COHNREZNICK SPOTLIGHT

Utilizing State and Local Fiscal Recovery Funds for Affordable Housing

The American Rescue Plan (ARP), signed into law in March 2021 to assist states, localities and individuals in recovering from the adverse impacts of the COVID-19 pandemic, included a provision establishing the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program. Thus far, attempts to access SLFRF dollars to finance affordable housing have been frustrated by uncertainty regarding several structuring issues associated with FRF in combination with Low Income Housing Tax Credits (LIHTC). However, in late July 2022, Treasury issued additional guidance to ensure that SLFRF can be used for the affordable housing programs.

The new guidance specifies that there are two presumptively eligible ways to use SLFRF to fund affordable housing that combats the public health and negative economic impacts (PH-NEI) of the pandemic.

Under Option 1, the project must meet "certain core requirements" of specific federal housing programs, including the National Housing Trust Fund (HTF), HOME, LIHTC, Section 202, Section 811 and Project-Based Rental Assistance (PBRA), among others. The guidance lists those requirements as including:

- Resident income restrictions;
- Affordability period of at least 20 years and related covenant requirements for assisted units; and
- Tenant protections and housing quality standards.

Under Option 2:

- Funded units must serve households at or below 65 percent of Area Median Income (AMI) for at least 20 years.
- A broader range of affordable housing investments may qualify that do not fall into the presumptively eligible categories.

The Treasury guidance also now allows SLFRF dollars to be used to finance affordable housing if the loan has a term and affordability period of not less than 20 years. In addition, for LIHTC-financed properties, the property owners must agree to waive their right to request a qualified contract and to repay the loan if the property becomes noncompliant.

Loans that fund affordable housing "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," the guidance states. "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."

While SLFRF can be granted to a LIHTC property, developers should understand that such grants will result in a reduction of LIHTC-eligible basis (and LIHTC equity). For-profit developers should also be aware that SLFRF funding provided as a grant generates taxable income.

In 2022, many LIHTC development budgets face funding gaps caused by a combination of increasing development costs and higher interest rates. NCSHA estimates that $9.6 billion of SLFRF funding has been budgeted for affordable housing, which could play a significant role in addressing the funding gap issue.

SLFRF is only available for a limited time, and must be obligated by Dec. 31, 2024, and expended by Dec. 31, 2026.

This high-level summary provides an overview of the main highlights of the program guidance that was issued. Developers considering using SLFRF should consult with their advisors for a more comprehensive understanding of the program requirements.

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