

The Homeowner Assistance Fund

***The Current Status of the HAF
Program in Select Jurisdictions***





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Background

On March 11, 2021, in response to the COVID pandemic and in an effort to combat the negative economic impacts of the virus, President Biden signed H.R. 1319, commonly known as The American Rescue Plan Act of 2021, into law.¹ The Act established the Homeowner Assistance Fund (HAF), which provides up to \$9.961 billion in financial relief for homeowners in U.S. states, U.S. territories, and Tribal governments.² According to the United States Department of Treasury, HAF's purpose is "to prevent mortgage delinquencies and defaults, foreclosures, loss of utilities or home energy services, and displacement of homeowners experiencing financial hardship after January 21, 2020." All funds available under HAF to a state, territory, or Tribal government must be expended within five years of program launch, or the funds expire and can no longer be awarded.

Regardless of jurisdiction, there are three criteria that an American homeowner must meet in order to qualify for HAF:

- The homeowner must have experienced financial hardship on or after January 21, 2020;
- The homeowner must use the HAF funds solely for their primary residence;
- The homeowner must have an income that is less than or equal to either 150% of the median household income for the jurisdiction, or 100% of the U.S. median income.

In addition to the three criteria listed above, the federal government empowered each state, territory, or tribe to develop its own program for distributing HAF funds. The federal government encouraged HAF participants, meaning states, U.S. territories, and Tribal governments, to consider the following factors when implementing their own programs to help homeowners using HAF funds, in order to "take a human-centered approach" to the distribution of funds:

- Accessibility
- Equity
- Usability
- Homeowner empowerment

Although the federal government provided substantial guidance to states, territories, and Tribal governments in order to assist them in setting up their relief funds, the divergent needs of each has led to a fairly wide variety of requirements and qualifications.

This report will closely examine the HAF program and its impact thus far on both homeowners and mortgage servicers.³ The default servicing industry, like every other industry, has experienced substantial changes resulting from COVID.

¹ <https://www.congress.gov/bills/117th-congress/house-bill/1319/text>

² <https://home.treasury.gov/system/files/136/HAF-state-territory-data-and-allocations.pdf>

³ For each state, the authors have provided the most recent statistics available to the public.

Current Status Of Haf Program In Select Jurisdictions

(1) Florida

The Homeowner Assistance Fund allocated approximately \$676.1 million to the state of Florida. On February 28, 2022, the Florida Department of Economic Opportunity (DEO)⁴ opened registration for prospective applicants, allotting up to \$50,000 in assistance funds per applicant. By June 24, 2022, the DEO had awarded more than \$100 million in assistance for Florida's vulnerable homeowners. Less than a month later, the DEO announced that more than \$213 million in relief had now been awarded. The response to Florida's HAF program was so popular that registration closed ahead of schedule because the DEO received enough applications to cover the amount awarded to Florida. As of December 29, 2022, the DEO had awarded more than \$555 million in relief and has helped approximately 28,500 Floridians prevent foreclosure. Florida's effort to mitigate financial hardship, prevent foreclosure, and keep Floridians in their homes has been incredibly successful, as Florida leads the nation in distributing HAF funds to its people in need.

(2) Illinois

The Homeowner Assistance Fund allocated approximately \$386.9 million to the state of Illinois. Illinois then established the Illinois Homeowner Assistance Fund (ILHAF).⁵ After the first wave of applications opened and closed, ILHAF announced that the COVID-related mortgage assistance program would reopen on November 1, 2022. This afforded eligible homeowners a second chance at hardship assistance. As of February 26, 2023, ILHAF had approved 6,112 applications, awarding upwards of \$97.5 million in assistance funds to homeowners needing help paying their mortgages and property taxes. As of April 2023, ILHAF has not exhausted its HAF funds and is still accepting applications.

(3) Texas

The Homeowner Assistance Fund allocated approximately \$842.2 million to the state of Texas. Texas's Department of Housing and Community Affairs established the Texas Homeowner Assistance Fund (THAF) to distribute aid to homeowners.⁶ On March 2, 2022, the program began accepting applications, allotting up to \$65,000 in assistance funds per applicant. These funds can be used to pay delinquent mortgage payments, property taxes, utility bills, homeowner association dues, and insurance premiums. Beginning on August 23, 2022, a homeowner can also apply for up to three months of future mortgage payments. As of April 2023, Texas has distributed more than \$382.5 million of assistance to 34,482 households, for an average of \$11,085 per household. THAF has not exhausted its HAF funds and is still accepting applications.

