

Comments on Homeowner Assistance Fund: Guidance on Participant Compliance and Reporting Responsibilities

April 14, 2022

Via electronic mail

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

Dear Secretary Yellen,

On behalf of the clients and communities we represent, we write to comment on the Treasury Department's draft Guidance on Participant Compliance and Reporting Responsibilities for the Homeowner Assistance Fund dated March 30, 2022.

Reporting requirements are essential to ensure program compliance, proper federal oversight, stakeholder accountability, and public confidence that HAF funds are distributed in a fair, effective, and non-discriminatory fashion. Accordingly, it is critical for the Treasury Department to collect from each state/territory/tribal entity detailed information about how program funds are being spent and how and whether program administrators are satisfying HAF requirements regarding targeting for socially disadvantaged individuals.

Treasury must also make as much of this critical information as possible public on a timely and consistent basis.

Here are our specific comments and recommendations:

Definitions

We recommend the following changes to the definition of monetary and non-monetary HAF assistance in order to ensure that all eligible types of uses of HAF funds are covered:

Monetary HAF Assistance means HAF assistance in the form of money that was provided to Homeowners or on behalf of Homeowners to, financial institutions, utility providers, ~~and~~ taxing authorities or other third-party payees under a HAF Program.

Non-monetary HAF Assistance means HAF assistance in any form other than money that was provided to Homeowners under a HAF Program (i.e., housing counseling or legal services).

Quarterly Reporting - Homeowner Applications

We recommend that the list of denial reasons in the section requiring disaggregation of denial separated by reason category be expanded to reflect some of the most common reasons homeowners are being denied for HAF assistance. These additional denial reasons should include:

- Servicer not participating
- Non-qualifying delinquency (*i.e.*, not delinquent enough or delinquency started too early or too late)
- Delinquency amount exceeds program cap
- Applicant unable to document ownership interest in the property

We further recommend that HAF participants also be required to report how many appeals of denials they received and, for each appeal, whether the decision to deny was confirmed or reversed.

Quarterly Reporting – Delinquencies/Program(s) Information

In subsections (d) and (f), the draft guidance requires HAF participants to report “delinquencies resolved” using both monetary or non-monetary assistance. We strongly recommend that “delinquencies resolved” be used as a metric only for monetary assistance and that the metric for non-monetary assistance be the number of homeowners assisted.

Using “delinquencies resolved” as a metric for non-monetary assistance poses a number of problems. First, when a HAF-funded housing counseling or legal services agency assists a homeowner who also applies for and receives monetary HAF assistance, reporting that delinquency as resolved under both monetary and non-monetary categories would result in double counting of a single resolved delinquency. Second, HAF-funded counseling, education or legal services provided to HAF-eligible homeowners will not always involve resolution of a current delinquency. For example, a homeowner may seek the assistance of a housing counselor when she is facing a loss of income that will make paying her mortgage difficult in the future instead of waiting until she is already delinquent on payments. Another homeowner may seek legal assistance with a homestead declaration to protect home equity or with establishing successor-in-interest status after a death or divorce.

In addition, unlike HAF programs providing monetary HAF assistance, where it is always clear whether a delinquency has been resolved with the money sent to a mortgage servicer or other third-party payee, providers of non-monetary HAF assistance frequently provide advice, counseling or education to homeowners who then proceed to take action on their own behalf so that the provider may not know the outcome.

It would make much more sense and be more feasible for providers of non-monetary HAF assistance for the Treasury Department to use a metric similar to the metric used for non-monetary housing stability services under the Emergency Rental Assistance Program (ERAP). Under the ERAP reporting guidance, program administrators and providers of housing stability services are only required to report the number of unique participant households that received

housing stability services in the reporting period. That approach should be adopted for HAF as well.

Quarterly Reporting – Disaggregated Information

We recommend that the specified data also be disaggregated by the following additional categories:

- Limited English proficiency.
- Language preference.
- Disability status.
- Census tract. Using census tract (as opposed to just zip code) in this context will make it much easier to overlay a variety of demographic and housing stock data on the HAF data for purposes of assessment, analysis and generation of lessons learned for the future. Converting street addresses to census tract numbers is relatively straightforward and so should not be difficult for HAF administrators. Moreover, many HAF programs are already using census tract information as part of their SDI definitions.

During the foreclosure crisis a decade ago, Hardest Hit Fund data were reported by state and type of use. HAMP data were provided at the MSA level. Greater detail is warranted for the current program, which reaches every jurisdiction in the country and comes on the heels of an international pandemic that has hit vulnerable populations the hardest.

We also recommend making the following related addition at the end of Appendix 2:

Census Tract

HAF participants will be expected to collect the number of homeowners and program funds obligated and expended at the census tract level.

Annual Performance Reporting – Civil Rights Compliance

We recommend revising this paragraph as follows:

Treasury may request information on the HAF participant’s compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This information may include a narrative describing the HAF participant’s compliance with Title VI, along with other questions and assurances, including actions taken and systems established to ensure that members of all relevant protected classes have full access to the HAF participant’s program, including people with disabilities and others, and data needed to determine compliance with all applicable civil rights statutes. This collection does not apply to Tribal Governments.

Appendix 1 - Ethnicity

We recommend including the following more specific categories under the “Hispanic or Latino/a” heading:

- Mexican
- Puerto Rican

- Cuban
- Other Hispanic or Latino/a

Appendix 2 - Socially Disadvantaged¹

We recommend revising the paragraph regarding racial or ethnic prejudice as follows:

Racial or Ethnic Prejudice – member of a group that has been subjected to racial or ethnic prejudice or cultural bias within ~~American society~~ the HAF participant’s jurisdiction, as determined by the HAF participant and specified in the participant’s HAF plan.

Appendix 2 – Housing Type

We recommend adding the following categories to this list:

- Cooperative
- Manufactured housing – affixed to real property
- Manufactured housing – unaffixed to real property

We very much appreciate all of the work the Department has done already to stand up a strong HAF program and to engage with stakeholders. We look forward to continuing to work with you to ensure an effective and equitable distribution of funds.

If you have any questions about these comments, please contact Lisa Sitkin, Senior Staff Attorney at the National Housing Law Project at lsitkin@nhlp.org.

Sincerely,

National Housing Law Project

National Consumer Law Center (on behalf of its low-income clients)

National Fair Housing Alliance

National Housing Resource Center

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¹ It is also critical that HAF program administrators make their most current working definitions of “Socially Disadvantaged Individual” available and accessible to the public.