Housing Alliance
of Pennsylvania

Memorandum

September 2, 2016

The state Housing Trust Fund now has three dedicated revenue sources. This memo explains how these sources fit into the overall structure, and details allowable uses and distribution of all Housing Trust Fund money.

1. Act 105 of 2010 – Establishment of PHARE or the State Housing Trust Fund
35 PS 1680.401d, et seq.

In November 2010, Gov. Rendell signed HB 60 establishing PHARE as a statewide fund to support all manner of affordable housing work. Unfortunately, Act 105 did not provide any money. Still, its creation was significant - a giant piggy bank that can take in funds from different sources.

The law amended the PA Housing Finance Agency's enabling legislation since it is PHFA that administers PHARE. The program parameters of PHARE are broad in keeping with the overall mission of PHFA.

§ 1680.403d. Program

(a) Project types.--The program may provide funding for the following:
(1) Projects to provide safe and sanitary dwellings for sale or rent to low-income and moderate-income individuals or families.
(2) Projects to increase the availability or quality of housing for elderly persons.
(3) Projects to increase the availability or quality of accessible housing for persons with disabilities.
(4) Projects to prevent or reduce homelessness.
(5) Projects to encourage the development and rehabilitation of distressed neighborhoods.
(6) Projects to provide mortgage or rental assistance, including housing counseling, foreclosure prevention and refinancing products.
(7) Projects to provide loans, low-interest loans or grants to low-income and moderate-income individuals or families who are owner-occupants for repairs and improvement to sustain or increase the conditions of the home.

(b) Purposes.--Money for projects under subsection (a) may be used for the following:

(1) Predevelopment activities, including title searches, market studies, project planning, architectural services, legal and engineering studies and related fees.
(2) Acquisition and disposition of real or personal property.

(3) Site preparation, including demolition of existing structures and remediation of environmental conditions.
(4) Construction, reconstruction, alteration and repair of existing structures, improvements and infrastructure.

The only specific requirement on beneficiaries is that 30% of the funds benefit households with incomes below 50% of the area median income.

The law lays out a process for PHFA to adopt an annual plan for PHARE, including a requirement for public comments, and for an annual report to the General Assembly. The plan is to establish PHFA's priorities and preferences for PHARE funding for the coming year, but to date the "priorities" have reflected the broad spectrum of allowable uses.

The statute does not establish eligible applicants.

Finally, the law opens PHARE to a variety of funding sources. The only source specifically written into the law is the National Housing Trust Fund.

2. Act 13 – Impact Fee from Marcellus Shale Unconventional Wells (Fracking)
PHARE's first funding source came with the establishment of the Marcellus Shale Impact Fee in 2012, Act 13. PHARE gets a minimum of $5 million a year.

In addition, there is "municipal spillover" funding for PHARE in Act 13. Using a complicated formula, Act 13 limits the amount of money each municipality may receive under the "local share" portion of the law. Any money that would have gone to that municipality but for the cap goes instead to PHARE. The municipal spillover raised PHARE's revenue to $8 - $9 million per year.

Unfortunately, the impact fee declines with the age of the well and is also influenced by the price of natural gas. With the price of gas falling since 2012 and fewer wells being drilled, the municipal spillover revenue has declined. The spillover money in 2016 is only $1.5 million, bring the total for PHARE for the year to $6.5 million.

Act 13 imposes its own restrictions on PHARE. The money is to be used in counties with "producing unconventional [i.e., shale] gas wells", and at least half of the funds go to 5th through 8th class counties. It may be used for:

> (1) projects … that increase availability of quality, safe, affordable housing for low-income and moderate-income individuals or families, persons with disabilities or elderly persons; and
> (2) rental assistance … to persons or families whose household income does not exceed the area median income.

Like Act 105, Act 13 does not speak to eligible applicants. However, PHFA decided that because the money came from the local share, the counties themselves would be the applicants for the money. Counties are encouraged to partner with nonprofit agencies and developers, but only the counties can apply.

