June 23, 2021

Scott Farmer
Executive Director
NC Housing Finance Agency
3508 Bush Street
Raleigh, NC 27609

**Re: Comments to NCHFA'S Proposed HAF Plan**

Mr. Farmer,

We are writing on behalf of the North Carolina Justice Center, Financial Protection Law Center, Charlotte Center for Legal Advocacy, Pisgah Legal Services, Land Loss Prevention Project, and Legal Aid of North Carolina to provide comments regarding the NC Housing Finance Agency's draft plan for the Homeowner Assistance Fund ("HAF").

# COMMENTS TO NCHFA'S PROPOSED HAF PLAN

## Methodology for Identifying Geographic Areas of Distress and Social Disadvantage

The draft plan states on page 13: *"To satisfy the statutory requirements and promote a racially equitable recovery, the index more heavily weights indicators of social disadvantage which include percentile rank of social vulnerability and non-white share of homeowners."*

The plan further states on page 18: *"Black and Latino households were disproportionately affected by COVID-19 infection rates and job loss, compromising their ability to pay their mortgage and retain wealth. The Agency has identified 41 counties and 204 Census tracts with high levels of social disadvantage, economic and housing distress that will be targeted for enhanced outreach."*

**COMMENT:** We appreciate the Agency's commitment to promote a racially equitable recovery that addresses the disproportionate impact of the COVID-19 pandemic on Black and Latino households, which is a by-product of longstanding and systemic racial disparities in household income, employment, and homeownership. While the plan's methodology gives extra weight to indicators of social disadvantage to determine the counties and census tracts that will receive special targeting, the plan must also set ambitious goals for the percentage of applicants and percentage of relief recipients who are from Black and Latino households and other socially disadvantaged groups. The Agency must also commit to allocating the necessary resources to ensure that the outreach and assistance needed to meet these goals is performed.

With regard to these resources, we are concerned that the Agency's draft plan does not allocate any funds to support the network of legal services entities and housing counselors whose work will be critical in reaching socially disadvantaged homeowners and assisting them in successfully obtaining relief. It is also critical that legal service providers have the resources needed to help represent applicants who are facing pending mortgage or tax foreclosures, mobile home repossessions, or who have title issues and who are at risk of losing their homes without legal representation.

## Program Design

### Use of Funds

**COMMENT:** In keeping with the Treasury Department's guidance and the Agency's intent to allow for a broad menu of eligible uses, the "Use of Funds" section should be expanded to include not only ongoing payment assistance and reinstatement but also principal reduction and interest rate reduction. The Treasury Department's guidance on this issue reflects the reality that homeowners may be too far behind on their loans to benefit from a reinstatement, but they could obtain an affordable loan modification if HAF funds were used to draw down the principal balance.

We also wanted to ensure that the term "mortgages"—as it does in the Treasury guidance—includes homeowners with manufactured housing loans and persons who live in a home they are purchasing through an installment loan (for example, a "contract for deed"). [See proposed changes below in yellow]:

The Agency plans to use HAF funding for the following types of qualified expenses that are for the purpose of preventing homeowner delinquencies, defaults, foreclosures and/or displacement:

1. Mortgage payment assistance, including payment assistance for manufactured (modular or mobile) home loans and installment contracts ("contracts for deed");
2. Financial assistance to allow a homeowner to reinstate a mortgage, manufactured (modular or mobile) home loan, or installment loan ("contract for deed"), or to pay other housing-related costs due to a period of forbearance, delinquency, or default. This would include a first and second mortgage, if needed, to bring the homeowner current;
3. mortgage principal reduction;
4. facilitating mortgage interest rate reductions
5. Payment assistance for housing related costs. Examples include: manufactured home lot rent; homeowner's insurance, flood insurance, and mortgage insurance; homeowner's association fees or liens, condominium association fees, or common charges; and payment assistance for delinquent property taxes to prevent homeowner tax foreclosures

### Eligible Homeowners

**COMMENT:** The plan should make clear that HAF assistance can be applied to arrears that existed prior to January 21, 2020, so long as the total requested assistance is within the maximum amount of relief and the applicant meets the program's eligibility requirements pertaining to income and has a post-January 21, 2020 financial hardship. Alternatively, if the assistance can only be applied to post-Jan. 21, 2020 arrears, the applicant should not be barred from receiving the assistance if the applicant has pre-existing default/arrears and otherwise meets the HAF eligibility requirements. In addition, the plan should make clear that homeowners who are in bankruptcy are also eligible for assistance. [Suggested changes to plan are highlighted in yellow.]

