



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: July 17, 2024

SUBJECT: Creation of Real Estate Gap Financing Grant Program

Request

The Members are asked to approve:

1. Cancellation of the Construction Inflation Fund (“CIF”) program and return of application fees to 15 applicants.
2. Creation of the Real Estate Gap Financing Grant Program (the “Program”), a \$10,000,000 pilot grant program funded from the “Gap Financing – Real Estate Projects Funding” previously appropriated in the Fiscal Year 2023 Appropriations Act (P.L. 2022, c.49) from American Rescue Plan (“ARP”) Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) to provide grants for real estate development projects located in distressed municipalities that require gap financing and that address the negative economic impacts of the COVID-19 pandemic.
3. Delegation to the Chief Executive Officer (“CEO”) of the New Jersey Economic Development Authority (“Authority”) to amend the Memorandum of Understanding (“MOU”) with the New Jersey Department of Community Affairs (“DCA”) which was executed July 12, 2023 for the CIF, or to enter into a new MOU, for the new Program, which includes \$10,000,000 for project funding and \$500,000 to support the Authority’s administrative costs associated with operating the Program.

Background and Status of Construction Inflation Fund Program

The Construction Inflation Fund program was approved by the Board in December 2022 and the program launched in August 2023 as a competitive application process to provide \$10 million of federal SLFRF funds to eligible applicants (small businesses) for real estate development projects impacted by COVID19, such as with increased construction and/or project development costs and funding gaps.

The CIF program had numerous eligibility criteria/program requirements which required significant information and documentation from applicants pertaining to COVID impact, initial construction costs and subsequent increases (i.e. pre and post COVID impact), adherence to NJEDA requirements pertaining to construction such as prevailing wage, affirmative action, contractor registration, and evidence of full financing and then funding gap. These program and application requirements ended up being more complex and challenging than anticipated for applicants to meet and to satisfactorily and sufficiently submit the required documentation. The CIF program had numerous eligibility criteria/program requirements which required significant information and documentation from applicants pertaining to COVID impact on the initial construction costs which then led to and resulted in subsequent cost increases (i.e. pre and post COVID impact), documentation of full construction contracts with evidence of adherence to NJEDA requirements in such contracts pertaining to prevailing wage and affirmative action language, contractor registration, and evidence of initial project financing and then post-COVID impact demonstrated funding gap. 17 applications were submitted by the October 19, 2023 deadline – 15 of which paid the required application fee. As part of the initial application review process, staff sent requests for preliminary information (i.e. application fee had not been paid and clarifying questions for 9 applicants that indicated that construction had already started on their projects) to some applicants.

Based on the amount of missing/incomplete application information, either the program requirements were not clear to the applicants or applicants were not able to satisfactorily meet the requirements. In order for EDA staff to continue with this program, it would require that we request that applicants continue to provide additional information. Due to the limited information submitted in the applications, the complexity of the program, and the level of incomplete documentation provided in response to the initial requests regarding construction documents, it would most likely require significant requests for documentation (possibly several back-and-forth iterations to ensure consistency with all applicants). Even after such a process, a substantial number of applicants may not have understood the program requirements and may not be eligible. Additionally, any significant delay – including having to launch a revised program after reviewing all currently submitted applications – risks losing the SLFRF funds, as they have to be expended by December 31, 2026.

For the reasons stated above, staff recommends that the Board cancel the CIF program.

At this time, no applications for CIF program funding have been scored/evaluated by a scoring committee or approved or denied. Additionally, per the Authority's fee rules (N.J.A.C. 19:30-6.1(d)), application fees may be refunded in certain circumstances, such as when the program funding is exhausted. In this instance, the cancelation of the program has the same effect on the pending applicants as if the program funding was exhausted. Thus, staff recommends that the Board approve the refund of application fees that have been paid.

New Real Estate Gap Financing Grant Program Overview

The Real Estate Gap Financing Grant Program is a pilot program established to provide grants for real estate development projects located in distressed municipalities as defined below that require gap financing and that address the negative economic impacts of the COVID19 pandemic.

Consistent with other Authority programs, the Real Estate Gap Financing Grant Program is established to mitigate the negative economic impacts of the COVID-19 pandemic and will

provide grant funding to support real estate new construction or substantial rehabilitation projects located within distressed municipalities.

The American Rescue Plan, which was signed into law by President Joe Biden on March 11, 2021, is a \$1.9 trillion economic stimulus bill designed to rebuild and restart the American economy in the wake of the Coronavirus (COVID-19) public health emergency by investing in families, communities, and small businesses. Through the SLFRF, the ARP delivers \$350 billion to state, local, and tribal governments to support their response to, and recovery from, COVID-19.