3. Act 58 of 2015 – Realty Transfer Tax Fund

Act 58 is short and sweet. It amends the section of the law that establishes the PHARE Fund at the state Treasury and directs the Treasurer to transfer money from the Realty Transfer Tax (RTT) to PHARE. PHARE receives 40% of the growth in revenue over the 2014-15 revenue projection, capped at $25 million a year. The funding is statewide, for all 67 counties.

The formula in the law uses the 2014-15 RTT revenue *projection*, not actual revenue, as the baseline so that if actual revenue came in below the projection PHARE would not take any money that was already committed. And in fact the actual revenue for 2014-15 was below the projection, so there was no money for PHARE in 2015.

Fortunately, the RTT revenue for 2015-16 was sufficiently in excess of the baseline to put $12.7 million into PHARE. As long as RTT revenue continues to grow in future years, the funding for PHARE will increase until it hits the $25 million ceiling.

Act 58 does not change the eligible uses, nor does it address eligible applicants. For 2016, PHFA has stated that “applicants” will include local governments, nonprofits, for-profit entities, and economic, community and housing developments organizations.

4. The National Housing Trust Fund

As noted above, the National Housing Trust Fund (NHTF) is the only revenue source specifically mentioned in the legislation that established PHARE. The NHTF was created by Congress in 2008 as part of the Housing and Economic Recovery Act. It was to be funded with proceeds from Fannie Mae and Freddie Mac, but a few months later those entities went into receivership and no money went to the NHTF.

Now that has changed. Last year the director of the agency that oversees Fannie and Freddie decided they were healthy enough to start sending money to the NHTF, beginning in 2016. PA will receive $3.8 million from the NHTF which will go into PHARE late this year.

NHTF money is almost all for rental housing for extremely low income households. The statute and regulations specify:

- All funds are limited to extremely low income (ELI; 30% of area median income) or very low income households (VLI; 50% of area median income).
- Not more than 10% of the money may be used for administration.
- Not more than 10% of the money may be used for homeownership.
- At least 75% of the rental funds must be for ELI households or those below the poverty level, whichever is greater.
- During the first year, HUD may require that all funds, whether rental or homeownership, benefit ELI households. (The rules do, in fact, require this.)

The funds may be used in a variety of ways, including new construction, rehab, preservation, operating subsidies, and downpayment and closing cost assistance. Public housing is not eligible for NHTF funds, but other federally subsidized developments are. There is a 30 year affordability restriction.

NHTF funds flow from the federal government to the states. In Pennsylvania the state agency will be PHFA via the PHARE fund. PHFA may then distribute the money to "recipients" which are defined as "an organization, agency, or other entity (including a public housing agency, or a for-profit entity or a nonprofit entity)…." More information on the NHTF is available at http://nlihc.org/issues/nhtf.

Given the 30 year use restriction and the complexity of the HUD rules, PHFA has decided that, at least for 2016, NHTF funds will be awarded to Low Income Housing Tax Credit or similar developments to reduce rents to the ELI level.

5. Process

The 2016 PHARE Plan for Act 13 funding is available at http://phfa.org/legislation/act105.aspx. The application period for 2016 closed on August 12.

The 2016 PHARE Plan will be amended to include the RTT money. The proposed Plan for the RTT funds was published in the PA Bulletin for public comments this summer at http://www.pabulletin.com/secure/data/vol46/46-31/1329.html and http://www.pabulletin.com/secure/data/vol46/46-35/1502.html. PHFA will issue a Request for Proposals (RFP) in mid-October after the comment period has ended. Applications will be due in late fall with awards anticipated in the early spring of 2017.

When HUD notifies PA that NHTF money is on its way, PHFA will amend the Plan again and issue a new RFP for the federal money.

Because of the timing of the arrival of the new RTT and NHTF funds, there will be three RFPs in 2016. They may be combined into one or two applications in the future.

Each of these funding sources is independent of the other. A project may receive funding from one, two, or, if it is in the shale region, all three sources.