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MEMORANDUM

August 12, 2022

TO: TRIBAL HOUSING CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***U.S. Department of the Treasury Hosts Webinar on the State and Local Fiscal Recovery Funds (SLFRF) for Affordable Housing Production and Preservation***

On August 10, 2022, the U.S. Department of the Treasury held a webinar discussing how the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) can be used for affordable housing. The entire webinar will eventually be posted on the U.S. Department of the Treasury's website for SLFRF funds. Questions regarding the SLFRF funds should be directed to the FAQ section. Additional general inquiries can be emailed to SLFRF@treasury.gov.

I. Introduction

Jacob Leibenluft – Chief Recovery Officer – U.S. Department of the Treasury – thanked states, localities, and Tribal governments on the work that has been done to help families stay safe and housed during the pandemic. He said the current housing shortage is around 1.5 million homes nationwide and this shortage is especially critical for low-to-moderate income families. He encouraged webinar participants to work with the U.S. Department of the Treasury to increase its commitment of SLFRF funds toward affordable housing. He said he looks forward to highlighting successful projects that have implemented SLFRF funds.

Noel Andrés Poyo – Deputy Assistant Secretary for Community Economic Development – U.S. Department of the Treasury – said resources from the American Rescue Plan and the Biden Administration's rapid actions have prevented a housing disaster. He said the eviction moratorium combined with the Emergency Rental Assistance Program prevented millions of evictions. The foreclosure moratorium and the Homeowner Assistance Fund prevented another foreclosure crisis. He said our nation's housing shortfall affects everyone across the country, in terms of geography and in terms of income, and the Biden Administration is working to address the housing challenges using a whole government approach.

Namrata Mujumdar – Lead for Policy Outreach – U.S. Department of the Treasury – provided a brief overview of the SLFRF program which delivers $350 billion for states, territories, localities, and Tribal governments to support the response to, and recovery from, the COVID-19 public health emergency. She said the SLFRF program provides substantial flexibility for each jurisdiction to meet local needs within the four separate eligible use categories. The four eligible use categories are 1) Public Sector Revenues, 2) Public Health and Economic Response, 3) Premium Pay for Essential Workers, and 4) Water, Sewer, and Broadband Infrastructure.

1) She said recipients can replace lost public sector revenue due to the pandemic. Recipients can either calculate the revenue lost using the formula found in the Final Rule or take the $10 million standard allowance. Revenue lost category has been made more flexible through FAQ 13.15, which tailors the applicability of subparts D and E of the Uniform Guidance.

2) She said recipients can use funds to support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health. Recipients can also address COVID-19 economic harms to household, small businesses, nonprofits, impacted industries, and the public sector. She said the Final Rule was intended to provide broad flexibility for SLFRF funds for affordable housing development.

3) She said recipients can provide premium pay for eligible workers performing essential work by offering additional support to those experiencing the greatest health risks due to their service in critical sectors.

4) She said recipients can make necessary investments to improve access to clean drinking water, to support vital waste water and storm water, and to expand critical access to broadband internet.

II. Overview of SLFRF Program Guidance Updates

Vinay Nayak – Senior Advisor – U.S. Department of the Treasury – said the U.S. Department of the Treasury has updated its Affordable Housing How-To Guide to clarify two presumptively eligible ways to use SLFRF funds. He said previously there were two programs that were aligned for presumptive eligible use of SLFRF funds. The update now lists more eligible programs with clarification on core requirements. He said these four core requirements are necessary to qualify for presumptive eligibility. The four core requirements are: 1) resident income restrictions; 2) the affordability period and related covenant requirements for assisted units; 3) tenant protections; and 4) housing quality standards.

Mr. Nayak said the presumptively eligible use for SLFRF funds occurs when the four core requirements match with one of the listed programs. He said the goal of the updated guidance was to be clear and to be as helpful as possible by providing an expanded list of eligible programs. He hopes affordable housing projects will move forward as a result from the expanded list of eligible programs and from the additional clarity within the updated guidance.

Mr. Nayak then went into detail describing Option 1 and Option 2 under the Expanded Presumptive Eligibility found in the Affordable Housing How-To Guide.

Option 1 is that SLFRF funds used for affordable housing projects under the public health and negative economic impacts (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 Tax 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

Mr. Nayak said Option 2 is new under the updated Affordable Housing How-To Guide. Option 2 is as follows: "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 [Area Median Income] AMI for a period of 20 years or greater."

Mr. Nayak said even if a use does not align with one of the programs previously specified, a use of SLFRF funds can be presumptively eligible when the SLFRF funds are used for the portion of units within a housing project that serve individuals at 65% of AMI or below for a 20-year period or greater. He said presumptive eligibility can happen even in a mixed income unit where only certain units are being funded by state and local funds.