In June 2022, Governor Murphy signed the Fiscal Year 2023 Appropriations Act P.L. 2022, c.49 (“Act”) into law. The Act appropriated significant State and federal funding to the Authority for numerous strategic economic development investments to support key industries, advance the innovation economy, continue to bolster recovery, and spur statewide growth. These strategic investments included \$10 million appropriated for “Gap Financing – Real Estate Projects Funding” from ARP SLFRF. The \$10 million funds will be deposited into the Economic Recovery Fund which will allow the Authority to authorize a grant program as listed under N.J.S.A § 34:1B-7.13(a)(13) for “a fund to provide grants or competition prizes, either directly or through a not-for-profit entity, that is consistent with economic development priorities as defined by the authority's board, where funds have been specifically allocated to the economic recovery fund for this purpose, including but not limited to an appropriation or transfer from another government entity.”

As the New Jersey economy continues to rebound in the wake of COVID-19, the Program will provide grants to eligible applicants to undertake impactful real estate development projects located in distressed municipalities which will help alleviate and respond to some of the negative economic impacts resulting from the COVID-19 pandemic.

The proposed Real Estate Gap Financing Program will still provide gap financing to real estate development projects that respond to COVID-19 related negative economic impacts, but minor changes are made from the original CIF so that the new Program is more likely to succeed. Changes include a broadening of eligible applicants from small businesses to both for-profit and non-profit developers. The focus of funding for projects located in distressed municipalities (as described herein) will build off and supplement ongoing Authority and state efforts for continued economic recovery and revitalization. Additionally application requirements have been simplified and made more consistent with other recent Authority real estate programs.

Eligible Project Types

The following types of real estate projects (new construction and/or substantial rehabilitation as defined below) which are located in distressed municipalities as defined below are eligible and will be considered for Real Estate Gap Financing grants:

- Commercial (including office and/or supermarkets/grocery stores)
- Mixed-use developments (any residential portion must comply with the 20% reservation for low- and moderate-income households required by N.J.S.A. 52:27D-329.9(b).
- Non-profit/community use projects (not government owned)
- Cultural, Arts, Performing Arts
- Manufacturing/Industrial

Projects consisting solely of warehouse and/or retail spaces are ineligible for funding. Additionally, any warehouse use included must be ancillary and in direct support of the site's eligible primary use.

Projects primarily for governmental or educational use are ineligible for funding, including buildings that would be owned, ground leased, or primarily leased (51% of square footage) by governmental or educational entities following development.

Applicants must agree to a 5-year deed restriction ensuring no change in the proposed project use for 5 years.

Substantial rehabilitation shall have the same meaning as "reconstruction" in N.J.A.C. 5:23-6.3 as "any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied. Reconstruction may include repair, renovation, alteration or any combination thereof. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted."

Projects that have started construction are not eligible. Construction, including demolition and remediation, cannot start until EDA's approval of the application. All projects will be subject to compliance with New Jersey prevailing wage law and the Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48 et seq.) which require all contractors, subcontractors, or lower tier subcontractors (including subcontractors listed in the bid proposal) who bid on or engage in the performance of any public work in New Jersey to register with the NJ Department of Labor and Workforce Development.

Per US Treasury deadlines and federal SLFRF requirements, all Program funds must be expended by December 31, 2026. Therefore, project readiness to proceed and ability to complete the project within the program timeline requirements will be a key funding consideration.

Eligible Project Locations

The project location must be located within a municipality ranked in BOTH the top 20% of the Department of Community Affairs 2023 Municipal Revitalization Index and the top 20% of Commuter Adjusted Population as described below. Although the cities of Atlantic City, Camden, Newark, New Brunswick, Passaic, Paterson, and Trenton meet the above location eligibility criteria, EDA has recently targeted significant other program funding to these cities, including the Activation, Revitalization, and Transformation (A.R.T.) Program Phase I, the Urban Investment Fund Grant Program, and the Atlantic City Revitalization Grant Program and therefore, project locations in these seven municipalities are not eligible.

- **Top 20%** of municipalities within the 2023 Municipal Revitalization Index (MRI). The MRI serves as the State's official measure and ranking of municipal distress. The MRI ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality. The MRI is used as a factor in distributing certain "need based" funds.

