible use category are presumptively eligible if the project meets certain core requirements of the following expanded list of federal housing programs:
        - National Housing Trust Fund (HTF)
        - HOME Investment Partnerships Program (HOME)
        - Low-Income Housing Credit (LIHTC)
        - Public Housing Capital Fund
        - Section 202 Supportive Housing for the Elderly Program
        - Section 811 Supportive Housing for Persons with Disabilities Program
        - Project-Based Rental Assistance
        - Multifamily Preservation & Revitalization Program
        - Affordable housing projects provided by a Tribal government if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program

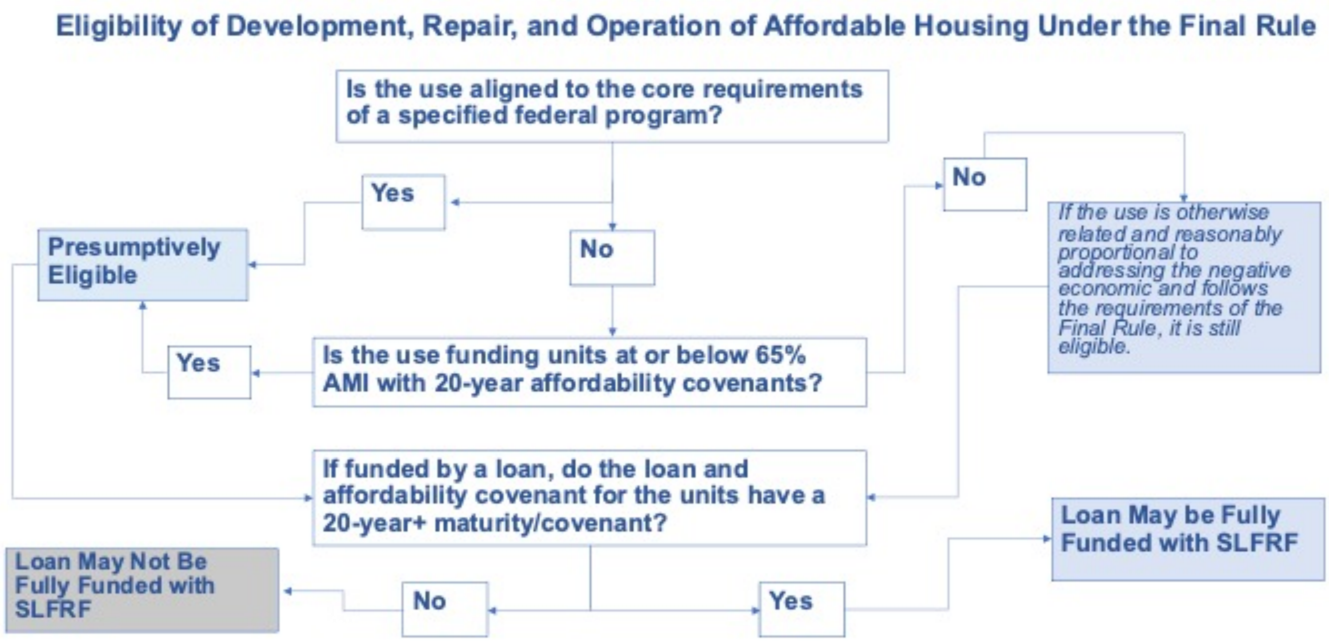
The program requirements of these federal housing programs that must be met for presumptive eligibility have been clarified to include four core requirements:

1. Resident income restrictions;
2. The affordability period and related covenant requirements for assisted units;
3. Tenant protections; and
4. Housing quality standards.

1 Refer to Final Rule FAQs 2.14 and 4.9 for additional information about presumptively eligible affordable housing investments and other program requirements.

- **Option 2:** SLFRF funds used for affordable rental housing under the PH-NEI eligible use category are presumptively eligible uses if the units funded serve households at or below 65% of AMI for a period of 20 years or greater.
- A broader range of affordable housing investments may also be eligible uses of SLFRF funds under the final rule if they are related and are reasonably proportional to addressing the negative economic impacts of the pandemic and otherwise meet the final rule's requirements. Depending on the needs of the local rental market, it may be reasonably proportional to address the negative economic impacts of the pandemic by funding units (e.g., up to 80% AMI) that do not fall into the presumptively eligible categories listed above.