Additionally, he continued quoting the Affordable Housing How-To Guide as follows:

> SLFRF funds 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. The requirements are as follows:
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> 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.

Mr. Nayak concluded by saying the goal for the updated options and guidance is to unlock additional dollars for affordable housing. He said the SLFRF funds may be helpful in increasing the scale and scope of commitments for affordable housing.

Ellen Lurie Hoffman – Senior Policy Advisor – U.S. Department of the Treasury – reminded webinar participants that all SLFRF funds combined with another federal program must meet the requirements of both programs, and if a project has a portion that uses SLFRF funds then that portion must meet the SLFRF program requirements. SLFRF funds may be combined with other federal, state, local, and private resources to meet housing needs through 1) new construction and substantial rehabilitation of affordable housing, and 2) rehabilitation and adaptive reuse, such as acquiring market rate rental properties, motels, or commercial properties that will be converted into affordable housing. She said SLFRF funds can also be used to finance retrofits and weatherization of properties to improve energy efficiency. Lastly, she said SLFRF funds can be used for affordable housing projects through acquiring land for the project and through predeveloping the site for the affordable housing project.

Laura McDaniel – Policy Outreach Advisor – U.S. Department of the Treasury – shared notable examples of SLFRF funds being utilized. She said one example is from the Lac du Flambeau Band of Lake Superior Chippewa Indians who set aside close to $5 million of SLFRF funds to assist the tribe's housing authority to construct a 24-unit acquisition rehab project, along with a new construction of a 21-unit community building.

III. Q&A Session

1. *Once funds are paid back from a loan can we reuse the funds or do they have to be repaid to the U.S. Department of the Treasury?*

Vinay Nayak answered by saying yes. He said for these affordable housing uses, recipients can reinvest into affordable housing. He said recipients are able to retain repayments of both principal and interest for those qualifying long-term loans that have the affordability covenant. This includes payments of principal and interest during the period of performance as well as repayments of principal and interest after the period of performance. He said these kinds of long-term loans that were previously covered are considered expend, for purposes of SLFRF requirements, at the time the funds are dispersed to the borrower. For further information refer to the FAQ 4.9.

2. *How do I determine if my project is eligible under this guidance?*

Ellen Lurie Hoffman said projects such as group homes may be eligible if the uses meet the presumption requirements. Ms. Hoffman reminded participants that recipients of SLFRF funds also have the flexibility to design other affordable housing projects beyond those described in the guidance. She said if the projects are related and if the projects are reasonably proportional in addressing the negative economic impacts of the pandemic then it would likely be eligible. She said additionally the use must otherwise meet the Final Rule requirements. There is no requirement that affordable housing has to be built on a qualified census track. She said FAQ 2.14 is the most helpful in determining whether a certain project is eligible for SLFRF funds.

3. *If funding multiple properties, should that be one SLFRF project or separate SLFRF project for each affordable housing site?*

Namrata Mujumdar said a project includes expenditures that are interdependent such as a school project where it has the purchase of land, the cost of building, and the cost of school equipment. Additionally, expenditures that would be used for a common purpose or for the same or similar type, such as a development of multiple affordable housing projects in the same jurisdiction.

Ms. Mujumdar said a recipient must not segment a larger project into smaller projects to evade review. A recipient undertaking a set of similar projects such as development of affordable housing across the recipient jurisdiction may complete one written capital expenditure justification to comprehensively address an entire set of projects. Further information on the definition of a project is on page 4392 of the Final Rule, and see the Compliance and Reporting Guidance pages 19, 28, and 31 regarding written justifications.

4. *Can SLFRF funds be used to put money into an affordable housing trust fund?*

Ellen Lurie Hoffman said a recipient may contribute SLFRF funds into an affordable housing trust fund as long as the uses of the housing trust fund resources are restricted to the eligible uses in the SLFRF Final Rule and U.S. Department of the Treasury's guidance. See FAQ 2.14. She said if funds are being provided in the form of a loan, either to the housing trust fund or by a housing trust fund to its beneficiaries, then the recipient should consult FAQ 4.9.

She said depositing SLFRF funds into a housing trust fund not associated with a particular project would not constitute an expenditure of funds. She said recipients and housing trust funds should be mindful of the obligation and expenditure timelines for the use of SLFRF funds. For further information see page 43 of the Overview of the Final Rule.

IV. Conclusion

Ms. Mujumdar thanked everyone for participating and directed participants with further questions to refer to the U.S. Department of the Treasury's SLFRF's website and the FAQ. General inquiries regarding SLFRF funds can be directed to SLFRF@treasury.gov.

We are still reviewing the FAQ and will be providing a separate report on the FAQ details in the near future.

If you have any questions or would like further information on the topics raised in this report, please do not hesitate to contact Edmund Clay Goodman (EGoodman@hobbsstraus.com or 503-242-1745).