- **Top 20%** of municipalities based on Commuter-Adjusted Population (2018-2022 American Community Survey 5-Year Estimates)
 - This is “Daytime Population” which is the calculation of Total Resident Population + Total Workers Working in Area – Total Workers Living in Area.

Eligible municipalities where projects could be located would include the 25 municipalities as listed below:

Bayonne, Belleville, Bridgeton, Carteret, East Orange, Elizabeth, Garfield, Hackensack, Irvington, Jersey City, Kearney, Lakewood Township, Linden, Long Branch, Middle Township, Millville, North Bergen, Orange, Pennsauken, Perth Amboy, Plainfield, Union City, Vineland, West New York, and Winslow.

Eligible Applicants

Eligible applicants are for-profit or non-profit entities (each, an “Applicant” or “Developer Entity”). Applications are limited to one application per EIN. Any city, State, or county entity and any state colleges or universities are not eligible to apply for this Program funding, including any such government entity that may also have a non-profit status under federal law.

Applicants must be in substantial good standing with the New Jersey Department of Labor and Workforce Development, New Jersey Department of Environmental Protection, and NJEDA prior to approval. The Program requires Applicants to provide a current tax clearance certificate at application to demonstrate the applicant is in good standing with the New Jersey Division of Taxation, unless the applicant is not required to register with the Division of Taxation.

Grant Funding

In order to provide Grants and support projects by different entities and in several different municipalities, no applicant (and or applicant related entity) may receive more than one grant award and only one application will be funded in any one municipality.

Minimum grant funding request would be \$500,000 per project.

Maximum grant funding request would be \$5,000,000 per project.

Program grant funding may not exceed 50% of the total of all project development costs within the approved application. Property acquisition costs/equity are not to be considered as part of total project development costs.

Program grant funding can only be used for the real estate project costs specifically approved based on the application, Authority review, and funding grant agreement. Project costs may include hard construction costs with a maximum 10% contingency, soft costs not exceeding 20% of total project costs and developer fee not exceeding 10% of total project costs or as otherwise allowed by another State agency providing funding to a project. Acquisition funding and operating costs are not eligible.

All project costs and Grant funding are subject to federal Duplication of Benefits requirements and a cost reasonableness analysis will be undertaken prior to project approval.

Application Process

The Program will be a competitive grant program with applications due by a set deadline. Online applications will be accepted during a defined, minimum 60-day application period, and all applications will be reviewed following the closure of the application period. Applications are limited to one application per EIN.

The Authority will accept questions regarding this program during the first 30 days following application launch. Questions and responses will be posted on the Authority's webpage for this program.

As part of a Program application, the Authority will request information about the proposed project, which may include, but which is not limited to:

- 1) Project description of overall project proposal describing building to be rehabbed/new construction proposed, property/site details and location information, existing conditions of the building/property, and the proposed project type/building use
- 2) Narrative describing how the proposed project is responsive to negative impacts of the COVID-19 pandemic (such as reduced economic activity, business/development delays or impacts, decreased pedestrian traffic or residents, conditions of vacancy, etc.)
- 3) Evidence of site control or a path to site control
- 4) Municipal Letter of Support
- 5) Project financial information including development budget, sources and uses, project feasibility, and evidence or status of financing
- 6) Project development timeline/implementation schedule indicating readiness to proceed, status of funding, permit and other approvals, and ability to complete the project within the program timelines
- 7) Applicant's organizational documentation
- 8) Applicant's experience and capacity to undertake and complete the proposed project;

Note that readiness to proceed and project development timelines for completion will be scoring factors. Applicants should provide as much detail as possible regarding the steps involved and projected timeline for undertaking and completing the proposed project if Grant funds are awarded.

The Authority will perform a review of applications after the closing of the application period. Applications will first be reviewed for application completeness to ensure that all necessary application information and documents are submitted and complete. Applicants will be given ten business days to cure any deficiencies. If at the end of the cure period, the applications are still incomplete, they will be notified the application will not be advancing to be scored and will be deemed nonresponsive.

At the sole discretion of the Authority, staff may ask for clarification of the information included in the application, including but not limited to narrative responses, supporting documentation, and attachments.

A Duplication of Benefits review and cost reasonableness analysis will be completed prior to any project being approved.

Scoring

Applications will be reviewed and scored by staff of the Authority formed as an evaluation scoring committee. Applications will be scored on a scale of 0 - 100 points, with award recommendations limited to applications that meet or exceed the minimum score requirement of 65 points.

