

# Memorandum



TO: Economic Transformation, Stabilization & Workforce Development Advisory Commission  
FROM: Cheryl Cohen, Division Administrator, Commerce  
DATE: September 7, 2021  
SUBJECT: Homeowner Assistance Fund \*UPDATE

## Overview

Montana House Bill 632 includes \$50,000,000 for Mortgage Assistance under ARPA Section 3206 (HB 632, Section 14(1)). Section 14(3) of HB 632 permits the Economic Transformation, Stabilization, and Workforce Development Advisory Commission the opportunity for input and the ability to make recommendations to the Department of Commerce for the use of Mortgage Assistance funds. This update is being brought to afford the commission the opportunity for input and the ability to make recommendations. The purpose of the Homeowner Assistance Fund (HAF), as named in ARPA Section 3206, is to prevent homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020.

## Timeline

- July 21, 2021: [Homeowner Assistance Fund Update](#) for Montana Board of Housing pilot program presented to Advisory Commission.
- August 4, 2021: Montana Board of Housing Board Meeting
- August 12, 2021: [Draft HAF Plan](#) presented at Advisory Commission
- August 12, 2021: Draft HAF Plan released for public comment
- September 8, 2021: Update and recommendations from Advisory Commission
- September 12, 2021: End of 30-day public comment period
- September 14, 2021: Montana Housing Board Meeting
- September 30, 2021: Deadline to submit final HAF Plan submitted to Treasury

## Summary of Public Comment

Montana Housing collaborated with the state banking division for broad distribution of the HAF public comment opportunity to non-depository mortgage servicers. Notice of public comment was released broadly to stakeholders via GovDelivery on August 12. Montana Housing additionally shared the public comment opportunity with mortgage servicer and lender contacts established during administration of the 2020 CARES Act Emergency Housing Assistance program, and reached out to state and regional credit unions. Commission members have received public comment submitted to date, including from Homeward, the Montana Budget and Policy Center, NeighborWorks Montana and the Missoula Housing Authority. Themes from public comment submitted include:

- Support for currently proposed up to \$5,000 grant to prevent immediate homeowner displacement.
- Recommend giving Montana Housing flexibility to issue the up to \$25,000 homeowner assistance as a loan or as a grant.
- Recommend the up to \$25,000 homeowner assistance be structured as 0% deferred loans, with ability to make loans forgivable.
- Support use of funds for homeowner counseling and other client services, including legal supports.

### **Relevant Treasury Guidance**

#### *Treasury HAF Guidance excerpts:*

- “Treasury may approve a HAF plan in whole or in part. If Treasury approves a HAF plan only in part, the HAF participant will be provided an opportunity to address the weaknesses identified by Treasury. Treasury may also return a HAF plan to the HAF participant with recommendations for improvement and resubmission to Treasury for reconsideration. In addition, to enable HAF participants to rapidly receive approval for certain HAF-funded programs that can be developed quickly, a HAF participant may elect to submit multiple HAF plans over time regarding different programs it proposes to implement. After Treasury approves a HAF plan in whole or in part, Treasury will inform the HAF participant of the schedule for disbursements to the participant for purposes of the approved portions of the plan.”
- “To the extent that HAF participants use HAF funds to supplement other loss-mitigation efforts, Treasury encourages participants to avoid using HAF funds in a manner that replaces other loss-mitigation resources that would otherwise be available.”

#### *Treasury HAF Grantee Plan Template excerpt:*

- “Treasury has provided sample term sheets to assist HAF participants in developing their HAF plans. Participants may use these sample term sheets, in whole or in part, as part of their submission. To the extent the Participant intends to structure the program differently with respect to significant program terms described in the Sample Term Sheets, Treasury will, in the course of its review of the HAF Plan, request a justification for how the alternate approach will further the objectives of the HAF, including targeting and prioritization requirements. In the chart below, the HAF Participant may provide a justification for significant deviations from the terms described in the sample term sheets upon initial submittal.”

#### *Treasury Sample HAF Terms Sheets excerpt:*

“Form of assistance:

- Assistance will be structured as a non-recourse grant.  
OR
- Assistance will be structured as an interest free loan payable about transfer of the property and forgivable over a period of time.”

## Analysis

The ARPA HAF program was modeled after Treasury's [Hardest Hit Fund \(HHF\)](#), established in February 2010. The HHF was designed to aid families impacted by the economic and housing market downturn that "led to unprecedented home price declines and sustained and higher unemployment in certain parts of the country". States were selected to administer HHF funding either because they were struggling with unemployment rates at or above the national average or steep home price declines greater than 20 percent. Montana was not a selected state for HHF.

Public comment submitted for the HAF program encourage the commission to consider giving Montana Housing the flexibility to issue financial assistance for the homeowner assistance reinstatement program as a loan or as a grant. Montana Housing has some concerns about this discretion.

First, it could place staff in the role of making potentially subjective determinations about the structure of assistance (loan or grant) based on individual homeowner situations. This may raise potential risks of perceived violations under applicable fair housing and civil rights laws. Montana Housing, and HAF program regulations, require adherence to the Federal Fair Housing Act and Title VI of the Civil Rights Act. Montana Housing is committed to ensure that the letter and spirit of these laws are followed.

Second, Treasury guidance encourages grantees to avoid using HAF funds in a manner that replaces other loss-mitigation resources available. Other loss-mitigation resources available under federal insurers and investors (FHA, USDA-RD, VA, Fannie Mae and Freddie Mac) are also subordinate loan programs (not grants). Establishing the HAF reinstatement assistance as a grant would not encourage homeowners or mortgage servicers to utilize other available loss-mitigation tools, and could result in inequities. For example, a first time homebuyer with a loan insured by FHA would have a partial claim loss-mitigation option, which results in a subordinate loan. But a homeowner with a portfolio loan from a private bank or credit union may not have other loss-mitigation options available and would be more likely to pursue the HAF program.

Aligning our HAF program to have similar loan structure of other loss-mitigation options will support equity and prevent the potential for homeowners and mortgage servicers to skip the pursuit other loss-mitigation options.

Treasury guidance also suggests HAF grantees either align with the sample term sheets (loan forgivable over time) or provide justification for the deviation. The HHF program financial assistance was provided in the form of loans forgivable over a period of time. However, HHF was addressing a climate of depreciating home values, a scenario that is not the case in our current market of steep appreciations in home values.

### **Recommendations**

- 1) Commission acknowledgement that the official HAF public comment period continues through September 12, 2021, and giving Montana Housing the ability to adjust components of the Montana HAF Plan that may be needed in response final public comments submitted. These adjustments will be made in consultation with the executive branch prior to submission of the final plan to Treasury by September 30, 2021.
- 2) Continued commission support of the proposed up to \$25,000 reinstatement financial assistance as a loan program. Cons of loan program include increased administrative costs and potential decrease in homeowner and mortgage servicer subscription to the program. Although Treasury has indicated a loan program is an eligible use, there remain some uncertainties in how Treasury will address loan repayments in the future. Pros include aligning with Treasury guidance to prevent HAF from replacing other loss-mitigation efforts and ensuring equity of loss-mitigation options for Montanans, irrespective of their loan investor or insurer.
- 3) Montana Housing will highlight the difference in current market conditions (versus market conditions during HHF) as justification to Treasury for the deviation to not include loan forgiveness as a component of our HAF loan reinstatement program.

### **Resources**

- [U.S. Treasury Homeowner Assistance Fund Guidance](#)
- [Treasury HAF Grantee Plan Template](#)
- [Treasury Sample HAF Term Sheets](#)

This is a final copy of the memo.