(4) California

The Homeowner Assistance Fund allocated approximately \$1.0 billion from the Homeowners Assistance Fund to California, the largest award given to any state, territory, or tribe. California's Housing Finance Agency then established the California Mortgage Relief Program (CMRP). On December 27, 2021, the program began accepting applications, allotting up to \$80,000 per household in total assistance. These funds can be used to cover past-due mortgage payments, up to \$20,000 in property taxes, up to \$80,000 to reduce or payoff a partial claim, or up to \$80,000 to pay taxes and homeowners insurance if the borrower has a reverse mortgage. In addition to the three federal criteria discussed above, California imposed additional requirements for eligibility: homeowners cannot have cash or assets on-hand (excluding savings in a retirement account) that is equal to or greater than the relief funds needed plus \$20,000, and the unpaid principal balance of the homeowner's primary mortgage loan, at the time of origination, cannot be greater than the "conforming loan limit" (as determined under the provisions of the Housing and Economic Recovery Act of 2008) in effect at time of origination. As of April 2023, California has distributed more than \$349 million of assistance to 13,088 households, for an average of \$26,679 per household. CMRP has not yet exhausted its funds and is still accepting applications.

⁴ <https://www.floridajobs.org/community-planning-and-development/homeowner-assistance/homeowner-assistance-fund>

⁵ <https://www.illinoishousinghelp.org/ilhaf>

⁶ <https://texashomeownerassistance.com/>

(5) New Mexico

The Homeowner Assistance Fund allocated approximately \$55.8 million to the state of New Mexico. The New Mexico Department of Finance and Administration then established the New Mexico Homeowner Assistance Fund Program (NM Home Fund)⁷ On May 18, 2021, the program began accepting applications, allotting up to \$20,000 per household in total assistance per household. These funds can be used to cover reinstatement of a delinquent mortgage, regular monthly mortgage payments, up to three years of delinquent property taxes, overdue homeowners' insurance, reverse mortgage escrow shortages, and taxes and insurance that are due up to 90 days after the application is submitted. In addition to the three federal criteria discussed above, New Mexico imposed an additional requirement for eligibility: the original loan balance on the property for which relief is being applied cannot be more than \$417,000. As of April 2023, New Mexico has distributed more than \$14.8 million in relief to homeowners. NM Home Fund has not yet exhausted its funds and is still accepting applications.

(6) Washington

The Homeowner Assistance Fund allocated approximately \$173.1 million to the state of Washington. The Washington State Housing Finance Commission established the Washington Homeowner Assistance Fund (WHAF).⁸ WHAF offers eligible homeowners in Washington up to \$60,000 per household in relief. The funds provided can be used for mortgage payments, as well as mortgage-related costs, some of which are: reinstatement of a mortgage in default, reduction of the mortgage principal (including the principal for a second mortgage that a non-profit or government entity provided), and a mortgage interest rate reduction. WHAF funds can also go toward other housing expenses such as homeowners' insurance, flood insurance, mortgage insurance, delinquent property taxes, homeowner association fees, paying off liens, condominium association fees, and paying off down payment assistance loans. WHAF will also pay for default housing counseling and related services. According to the most recent data available for WHAF (Q3 2022), only \$13 million of the available funds have been distributed, leaving more than 95% of the funds still available.

(7) New York

The Homeowner Assistance Fund allocated approximately \$539.5 million to the state of New York. New York's Department of Homes and Community Renewal established the New York State Homeowner Assistance Fund (NYHAF).⁹ NYHAF began accepting applications on January 3, 2022, and received approximately 31,000 applications within six weeks. NYHAF offers eligible homeowners in New York up to \$50,000 per household in relief. NYHAF funds can be applied toward property taxes, water bills, cooperative and condominium fees, mortgage payments, and mortgage modifications. As of January 2023, all 31,000 applications have been processed, and approximately \$279 million of New York's total HAF funds have been disbursed. Almost half of the funds were applied to two or more debt types, such as mortgage, taxes, cooperative or condominium, or modification payments.¹⁰ As of February 28, 2023, New York is no longer accepting NYHAF applications, but homeowners can register for a wait list in the event that more funding becomes available.

(8) Delaware

The Homeowner Assistance Fund allocated \$50 million to the state of Delaware. The Delaware State Housing Authority then created the Delaware Emergency Mortgage Assistance Program (DEMAP). DEMAP began accepting applications on June 28, 2022, and offers eligible homeowners up to \$50,000 per household in relief. An award can be used to pay mortgage arrears or for principal or rate reduction or modification, taxes, utilities (water and sewer only), homeowner association fees, and insurance. DEMAP does not cover home repairs or electricity payments. Homeowners in forbearance are not eligible until they exit forbearance, but homeowner in bankruptcy may be eligible. As of April 2023, DEMAP has provided more than \$19.6 million of assistance to 1,843 households, for an average of \$10,686 per household. A majority of the funds have been applied to mortgage payments. DEMAP has not yet exhausted its funds and is still accepting applications.