Scoring factors and points will include:

- 30% Overall proposal concept (Proposed community and economic impacts/benefits of the project, project location, participation of Small, Women, Minority, Veteran Owned Businesses, and ways in which proposed project addresses negative COVID19 impacts)
- 20 % Experience & capacity of applicant/development team
- 30% Readiness to proceed and reasonableness of proposed timeline to undertake and complete proposed project
- 20 % Financial feasibility and cost effectiveness of proposed project

Board Approval

Following application review and processing as described above, applications that meet or exceed the minimum score requirement of 65 out of a possible 100 points will be recommended to the Board for award approval starting with the highest scored application until all the Program funding is awarded.

If an applicant requests grant funding for an eligible project but there are not sufficient Program funds available to fund the full grant request, the Authority will inform the applicant of the amount of grant funds available. If the applicant wishes to proceed, the applicant will be required to commit to and then fund the difference to fill the gap to ensure the submitted project proposal is undertaken as described.

If all program funds are not awarded during the initial application period and/or if additional Program funds become available, then applications will be reopened on a rolling basis and grants awarded on a first come, first served basis to eligible applicants that meet the minimum score (subject to the limit on awards per municipality).

All eligible applications will proceed to the Board for approvals, and all applications which have not been declined due to non-discretionary reasons will also proceed to the Board.

As a pilot program, decisions based on non-discretionary reasons are subject to the existing delegated authority. Accordingly, the CEO will delegate authority to the appropriate staff on all appeal decisions for non- discretionary reasons.

To ensure that federal expenditure deadlines are met, staff recommendations to the Board for approval of applications will include timelines and anticipated project development milestones to be met and will indicate that if timelines are not met, then the Authority may recapture or require repayment of Grant funds and/or the Applicant may no longer be eligible for any remaining unused grant funds.

Grant Agreement and Funding Disbursements

Following Board approval, the Authority will enter into a Grant Agreement (“Grant Agreement”) with the applicant detailing the project to be funded, eligible project costs, the amount of grant funding, and all financial programmatic requirements including the amount of other funding as may be applicable. The Grant Agreement will detail timelines for the project based on the project schedule included in the application and the project approval. At the Authority’s sole discretion, the Authority may grant timeline extensions. The Grant Agreement will indicate that, to comply with federal funding requirements, all projects must be fully completed, and all funds fully disbursed by 12/31/2026.

The applicant shall be responsible for assuring the compliance of the project with all terms and conditions of the application, Grant Agreement, and the Program funding requirements.

The Grant Agreement will detail state requirements. All projects shall be subject to compliance with New Jersey prevailing wage law and compliance with other labor standards requirements, as well as other state requirements which may be applicable depending on project details and funding amounts including possibly New Jersey Executive Order 215 of 1989 regarding Environmental Assessments. No construction can have started on any project prior to execution of a Grant Agreement.

Additionally, the Grant Agreement will have a deed restriction indicating that, if project development timelines are not met, the Authority may recapture or may require repayment of Grant funds and/or the Applicant may no longer be eligible for any remaining unused grant funds. The Authority will also require that the applicant file a 5-year deed restriction on the property utilizing the Authority’s required restriction language. The deed restriction will be released by the Authority after 5 years from final Project closeout.

The Grant Agreement will detail the funding disbursement process. Following the execution of the Grant Agreement, Grant funds will be disbursed either incrementally as eligible project expenses are incurred and may be prorated with other funding sources, if applicable, with the Authority’s standard construction retainage withheld until project completion or grant funds may be disbursed in coordination with the other funder’s disbursement process. Funding disbursement requests must be evidenced by documentation supporting that the expenses were incurred, work has been performed in accordance with prevailing wage and labor standards compliance requirements, and work was done consistent with Grant approval and eligible uses of Program funding.

Fees

As allowed by EDA's recently revised fee rules, no application fee will be charged because EDA is using part of the funds for EDA's administrative costs.

Recommendation

The Members are requested to approve: (1) the cancellation of the Construction Inflation Fund Pilot Program and return of application fees to 15 applicants; (2) the creation of the Real Estate Gap Financing Grant Program, a \$10,000,000 pilot grant program utilizing SLFRF funding to provide grants for real estate development projects located in distressed municipalities that require gap financing and that address negative economic impacts of the COVID-19 pandemic; and, (3) delegation to the Authority's Chief Executive Officer to amend or enter into a new a Memorandum of Understanding with the New Jersey Department of Community Affairs.



Tim Sullivan, CEO

Attachments:

- Real Estate Gap Financing Grant Program Specifications