



December 10, 2021

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Secretary Yellen,

The undersigned organizations, including representatives from state and local governments and the affordable housing industry, strongly urge the U.S. Department of the Treasury (Treasury) to modify existing guidance on the Coronavirus State and Local Fiscal Recovery Fund to provide more flexibility in the use of these funds in developments financed with Low Income Housing Tax Credits (Housing Credits).

The Housing Credit is our nation's most important program for the production of affordable rental housing. Nearly all affordable rental housing built or preserved today relies on the Housing Credit as its primary financing source. This program is simply the backbone of affordable rental housing finance.

Unfortunately, Housing Credit production has faced significant challenges since the onset of the pandemic due to heightened construction costs caused by supply chain disruptions and labor shortages. These cost increases have widened financing gaps in Housing Credit developments, threatening their feasibility.

The unprecedented nature of the surge in construction material prices due to the pandemic cannot be overstated. Earlier this year, the National Association of Home Builders estimated that higher lumber prices added nearly \$13,000 to the cost of every multifamily unit under construction, and the Bureau of Labor Statistics reported building material price increases of nearly 15 percent year-to-date, led by increases in iron, steel, and asphalt.

For this reason, states, local governments, and their development partners are eager to use Fiscal Recovery Funds to help fill the gaps in properties primarily financed with the Housing Credit. In fact, since passage of the American Rescue Plan Act (ARPA) in March, nearly half of the states and numerous localities have committed to use significant amounts of Fiscal Recovery Funds for affordable housing purposes, primarily for use with the Housing Credit. This is precisely the type of use we would argue Congress intended for the program.

By leveraging Fiscal Recovery Funds with the private equity invested in Housing Credit developments, states and local governments would be able to maximize the impact of the Fiscal Recovery Fund for affordable housing. Leveraging these funds will allow construction to resume, generate additional economic activity, and enable greater housing affordability for families disproportionately impacted by the pandemic.

Affordable housing developers typically structure gap financing sources as loans rather than grants, as grants typically reduce Housing Credit qualified basis. Unfortunately, Fiscal Recovery Fund guidance outlined in the Treasury Interim Final Rule and the Frequently Asked Questions document complicate the gap financing structuring approach when these resources are used as loans.

While the guidance clarifies that loans with maturities before December 31, 2026, may use Fiscal Recovery Funds to cover the principal cost of a loan, the requirement that all funds must be expended by December 31, 2026, means that loans with maturities after 2026 are essentially infeasible.

For loans with maturities longer than December 31, 2026, the funds can be used only “for the projected cost of the loan” which Treasury defines as the effective present value subsidy provided by the loan, based on the cost of funds for similar borrowing. This interpretation complicates typical financial structuring approaches that involve long-term loan maturities, presents unnecessary obstacles for the expedient use of Fiscal Recovery Funds by states and local governments, and greatly reduces the effectiveness of leveraging ARPA funding with other affordable housing finance tools.

Given the limitations imposed by these rules, states and local governments are exploring alternative financial structuring models to use Fiscal Recovery Funds in

Housing Credit developments. But these alternative structuring models are likely to have limited applicability. Thus, more flexibility in the use of Fiscal Recovery Funds in general is needed to expedite use of the funding as Congress intended.

There are two ways we believe Treasury could modify its guidance to allow states and local governments to maximize the efficacy of Fiscal Recovery Funds used with the Housing Credit.

- First, we recommend that Treasury publish guidance to clarify that Fiscal Recovery Funds structured as grants do not result in an eligible basis reduction in Housing Credit developments regardless of sponsor type, consistent with treatment of Tax Credit Exchange funds administered by the Treasury during the 2009 economic recovery. At that time, like now, there was an imperative that stimulus dollars be deployed quickly to make an immediate impact on the economy while also serving households in need.
- Second, we recommend that Treasury provide authority to use Fiscal Recovery Funds for principal amounts on loans with maturities beyond 2026—not just for the “cost of the loan” as currently outlined in the Interim Rule—and to allow repayments of funds to be used for similar affordable housing purposes, even after the 2026 deadline.

Lack of additional flexibility in using Fiscal Recovery Funds to support Housing Credit developments puts significant state and local commitments to use such funds for affordable housing at risk.

We greatly appreciate your consideration of our comments as you work to provide additional guidance on the Fiscal Recovery Fund. Please let us know if we can answer any questions or provide additional information on these matters.

Sincerely,

Affordable Housing Investors Council  
Affordable Housing Tax Credit Coalition  
Council of Development Finance Agencies  
Council of Large Public Housing Authorities  
Council of State Community Development Agencies  
Government Finance Officers Association  
Housing Advisory Group  
National Association of Counties  
National Association of Home Builders  
National Association of Housing and Redevelopment Officials  
National Association of Local Housing Finance Agencies

National Association of State and Local Equity Funds  
National Council of State Housing Agencies  
National Housing Conference  
National Housing & Rehabilitation Association  
National League of Cities  
National Multifamily Housing Council  
Public Housing Authorities Directors Association  
Stewards of Affordable Housing for the Future

cc:

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