- Loan Flexibilities. SLFRF can now be used to fund the full principal amount of certain loans that finance long-term affordable housing investments. Among other requirements, the loans must have maturity and affordability covenants of 20 years or longer, including but not limited to loans that fund low-income housing tax credit (LIHTC) projects.[2]



Additional Uses

- Recipients may consider offering down payment assistance. Examples of this assistance include:
    - contributions to a homeowner's equity at origination; or
    - establishing a post-closing mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (e.g., if the borrower faces financial stress).
- Homeownership assistance that would be eligible under the Community Development Block Grant (24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

2 Refer to Final Rule FAQ 4.9 for additional information and requirements for using SLFRF to fund affordable housing loans.

Flexibilities and Requirements for Long-Term Loans for Affordable Housing:

Treasury has concluded that the features of certain long-term loans significantly mitigate concerns about funds being deployed for purposes of recycling funds, potentially for ineligible uses, following the SLFRF program's expenditure deadline. Treasury has determined that SLFRF funds may be used to finance certain loans that support affordable housing investments. Specifically, under the PH-NEI eligible use category, recipients may use SLFRF funds to make loans to finance affordable housing projects, funding the full principal amount of the loan, if the loan and project meet the following requirements:

1. The loan has a term of not less than 20 years;
2. The affordable housing project being financed has an affordability period of not less than 20 years after the project or assisted units are available for occupancy after having received the SLFRF investment; and
3. To protect affordability, the project owners of any properties receiving SLFRF loans which also receive LIHTC financing must agree to waive their right to request a qualified contract as defined in Section 42(h)(6)(F) of the Internal Revenue Code and repay any loaned funds if the property becomes noncompliant.

Loans that fund investments in affordable housing projects under the PH-NEI eligible use category which meet the above criteria will be considered to be expended at the point of disbursement to the borrower, and repayments on such loans are not subject to program income rules. Loan modifications will be permitted if the modifications do not result in repayment of all or substantially all funds to the lender prior to the end of the affordability period. To reduce administrative complexity, the start date of the 20-year affordability covenant may conform to the start date of other covenants on the same project or units that are required by another source of federal or state funding associated with the project or units.

Layering SLFRF with Other Funding Opportunities

SLFRF may be combined with a wide range of other federal, state, local, and private resources to meet housing needs. The rest of this guide provides an overview of possible combinations and uses of resources. Recipients using SLFRF in conjunction with another federal program must comply with all related statutory and regulatory requirements and policies of both programs, including the capital expenditure requirements and the requirement that if a project is only partially funded with SLFRF, the portion of the project funded must be an eligible use under the SLFRF program.[3]

1. **Flexible funding for new construction and substantial rehabilitation of affordable housing**

SLFRF may help fill gaps and expedite the construction or rehabilitation of thousands of affordable housing projects around the nation that face funding gaps, in many cases due to the impacts of COVID-19 and the resulting economic challenges on materials and labor costs. Recipients also could use these funds to support "shovel ready" projects that have received other funding approvals from federal, state, local government, or private sources. Examples include:

3 For more information about capital expenditure requirements, refer to the final rule and pages 30-31 of the Overview of the Final Rule. For more information about blending and braiding SLFRF funds, refer to Final Rule FAQ 4.8.

- **LIHTC projects:** SLFRF may fill funding gaps to projects that received an allocation of 9 or 4 percent LIHTC, for new construction or preservation of affordable rental housing.
- **Federal Housing Administration (FHA) multifamily mortgage insurance:** HUD's Office of Multifamily Housing insures new construction and substantial rehabilitation loans for the construction or substantial rehabilitation of rental or cooperative housing under section 221(d)(4) of the National Housing Act. These loans are often not sufficient to cover the entire cost of these transactions, and SLFRF could provide necessary additional financing to make the projects financially viable. The 221(d)(4) program includes key goals and requirements related to federal wage rates and environmental reviews.
- **HOME and HTF:** The HOME program, through which funds are provided to state and local governments designated as Participating Jurisdictions (PJs), and HTF, which provides formula funds to states, may be used for acquisition, rehabilitation, and new construction of affordable homeownership or rental housing. Recipients may align SLFRF with these HUD programs to meet affordable housing production and repair goals.
- **HOME-ARP:** The American Rescue Plan provided funding to PJs to assist qualifying populations. SLFRF may be layered with HOME-ARP to acquire, rehabilitate, or newly construct rental housing for eligible populations.
- **Project-Based Vouchers (PBVs):** Recipients may partner with their local Public Housing Authorities (PHAs), which may be able to award PBVs to build or rehabilitate units pursuant to section 8(o)(13) of the U.S. Housing Act of 1937.
- **Recapitalization of Public Housing through HUD's Rental Assistance Demonstration (RAD):** Many PHAs are undertaking substantial rehabilitation of public housing or repositioning public housing and adding new homes under RAD. SLFRF may fill gaps in these RAD transactions or may be used as a flexible source to support Faircloth-to-RAD housing transactions, which allow PHAs to add new affordable housing.
- **Community Development Block Grants (CDBG) and Section 108 Loan Guarantee Program:** SLFRF may be combined with CDBG funding that states, metropolitan cities, and urban counties receive annually to support rehabilitation, conversion, or reconstruction projects. Recipients may align SLFRF with CDBG or Section 108 Loan Guarantee Program financing to make eligible affordable housing investments.