⁷ <https://nmhomefund.org/>

⁸ <https://washingtonhaf.org/>

⁹ <https://www.nyhomeownerfund.org/>

¹⁰ <https://www.nyhomeownerfund.org/reports>

(9) New Jersey

The Homeowner Assistance Fund allocated approximately \$326 million to the state of New Jersey. New Jersey's Department of Consumer Affairs established the Emergency Rescue Mortgage Assistance program (ERMA) to manage and distribute the funds.¹¹ ERMA began accepting applications on February 3, 2022, and offers eligible homeowners up to \$75,000 per household in relief. An award can be used to cover escrow shortages, delinquent property taxes, municipal or tax liens, delinquent homeowner association dues, and up to four future mortgage payments (inclusive of principal, interest, taxes, and homeowner's insurance). According to the most recent data available for ERMA (Q3 2022), only \$13.2 million of the available funds have been distributed, leaving more than 95% of the funds still available. New Jersey is still accepting applications.

(10) Pennsylvania

The Homeowner Assistance Fund allocated approximately \$350.4 million to the Commonwealth of Pennsylvania. Pennsylvania created the Pennsylvania Homeowner Assistance Fund (PAHAF) to distribute the funds. Up to \$50,000 in relief is available per household. These funds can be used for mortgage reinstatement, forward mortgage payments for up to six months, property taxes, reverse mortgage insurance premiums, homeowner association fees, and delinquent energy-related utility bills. As of February 1, 2023, PAHAF has temporarily paused the acceptance of new applications of PAHAF relief, to allow for a transition the program from a third-party vendor to the Pennsylvania Housing Finance Agency (PHFA). As of that date, PHFA has distributed \$99 million in assistance.

Servicer Participation and CFPB Monitoring

According to the Department of Treasury, "Homeowner Assistance Fund (HAF) participants (including states, territories, and Tribal governments) can work with mortgage servicers to assist homeowners facing financial instability."¹² The HAF programs prevent foreclosures by working with servicers to enable homeowners to gain assistance. As such, servicers are a vital piece of the HAF process.

When a homeowner submits an application to a state HAF program, the particular state reviews that applicant to see whether the homeowner would be conditionally eligible for the assistance. At that time, the state forwards the information received from the borrower to the servicer. As a next step, the servicer validates the information provided by the borrower. From there, "As needed, the State HAF Program and the Servicer work together (often in concert with housing and legal aid counselors) to confirm the Applicant's financial standing (if there are discrepancies between the information supplied by the Applicant and the Servicer) and identify potential appropriate options to assist the applicant."¹³ This back-and-forth process can take time to complete.

The CFPB placed an emphasis on reviewing how servicers work to assist borrowers through these programs. The CFPB stated, "the Bureau will be paying particular attention to how mortgage servicers respond to borrower requests for loss mitigation assistance and process loss mitigation applications. The Bureau urges servicers to dedicate sufficient resources and staff to ensure they can communicate clearly with borrowers, effectively manage borrower requests for assistance, promote loss mitigation, and ultimately reduce avoidable foreclosures and foreclosure-related costs."¹⁴ The CFPB spelled out that it would be monitoring servicers' overall effectiveness in working towards these goals.

In many of the states, however, even with servicer participation, it has been a slow process to release the HAF funds. "As of October 2022, only about \$2 billion in relief funds have been distributed to approximately 150,000 households."¹⁵ The Treasury Department has relied on the states to set up programs for distribu-

¹¹ <https://www.nj.gov/dca/hmfa/erma/hub/>

¹² <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund/promising-practices/promising-practices-for-state-haf-program-administrators-to-collaborate-with-servicers>

¹³ *Id.*

¹⁴ <https://www.federalregister.gov/documents/2021/04/07/2021-07098/bulletin-2021-02-supervision-and-enforcement-priorities-regarding-housing-insecurity>

¹⁵ <https://www.consumerfinancialserviceslawmonitor.com/2023/02/navigating-mortgage-servicing-through-the-slow-moving-homeowner-assistance-fund/>

tion of the funds. In some ways, with 50 different states with 50 different approaches, this has caused some delay in processing funds and has also created issues for servicers to monitor all the multiple different types of procedures. Based upon the type of a particular loan, servicers have to wrestle with determinations as to whether to suspend foreclosure cases. The “Federal Housing Finance Agency requires servicers of Fannie Mae and Freddie Mac loans to suspend foreclosure activities for up to 60 days if the servicer is notified that a borrower has applied for relief under HAF. Although servicers of other types of loans may proceed with foreclosure, they should do so cautiously and under advice of counsel.”¹⁶ The CFPB noted that it would place an increased scrutiny on servicers who foreclose on a borrower who has a pending application for assistance.

