

ARPA SLFRF Eligible Expenditures for NC Local Governments

31 CFR 35.6(b)(1)(i): Program, service, capital expenditure eligible if (1) identify a harm and (2) it responds to harm. Need **ALL THREE COLUMNS**:

31 CFR 35.6(b)(2) Identify a harm	31 CFR 35.6(b)(1)(ii) Responds to harm	Most restrictive of SFLRF regs or state law (below)
<p>1. Households are presumed impacted that experienced:</p> <ul style="list-style-type: none"> • Unemployment • Food or housing insecurity • Qualify for certain fed programs (CHIP, Medicaid, etc.) • For affordable housing programs, qualify for HTF or HOME • Low and mod income households (300% FPL, 40% AMI) <p>OR</p> <p>2. Disproportionately impacted households</p> <ul style="list-style-type: none"> • Residing in QCT • Low income households (FPL, 40% AMI) • Qualify for certain fed programs (TANF, SNAP, SSI, WIC, etc.) 	<p>1. “reasonably designed to benefit” those harmed AND</p> <p>2. “related and reasonably proportional” to the harm</p> <ul style="list-style-type: none"> • 31 CFR 35.6(b)(3) Responses presumed reasonably proportional “unless such use is disproportionately disproportional to the harm”: <p>• Assistance to households and individuals:</p> <ul style="list-style-type: none"> • Emergency housing; • Repairs or weatherization; • Rent, repair and oper. of aff. Housing; • Increase long term housing security; • Relocation assistance 	<ul style="list-style-type: none"> • Who can be served? <ul style="list-style-type: none"> • Low Income: 60% AMI • Mod Income: 80% AMI <ul style="list-style-type: none"> • <i>Low-interest loans</i> • No authority to aid over 80% AMI • Rental subsidy only for low income (60% AMI or below) • Set asides for low income <ul style="list-style-type: none"> • Any “housing project” with “other than low and moderate income” persons must set aside 20% of units for “exclusive use of persons of low-income” • If subsidize multi-family rental, must set aside 20% of units for “exclusive use” of low-income for 15 years. Federal programs often exceed this: <ul style="list-style-type: none"> • HTF: 30 years • LIHTC: 30 yrs in NC • HOME: 20 yrs for new construction • Units set aside for “exclusive use” must be “within financial reach.” Fed programs are specific: <ul style="list-style-type: none"> • HOME: rents below 30% of 65% AMI
<p>3/29/2024 SLFRF FAQ</p> <p>FAQ 2.14 Affordable housing is a “presumptively eligible use” if it meets one of these presumptions</p> <ul style="list-style-type: none"> • Presumption 1: <u>Any</u> projects that would be eligible for enumerated federal programs, and investment agreement requires compliance, are eligible uses. • Presumption 2: Development, repair, or operation of a specific unit if limited to maximum income of 120% AMI (80% AMI is max under NC law, see next column) for 20 years. <p>FAQ 4.9 Loans under public health and negative economic impacts eligible use</p> <p>Loans for affordable housing with term over 20 years, and funding LIHTC projects under specified conditions, count as fully expended when made and are not subject to program income rules.</p> <p>FAQ 13.15 and 13.16 Different Uniform Guidance (UG) rules apply if revenue loss category used.</p>		

For affordable housing development, these rules became less relevant after Treasury and HUD issued a joint “Affordable Housing How-To-Guide” in July 2022 and made updates to SLFRF FAQ on March 5, 2024, that continue to be reflected in FAQ on March 29. See FAQ explanations below.

