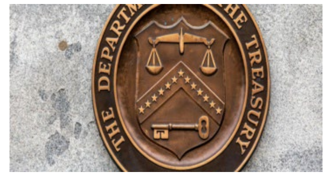
Treasury releases updated ARPA Recovery Fund guidance providing additional flexibility to use funds for affordable housing



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Treasury releases updated ARPA Recovery Fund guidance providing additional flexibility to use funds for affordable housing NACo worked with Treasury ahead of updated guidance to provide counties with additional flexibility to build and preserve affordable rental housing

On July 27, the U.S. Department of Treasury (Treasury) released new guidance that provides additional flexibility to use American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (Recovery Funds) to boost the supply of affordable housing in counties' communities. This updated guidance follows the White House's recently released Housing Supply Action Plan that outlines how counties can leverage ARPA dollars for affordable housing.

Ahead of the updated guidance, NACo urged Treasury to provide this additional flexibility to ensure counties are able to use Recovery Funds to build and preserve desperately needed affordable rental housing.

Key highlights include:

- **Increased flexibility to use Recovery Funds for long-term affordable housing loans:** As outlined in the Final Rule, Recovery Funds can be used to finance long-term affordable housing loans. SLFRF permits funds to be used, among other uses, to combat the public health and negative economic effects of the pandemic, including by building affordable housing. The guidance updates permit governments to use SLFRF funds to fully finance long-term affordable housing loans, including the principal of any such loans, subject to certain conditions. These changes will facilitate significant additional financing for affordable housing projects, including those that would be eligible for additional assistance under Treasury's Low Income Housing Credit (LIHTC).

- **Expanded eligible uses:** Treasury's Final Rule was initially designed to allow counties flexibility in the use of funds for affordable housing, identifying uses consistent with two major HUD programs as presumptively eligible under SLFRF. The updated guidance expands that list to include an expanded range of federal programs from multiple agencies, permitting more options for how states and local governments can presumptively use funds for affordable housing. Additionally, Treasury updated its guidance to clarify that Recovery Funds may be used to finance the development, repair, or operation of any affordable rental housing unit that provides long-term affordability of 20 years or more to households at or below 65 percent of the local area median income.

- **Treasury and HUD release new "How-To" guide:** Treasury worked with the U.S. Department of Housing and Urban Development (HUD) to publish a How-to Guide for

Affordable Housing. The guide provides a summary of how counties can use ARPA Recovery Funds for affordable housing and combine these dollars with other federal funds. In addition to this guide, Treasury and HUD will host a series of webinars, which will be announced at a later date.

Updated Treasury FAQs related to affordable housing

Treasury has reflected these updates related to eligible housing expenditures in their [Final Rule FAQs](). Specific updates include:

- FAQ 2.14 (pgs. 10-11): The updated FAQ reflects new presumptively eligible uses, which include: 1. projects that would be eligible for funding under an expanded list of federal housing programs and; 2. projects for the development, repair or operation of affordable rental housing with certain income and affordability requirements.
    - Presumption 1: In addition to projects funded by the National Housing Trust Fund (NTF) and Home Investment Partnerships Program (HOME), which were already eligible under previous guidance, any projects funded by the following federal housing program are now also eligible:
        - The Low-Income Housing Tax Credit (administered by Treasury)
        - The Public Housing Capital Fund (administered by HUD)
        - Section 202 Supportive Housing for the Elderly Program and Section 811
        - Supportive Housing for Persons with Disabilities Program (administered by
        - HUD)
        - Project-Based Rental Assistance (PBRA) (administered by HUD)
        - Multifamily Preservation & Revitalization program (administered by USDA)
    - Important note: These programs use different income limits than the definitions of low- and moderate-income adopted by Treasury. If a county chooses to invest in an affordable housing project under the above federal program, the investment agreement must adhere to all applicable local codes and requirements related to: Resident income restrictions; period of affordability and related covenant requirements for assisted unit; tenant protections; and housing quality standards.
- Presumption 2: Under the new guidance, Treasury will presume that an investment in the development, repair, or operation of any affordable rental housing unit is an eligible use of Recovery Funds if the unit has a limited maximum income of 65 percent area median income (AMI), as imposed through a covenant, land use restriction agreement, or other enforceable legal requirements for a period of at least 20 years. A jurisdiction may establish a longer period of affordability at its discretion.
    - Counties may use Recovery Funds as part of the financing for a mixed-income housing project if the total financing made up of Recovery Funds does not exceed the total development costs attributable to affordable housing units limited to households at or below 65 percent AMI for the affordability period.
    - FAQ 4.9 (pgs. 35-36): The updated FAQ reflects loans to fund investments in affordable housing projects. Recovery Funds can be used to finance certain loans that finance affordable housing investments. Counties may use Recovery 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:
        - The loan has a term of no less than 20 years
        - Affordable housing project being financed has an affordability period of no less than 20 years AFTER the project or assisted units are available for occupancy after ARPA investment
        - For loans to finance projects expected to be eligible for the low-income housing credit the project owner must agree to waive any right o request a

qualified contract and repay any loaned funds to the entity that originated the loan at the time the project becomes non-compliant

- This additional flexibility to finance qualified low-income housing projects aligns with that of the LIFELINE Act, which NACo endorsed.