As certain states cut off HAF application periods, this monitoring of servicer performance on handling the applications will continue to play out.

HAF Intersects

Foreclosure

On April 6, 2022, the Federal Housing Finance Agency (FHFA) announced that Fannie Mae and Freddie Mac will require servicers to suspend foreclosure activities for up to 60 days if the servicer has been notified that the borrower has applied for assistance from the Homeowner Assistance Fund. This announcement was made shortly after the federal foreclosure moratoriums were expiring. FHFA’s foreclosure suspension for borrowers who applied for HAF will provide additional time to be evaluated for relief through their state’s approved HAF.

The following are the criteria for the 60-day delay of foreclosure on these loans:

- Notification that the borrower has applied through the state’s HAF program;
- The servicer has time to delay or suspend the initiation of the foreclosure process or if a foreclosure sale is scheduled, the servicer is notified at least seven days before the sale; and
- The delay of the sale can take place without the dismissal of the action.

Regardless of investor type, most servicers are placing files on hold once they have been notified that the borrower has applied to their state’s HAF program. Many homeowners are not aware and are not applying for assistance through HAF until they receive foreclosure notices. This additional time often times results in a reinstatement of the loan and the dismissal of the foreclosure action.

Bankruptcy

Many homeowners who are experiencing financial hardship related to COVID-19 may also need bankruptcy relief. The criteria for both HAF and bankruptcy tend to overlap. Although some homeowners’ need for bankruptcy may be eliminated once they receive HAF benefits, others may need the benefits that both bankruptcy and HAF have to offer. Nothing indicates that homeowners who obtain HAF assistance are ineligible for bankruptcy or vice versa. In fact, many bankruptcy courts are seeing active debtors receiving the benefit of the HAF program. While some homeowners may file bankruptcy while awaiting HAF approval, others may need bankruptcy relief in addition to HAF assistance. Factors to consider when a bankruptcy debtor is approved for HAF assistance:

- For many debtors, they will only be able to afford the required bankruptcy payment if their mortgage arrears are cured by the HAF programs. In other words, the HAF pro-

¹⁶ Id.

gram not only helps them save their home but also gives them an opportunity at a fresh start that otherwise would not be available.

- Chapter 7 bankruptcy does not pose any barrier to accessing HAF assistance. A chapter 7 only lasts about 3-4 months. If a debtor is awaiting HAF funds at the time the petition is filed, the only issue that may arise is whether the mortgage company is willing to enter into a reaffirmation agreement with the debtor. Reaffirmation agreements are voluntary as to both a creditor and a debtor. Creditors generally require a debtor to be current in order to enter into reaffirmation agreements. Further, Bankruptcy Judges also want to see that an account is current and in good standing prior to approving the terms of a reaffirmation agreement.
- Chapter 13 bankruptcies last between 3-5 years. Many Chapter 13 plans provide for payment of pre-petition arrears. As such, it is good practice to seek court approval of an HAF benefits in order to put all parties on notice and to ensure that any arrears previously being paid through the Chapter 13 plan can be addressed when cured by the HAF proceeds.
- Because each district may have distinct local procedures to deal with the HAF program, it is essential for local counsel to review local rules, administrative orders, and communicate openly with trustees.
- Servicers should take extra caution to ensure the funds are properly applied to the debtor's account when a bankruptcy is pending. This can be coordinated by local counsel and between debtor's counsel and the trustee, with guidance from the court.

Nationwide Statistics

As of September 30, 2022 (the most recent available data), HAF programs have assisted over 162,000 homeowners across the country. This is a 138% increase in the number of homeowners assisted as of June 2022. U.S. Department of Treasury data, reporting through September 30, 2022, shows that HAF assistance is reaching a much broader range of economically vulnerable and traditionally underserved homeowners than prior Federal mortgage assistance and foreclosure prevention programs. It is estimated that:

- 57% of HAF assistance was delivered to very low-income homeowners—those earning 50% of area medium income and below.
- 35% of HAF homeowners self-identified as Black.
- 20% of HAF homeowners self-identified as Latino.
- 64% of all HAF beneficiaries self-identified as female.