2. **Rehabilitation and Adaptive Reuse**

   Recipients may use SLFRF to acquire properties that will be transitioned into affordable housing for households that experienced the negative economic impacts of the pandemic. This could include acquisition of market rate rental properties, motels, or commercial properties that will be converted to affordable housing, or acquisition and preservation of publicly supported affordable housing. SLFRF may finance retrofits and weatherization of properties to improve energy efficiency, potentially by leveraging new federal funding such as the Department of Energy's Weatherization Assistance Program, or infrastructure resources.

   Opportunities for layering with **FHA Multifamily mortgage insurance include:**

   - **HUD's Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing under Section 223(f) of the National Housing Act:** FHA insures loans that offer fixed-rate, non-recourse financing for up to 35 years and allow for a modest number of repairs and energy efficiency retrofits as part of the transaction. A jurisdiction could layer SLFRF with a Section 223(f) loan to finance property acquisition or refinance.
   - **FHA Risk Share:** In the Risk Share model, HUD delegates authority to HFAs to underwrite multifamily loans in exchange for taking on a portion of the risk in the transaction. Recipients may layer SLFRF resources with a Risk Share loan to fund the acquisition or refinancing of affordable properties. Currently 37 HFAs are approved to use Risk-Share and 22 of those have active programs with the Federal Financing Bank-Risk Sharing Initiative to maximize these purchase/refinance opportunities.

SLFRF also may be used to convert vacant or abandoned properties to affordable housing in disproportionately impacted communities. For example, SLFRF may be:

- layered with Section 108 Loan Guarantee Program funds for the eligible housing portion of a mixed use development;
- combined with HOME or HTF to provide deeply affordable units within mixed-income developments;
- utilized to convert office buildings to condominiums for homeownership;
- employed to finance the conversion of industrial or commercial properties to housing; or
- used to acquire vacant lots for affordable housing development.

Predevelopment

Recipients may use SLFRF to help fund pre-project development activities, which could include site work and land acquisition, that precede housing development or rehabilitation of affordable housing.

- **Land acquisition:** Recipients may use SLFRF to acquire land for future development or within existing land acquisition programs for purposes of affordable housing investments, including those funded with CDBG or Section 108 Loan Guarantee Program funds.
- **Predevelopment and site work:** SLFRF may be used for predevelopment activity and site work to lay the ground for affordable housing development. Recipients planning to layer SLFRF with HOME for new construction should review HUD environmental review and planning requirements.

Please note that this Affordable Housing Guide is provided for informational purposes only and is intended to provide examples of ways that recipients can consider using SLFRF to invest in the development, repair, and operation of affordable housing. The examples provided in this document are derived from the eligible uses of funds discussed in the SLFRF final rule and associated guidance, including the Final Rule FAQs. Recipients should refer to Treasury's final rule and guidance for more information about SLFRF eligible uses and other program requirements, including Final Rule FAQ 4.8, which provides more information about requirements for blending and braiding SLFRF funds. SLFRF funds are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.

For More Information:

Resources from Treasury for State and Local Fiscal Recovery Funds

Please visit the State and Local Recovery Funds website, final rule, final rule overview, final rule FAQs, and Compliance and Reporting Guidance. Questions should be sent to slfrf@treasury.gov.

Resources from the Department of Housing and Urban Development

Low-Income Housing Tax Credit

Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing

Housing Finance Agency Risk Sharing

HOME Investment Partnerships Program

Housing Trust Fund

Project Based Vouchers

Recapitalization of Public Housing through HUD's Rental Assistance Demonstration (RAD)

Community Development Block Grants

Section 108 Loan Guarantee Program

HOME-ARP

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