Mechanics of Using SLFRF for Affordable Housing

Activity	SLFRF considerations	State law considerations
Acquire land for housing development	<ul style="list-style-type: none"> • Complete SLFRF capital expenditures justification? • If not revenue loss follow UG 200.311, .316, .330 <ul style="list-style-type: none"> ○ Calculate federal share and record lien/notice ○ Conduct real property monitoring ○ Return federal share at disposition • No land banking, must develop housing <ul style="list-style-type: none"> ○ HOME safe harbor: begin construct in 12 mos. ○ SLFRF: obligate end 2024, expend by end 2026 	Authority: G.S. 160D-1316, G.S. Ch. 157 <ul style="list-style-type: none"> • Counties must hold public referendum prior to appropriating state or local tax revenues for subsidy or other activities outside of G.S. 160D-1316. No referendum if only federal funds are used. <p style="text-align: right;"><i>G.S. 160D-1311(d)</i></p>
Ground lease to third party at fair market rate (after accounting for restrictions)	<ul style="list-style-type: none"> • If not revenue loss, follow UG 200.311, .316, .330 <ul style="list-style-type: none"> ○ Calculate federal share and monitor as described for land acquisition above. ○ Lease payments recv'd are program income, add to award and expend (3/29/24 FAQ 13.11). After period of performance, program income need not be tracked. 2 CFR 200.307(f). 	Authority: G.S. 160A-278 <ul style="list-style-type: none"> • Ground lease contains requirements • Fair market lease rate (but appraise with income approach to account for affordability restrictions) • 20% set aside for low income if any units serve "other than" LMI
Convey or lease land to third party with non-monetary consideration to offset sale price	<ul style="list-style-type: none"> • If not revenue loss, follow UG 200.311, .316, .330 <ul style="list-style-type: none"> ○ Calculate federal share and monitor as described for land acquisition above. ○ If sale: return proceeds to Treasury (200.311) ○ Lease payments recv'd are program income, same as ground lease above. 	Authority: G.S. Ch. 157 <ul style="list-style-type: none"> • Non-monetary consideration: enforceable promise to serve LMI • Property reverts back to govt if no longer used by recipient for purpose • Any subsidy must flow to LMI • 20% set aside for low income for 15 years (G.S. 157-9.4)
Construction or rehab of housing by subrecipient of local govt (housing not to be owned by local govt)	<ul style="list-style-type: none"> • Complete SLFRF capital expenditures justification? • If not revenue loss, follow UG 200.311, .316, .330 <ul style="list-style-type: none"> ○ Calculate federal share and monitor as described for land acquisition above. • UG procurement rqmts (200.317 - 200.327) do NOT apply (3/29/24 FAQ 13.15 and 13.16) • NEPA and Davis-Bacon do NOT apply when wholly funded by SLFRF (3/29/24 FAQ 6.3 and 6.15) 	Authority: G.S. Ch. 157 <ul style="list-style-type: none"> • Subrecipient follows UG only unless subaward also imposes state rules • Enforceable promise to serve LMI • Property reverts back to govt if no longer used by recipient for purpose • 20% set aside for low income for 15 years (G.S. 157-9.4)
Subrecipient rents units to LMI	<ul style="list-style-type: none"> • Eligible beneficiary income lesser of (1) state law limits or (2) federal eligible incomes under applicable federal housing program. • Rent established by federal housing program • Rent payments recv'd are program income, same as lease payments described for ground lease. 	Authority: G.S. Ch. 157 <ul style="list-style-type: none"> • Payment of rent subsidies only for low income (60% AMI or below) • Rents to be "within financial reach" • Income cannot be diverted to other purposes. All subsidy flows to LMI.
Convey housing to LMI owners	<ul style="list-style-type: none"> • See federal housing program guidance for household income eligibility and sale price • Upon sale: return proceeds to Treasury if not funded under revenue loss (200.311) 	<ul style="list-style-type: none"> • G.S. 160D-1316 at cost (or appraised value acceptable if less than cost) • G.S. Ch. 157 if subsidized
Financing for LMI or third party (SLFRF 3/29/24 FAQ 4.9)	<ul style="list-style-type: none"> • Loans for 20+ years for affordable housing <ul style="list-style-type: none"> ○ SLFRF expended at time of disbursement to borrower and repayment not program income 	Authority: G.S. Ch. 157 <ul style="list-style-type: none"> • 20% set aside for low income if any units serve "other than" LMI