NCSHA
National Council *of*
State Housing Agencies

July 16, 2021

Office of the Undersecretary for Domestic Finance
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Docket No. TREAS-DO-2021-0008-0002
Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA)[1] appreciates the opportunity to submit comments on the Treasury Department's Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds program. In general, we urge Treasury to provide more flexibility for grantees to use the fiscal recovery funds (FRF) for affordable housing.

States created HFAs to provide affordable mortgage financing for homeownership and rental housing in their states. HFAs use the Low Income Housing Tax Credit (Housing Credit), tax-exempt Housing Bonds, the HOME Investment Partnerships program, the Housing Trust Fund, Section 8 rental assistance, and many other federal and state programs to support the production and preservation of affordable housing.

As state-chartered public-mission entities dedicated to financing the variety of housing needs in their states, many HFAs will receive FRF from their states' allocation to use for affordable housing. Others will work closely with other state agencies using FRF for housing purposes.

Currently, we know of at least 13 states (including the District of Columbia) which plan to or are seriously considering using some of their FRF allocations for affordable housing. Their intended uses include production and preservation of both rental and homeownership housing, eviction diversion programs, mortgage financing for rental production and preservation, workforce housing, down payment assistance,

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

housing recovery for disaster-impacted areas, addressing homelessness, and single-family and multifamily housing repair and energy-efficiency improvement.

The substantial sub-allocations of FRF for affordable housing in many states demonstrates the critical need for more affordable housing, particularly for groups and areas that have been disproportionately affected by the Covid-19 pandemic. In many states, the potential for significant use of FRF for affordable housing depends on receiving more flexibility and clarity from Treasury on how they may use those funds. We urge the Department to modify the Interim Final Rule is several key ways to make FRF more effective in addressing the serious affordable housing problems created and exacerbated by the pandemic.

Allow Grantees to Use Fiscal Recovery Funds to Develop and Support Affordable Housing in More Geographic Areas and for a Broader Range of Activities

Question 7 in the interim rule notice asks about the advantages and disadvantages of using Qualified Census Tracts (QCTs) to delineate where a broader range of eligible uses—including housing—are presumed to be responsive to the public health and economic impacts of COVID–19. It also asks what other measures Treasury might consider and whether there are other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included. Question 9 asks about the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties.

Treasury should allow affordable housing investments in any community – not just QCTs. Affordable housing needs are so great and COVID-related impacts are so universal among those eligible for affordable housing that broad authority to use FRF for affordable housing anywhere is highly appropriate and necessary for meeting the wide variety of affordable housing needs throughout every state.

We understand that using QCTs makes sense to identify communities that have most likely seen the biggest COVID impacts. But people in many other areas have been impacted as well. Limiting the ability to use FRF for affordable housing development to just those areas—without administratively challenging designations and approvals—would very likely unintentionally lead to higher concentrations of low-income residents in those areas. This would reinforce racial segregation and limit housing opportunities for lower income people.

It would also prevent deploying FRF's power to help the extensive numbers of COVID-impacted people of modest means in other areas and runs counter to the public policy consensus and imperative to create affordable homes in areas of opportunity.

Additionally, the lack of clarity on what is required to demonstrate disproportionate impact creates ambiguity that will divert administrative capacity and delay new housing which is urgently needed but takes time to develop. The interim rule does not address how recipients can support their determination that a particular population, household, or geography has been disproportionately impacted by COVID-19. In the absence of clear guidance for how states and localities can make the case for disproportionate impact, grantees will likely shift resources away from affordable housing development in non-QCT areas, choosing instead to stick to definitively allowable uses to avoid any missteps that could result in funds being clawed back by the federal government.

If Treasury does not permit grantees to use FRF for affordable housing throughout their jurisdictions, it should allow automatic eligibility for FRF affordable housing activities in:

- Areas designated by HUD as Difficult Development Areas (DDA) for purposes of the Low Income Housing Tax Credit program;
- REAP Zones designated under the USDA Rural Economic Area Partnership Program;
- Opportunity Zones; and
- Manufactured housing communities, including mobile home parks.

Treasury should also create in the final rule a simple template for grantees to document to Treasury which populations or geographic areas they have determined to be disproportionately impacted and therefore eligible based on simple criteria, such as the percentages of low-income renters, residents with severe housing costs burdens, people of color, or housing that is substandard or in need of repair in such areas.

To provide communities and stakeholders clarity on how FRF can be used and provide grantees the flexibility they need to address their particular needs, Treasury should permit a broad variety of housing programs to qualify as affordable housing. At least, housing intended for occupancy by families or households with incomes up to 100 percent of area median income, with exceptions for higher percentages of income in high-cost areas or areas with low area median incomes (including many rural areas), should qualify as affordable housing. The rule should also allow grantees to use at least some percentage of their FRF funds for workforce housing for homebuyers earning up to 150 percent of area median income.

Treasury should also provide grantees with additional flexibility on what housing-related activities are FRF-eligible. Allowing grantees to use FRF for neighborhood support, whether through demolition, rehabilitation or development, supportive services, counseling, and other activities will allow those communities to address inequities which have been prevalent for decades and have resulted in the inability of many in those populations to receive high quality medical care and to live in healthy environments. We also recommend a final rule explicitly allow funding of development, down payment assistance, and other uses to support homeownership.

Allow Grantees to Use FRF for Operating Assistance

Many affordable housing activities, particularly properties targeted to assist the lowest income families, are not feasible without substantial operating assistance to pay for the normal costs of running a property that cannot be paid for with affordable rents or mortgage payments. In these cases, allowing FRF to pay those operating costs allows such activities to proceed. We urge Treasury to modify the interim rule to explicitly state FRF may be used for such expenses. Making this change will promote the use of FRF for deeply targeted housing that provides affordability to the lowest income for the longest period of time.

Allow Grantees to Use Repayments of FRF Funds for Similar Purposes

Many housing activities are often designed as loans with flexible repayment terms, often based on conditions that require repayments if residents do not remain in a property or use it as affordable housing for the expected affordability period. Some assistance is provided in the form of loans because recipients have the wherewithal to make affordable repayments and such funds can be recycled for important affordable housing purposes and other people that need housing help.

We urge Treasury to allow grantees using such financing models to use any repayments they receive for a broad variety of affordable housing activities, including the administrative expenses and operating costs of housing agencies using FRF. We recommend Treasury permit this flexibility for repayments made before or after the statutory deadline for new commitments of FRF dollars.

Thank you for your consideration.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives