NCSHA
National Council *of*
State Housing Agencies

March 12, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury

Transmitted via Email

Dear Secretary Yellen:

On behalf of the National Council of State Housing Agencies (NCSHA), thank you for the Treasury's leadership in delivering urgently needed assistance, through states and localities, from the Emergency Rental Assistance (ERA) program to the millions of low-income renters suffering severe housing hardship.[1] The Treasury team, and others you are working with across the Biden – Harris Administration, has been outstanding on this program in our view.

Now, as a result of the American Rescue Plan, Treasury will administer and states will deliver similarly needed aid to struggling homeowners through the Homeowner Assistance Fund (HAF). This letter provides the recommendations of the nation's state housing finance agencies (HFA), which will be Treasury's primary governmental partners in putting this important new program to work.

Background

State HFAs for decades have been in the business of providing affordable mortgage financing, down payment assistance, home repair funding, and many other resources to millions of low-income homeowners. During the Great Recession, state HFAs worked closely with Treasury on several emergency initiatives.

One of them, the Hardest Hit Fund (HHF), lead to a 40 percent reduction in the probability of mortgage default and foreclosure and saved housing finance system participants almost $8 billion in losses, according to an independent evaluation published last year and updated last month. The researchers concluded "about one in four of these assisted homeowners would have ended their loan in severe default absent the HHF program."[2]

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

[2] Moulton, Stephanie and Chun, Yung and Pierce, Stephanie and Holtzen, Holly and Quercia, Roberto G. and Riley, Sarah, Does Temporary Mortgage Assistance for Unemployed Homeowners Reduce Longer Term Mortgage Default? An Analysis of the Hardest Hit Fund Program (October 30, 2020).

In addition, the HFAs in 12 states stood up short-term aid programs serving low-income homeowners with federal relief funds and other sources last year. This direct recent and historic implementation experience in providing emergency homeowner assistance is the basis for our recommendations.

The core principle that underpins our recommendations is that Treasury should reflect Congress' intent to provide states flexibility to design their programs to meet the specific needs of homeowners in their states. In general, unless the statue expressly directs Treasury to prescribe a particular approach, we believe Congress expected Treasury to defer to the states that are ultimately responsible for administering the program and accountable to the federal government. Treasury, to its credit, has reflected this principle in its guidance for the ERA program, and we urge it to do so for the Homeowner Assistance Fund.

This is not to say we would object to efforts to develop common approaches, standardized model forms, and the like for aspects of program implementation and monitoring. In fact, we strongly encourage Treasury to do so and hope to work with the department to develop them. The experience of HHF suggests the benefits of such an approach.

Working with HFAs and other stakeholders, Treasury developed a "common data file" for participating servicers and HFAs to share applicant data and a "uniform servicer agreement" governing servicers' participation in HHF programs, both of which boosted servicer involvement in HHF and resulted in more homeowners receiving assistance. We would look forward to developing similar approaches and potentially a common application for borrower assistance that all states could utilize for the HAF.

We organize our recommendations in three categories:

- "mission critical" items that must be addressed in the "grantee award terms" or other mechanism Treasury develops to make payments to grantees;
- issues necessary to clarify or resolve in order for programs to be able to launch in a timely manner;
- steps Treasury should take when administering the program to ensure that assistance is delivered to homeowners promptly and effectively.

We anticipate that we may write you with further recommendations as NCSHA and the HFAs continue to evaluate HAF. We look forward to working with you to help working families impacted by the pandemic avoid foreclosure.

Recommendations for Grantee Award Terms

First, it is essential Treasury clarify that "States or their authorized designees" may receive payments under the Homeowner Assistance Fund.

Without this clarification, experience suggests the timely development of programs and delivery of funds could be impeded by state budgeting requirements, legislative processes, and other factors.

Congress' original intent in developing the Homeowner Assistance Fund was for federal payments to flow from Treasury to state HFAs. This was specified in the original legislation introduced by Senators Reed and Brown in February, with 31 cosponsors. It was also specified in both versions of the

HEROES Act the House of Representatives passed last year. It is our understanding the only reason the provision was altered in the final version of the American Rescue Plan was to avoid potential complications with the budget reconciliation rules.

Second, Treasury should not utilize foreclosures as a data point in determining each state's grant payment amount.

The statute requires state allocations to be based on unemployment metrics and "the total number of mortgagors with mortgage payments that are more than 30 days past due or mortgages in foreclosure."

Given that mortgage forbearance policies and other measures have, thankfully, substantially limited foreclosures during the pandemic, foreclosure data could portray an inaccurate picture of the need for assistance. In fact, foreclosure rates have actually decreased year over year in most markets, despite serious delinquencies having increased five times over their pre-pandemic levels. We encourage Treasury to rely instead on delinquent mortgage data, along with unemployment figures.

Third, Treasury must specify that grantees may fund their administrative costs with grant funds, as is customary in federal grant programs.

Without such clarity from Treasury, states will simply be unable to operationalize the Homeowner Assistance Fund and achieve the goals the Biden – Harris Administration and the states share to help struggling homeowners through the program.

Again, prior versions of the legislation included an allowance for administrative costs, but a similar provision was omitted, we believe inadvertently, from the final legislation. As with HHF, there will be considerable start-up costs associated with HAF, which will require states to establish entirely new programs, conduct stakeholder and consumer outreach, train current staff, and possibly hire new staff. States will also need resources to engage with community-based groups, culturally specific organizations, counselors and others to maximize the HAF program's potential to reach households of color and other underserved groups.

Based on state HFA experiences administering the HHF and similar programs, we recommend that grantees be allowed to fund their program administrative costs with up to 15 percent of their grant amounts.

Recommendations for Early Treasury Guidance

Treasury should specify grantees may rely on self-attestations by homeowners that they meet the eligibility criteria for assistance under the program.

Treasury provided this flexibility to grantees administering the ERA program, subject to clear guidelines for compliance. It should do the same for the HAF, for the same reasons: During a time of unprecedented public health and economic challenge, many low-income households are simply unable to provide sufficient third-party documentation of their housing and financial hardship. Some of the most needy and deserving homeowners, including those who work in the gig economy or who previously worked for businesses that are now closed, may not be able to provide such documentation at all, despite their best efforts.

While homeowners as a group may generally be better able to provide relevant documentation than renters, the fact remains that requirements for external documents discourage households from accessing aid they need and increase the time and cost to provide aid. States are prepared to document their policies and establish the necessary protocols to meet the federal government's expectations for compliance with program rules.

Similarly, Treasury should specify grantees have the flexibility to determine how they will meet the statute's requirement that they prioritize "socially disadvantaged individuals," as defined by the Small Business Act.

Consistent with our guiding principle referenced above, we believe Congress refrained from directing Treasury to define this requirement because it understood the necessity for different states to do so based on their economic and demographic realities.

We note that Treasury followed the approach we recommend with respect to a similar provision in the ERA statute — that program's requirement that grantees prioritize assistance to households with incomes less than 50 percent of area median income or households with one or more individuals who have not been employed for the 90-day period preceding the date of application.

In addition, it is critical Treasury's early guidance clarify that states have reasonable discretion to mitigate "financial hardships associated with the coronavirus pandemic" under the statute.

The law does not say such hardships must be "caused by" the pandemic, although for millions that has been the case. We believe Congress clearly intended, and Treasury should expressly clarify, that housing hardships "associated with" the pandemic are for grantees to determine and document.

For example, many states report home prices have skyrocketed due to factors the pandemic has caused or accelerated, ranging from in-migration of higher-income home buyers bidding up prices to lumber shortages stifling the production of needed affordable for-sale homes. Low-income homeowners whose housing cost burdens have worsened due to large increases in property taxes, insurance, or related expenses also may be experiencing housing hardship "associated with" the pandemic. If a state determines a homeowner is experiencing such a housing hardship, it should be able to assist them through the program.

Treasury should clarify that grantees may provide different forms of assistance to borrowers based on their current housing financial profile and consideration for additional resources homeowners may be able to access.

For example, grantees should be able to help: 1) homeowners who are making progress exiting forbearance such as through assistance that eliminates a partial claim second lien; 2) homeowners who may be able to modify their mortgage but for whom assistance to avoid the process would be better financially; 3) homeowners who may be unlikely to remain in their home for the long term, even with assistance, but who would like to avoid foreclosure by disposing of their home through short sale or deed in lieu of foreclosure.

Treasury should provide clarity that a grantee may use grant funds to assist homeowners with expenses alluded to but not necessarily specified in the statute as long as the grantee determines the expenses are necessary to address housing-related financial hardships associated with the pandemic.

Examples include property taxes, homeowners' insurance, costs associated with escrow accounts (including delinquent escrow contributions), costs associated with second or third mortgages and home equity lines of credit, and any eligible costs associated with privately held mortgages. We also strongly encourage Treasury to allow grantees to assist individuals who have lost their home due to pandemic-associated factors in covering the costs of finding a rental apartment, but not rent itself.

Further, we suggest Treasury allow borrowers who own their home free and clear of mortgage debt to be eligible for assistance for utility payments, insurance, property taxes, and other homeownership-related expenses. We also suggest homeowners currently receiving mortgage assistance through HHF be eligible to receive HAF assistance to help with utility, insurance, or tax payments.

Finally, we ask Treasury to make it clear that states can assist borrowers living in manufactured housing, including those with chattel loans, as well as those living in condominiums and co-ops. We believe the law's broad definition of "mortgage" was intended to cover all these categories, which often serve as affordable homeownership options for low- and moderate-income families. This is another area where flexibility will serve state efforts to ensure equitable access to HAF resources.

Treasury should clarify that grantees have discretion to assist homeowners with as many eligible expenses and with whatever level of assistance they determine.

Any attempt to limit the types of and amount of assistance individual homeowners can receive will only hamper HFAs' efforts to help struggling families remain in their homes.

Similarly, Treasury should give HFAs wide latitude in setting their own eligibility requirements for applicants and avoid imposing any top-down underwriting criteria.

For example, the HHF program mandated that states provide assistance only to borrowers with a debt-to-income ratio above a certain threshold. While this requirement was a well-intentioned attempt to ensure the assistance went to those who needed it the most, it also meant HFAs could not offer assistance to many borrowers who, while carrying a lower debt level, were still suffering an economic hardship and needed help to keep current on their mortgages. In addition, HHF required states to adopt an asset cap for borrowers applying for assistance. This not only limited the number of borrowers HFAs could help but also delayed the process through increased documentation requirements.

Treasury should clarify that any assistance homeowners receive through HAF is non-taxable.

The goal of the American Rescue Plan to is help the nation recover from a once-in-a-generation disaster that has imposed substantial economic hardship on millions of working families through no fault of their own. Taxing HAF benefits will hinder this recovery and may hamper recipients' ability to rebuild their finances.

Recommendations for Effective Implementation

Treasury should adapt, to the extent practicable, the common date file and uniform servicer agreement from HHF for HAF.

As mentioned above, the common data file and uniform servicer agreements were both crucial in securing wider industry participation in HHF and in helping HFAs assist more homeowners faster. In order for the HAF program to succeed, HFAs and servicers will have to be able to work together, which will be much more feasible if servicers don't have to navigate different data and reporting requirements for up to 56 different programs (not including those administered by tribal entities) and negotiate separate agreements with each state.

Most servicers and those HFAs that administered HHF are already familiar with the HHF common data files and uniform servicer agreements. Adapting these files for HAF will help to ensure HAF launches smoothly.

In addition, Treasury should develop a common application states can use for borrower assistance.

A uniform application would provide a straightforward way for borrowers to seek assistance, increase efficiencies, and allow states to devote fewer resources toward program administration and more toward helping homeowners. We suggest application templates be developed in both English and other languages that are common among limited English proficiency households.

Treasury should consider publishing different assistance delivery models HFAs can consider and adopt to fit their needs.

Providing these models could help HFAs more quickly develop their HAF programs. Examples could include a consumer-driven model, where homeowners apply directly to the state for assistance; a servicer-driven model, where the servicer searches its own records to find borrowers who could benefit from HAF assistance; and a counselor-driven model, where HFAs partner with housing counseling agencies to conduct outreach to shepherd homeowners through the application process.

We appreciate your interest in our recommendations and are available to discuss them further with you at any time.

Sincerely,

Stockton Williams

Stockton Williams
Executive Director

cc: Jacob Liebenluft, Counselor to the Secretary, Treasury
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