Homeowners are eligible to receive assistance under the HAF program if:

1. They experienced a financial hardship after January 21, 2020 and have incomes equal to or less than 150% of the area median income, consistent with Treasury guidance.
2. The qualified expenses are related to the dwelling that is the homeowner's primary residence.
3. They attest that they experienced financial hardship after January 21, 2020. The attestation must describe the nature of the financial hardship (for example, job loss, reduction in income, or increased costs due to healthcare or the need to care for a family member).
4. Homeowners are eligible to receive assistance regardless of their delinquency status prior to January 21, 2020, so long as they experienced a financial hardship after January 21, 2020.
5. Eligible homeowners include homeowners currently in bankruptcy.

## Income Verification Requirements

**COMMENT:** The Agency's intent to use a proxy for income verification that is based on census tract data will be important to streamline the application process. The plan should also make clear that the homeowner will be eligible to obtain a stay from foreclosure under the Home Protection Program Statute while the homeowner is attempting to obtain and submit income-verification documents, to the extent the documentation is required.

## Homeowner Assistance Offered

**COMMENT:** As in the Comment to the "Use of Funds" section above, we have added text (highlighted in yellow) to clarify that (1) homeowners should be able to receive assistance to reduce the principal of their loans and to facilitate interest rate reductions; and (2) eligible homeowners should include those who live in manufactured homes and persons who are purchasing their primary residence through an installment contract. [Suggested changes to plan are highlighted in yellow.]

Eligible homeowners may be able to access the following assistance, up to a maximum of $35,000:

1. Mortgage payment assistance
2. Manufactured housing (mobile or modular home) payment assistance
3. Financial assistance to allow a homeowner to reinstate a mortgage, a manufactured housing loan or to pay other housing-related costs related to a

period of forbearance, delinquency, or default. This would include a first and second mortgage

4. Financial assistance to allow a buyer of a home they live in and are purchasing under an installment contract (for example, a “contract for deed”) to pay other housing-related costs related to a period of forbearance, delinquency, or default
5. mortgage principal reduction;
6. facilitating mortgage interest rate reductions
7. Payment assistance for housing related costs. Examples include: manufactured home lot rent; homeowner’s insurance, flood insurance, and mortgage insurance; homeowner’s association fees or liens, condominium association fees, or common charges; and payment assistance for delinquent property taxes to prevent homeowner property tax foreclosures

## Targeted Homeowners

**COMMENT:** The Agency should consider using an initial income threshold of at or below 80% of AMI.

While it is understandable and in keeping with Treasury guidance to focus attention on homeowners who have FHA-insured, VA, and USDA mortgage loans that target low-income borrowers, there are many low-income homeowners who have mortgages that are not federally backed. These homeowners have struggled with the pandemic without the benefit of federal foreclosure moratoria and forbearance programs and thus might be in urgent need of assistance.

## Payment Process

**COMMENT:** There is no mention in the plan as to whether HAF assistance will be provided as a grant or through a recoverable lien. We urge the Agency to provide the assistance as a grant to promote efficient administration and to avoid the costs and complications of lien recording requirements.

## Performance Goals

**COMMENT:** The draft plan sets as a performance goal to have more than 50% of applicants qualify as socially disadvantaged individuals. Based on the plan’s analysis that Black and Latino North Carolinians suffered disproportionately from the COVID-19 pandemic and face systemic racial disparities, we believe the plan must set a more ambitious and precise goal than “more than 50%.”

The plan then sets a far more limited performance goal regarding the households served by the program (stating that the sample outcome must be “*proportional to or exceed share of nonwhite homeowners*”). That is simply not good enough. According to the data provided in the Agency’s plan, only 20% of homeowners in North Carolina are nonwhite. The program must push to do far better than having 20% of those receiving assistance be nonwhite in order to meet statutory requirements and Treasury Department's goal of a racially equitable recovery.

## Best Practices and Coordination with Other HAF Participants

On page 24, the plan states: *"A robust feature of the Home Protection Program allowed the Agency to place a stay of foreclosure while the application was being processed. The Home Protection Program statute, still in place, was the underpinning for the state's HHF program."*

**COMMENT:** We welcome the application of the Home Protection Program stay of foreclosure to the HAF program. The plan should make clear that an applicant can obtain the benefit of this stay by attesting to an eligible financial hardship and to meeting the income requirements without having to submit documentation. The applicant will then be protected from foreclosure while the Agency works to review the application and obtain any necessary documents.

We also note, however, that homeowners will be facing other threats that cannot be addressed via the foreclosure stay, but that can be addressed through legal and nonlegal strategies implemented by legal services providers and housing counseling agencies. The need to engage full wrap-around advocacy supports the allocation of allowable HAF funds to legal services and other grassroots agencies to ensure full and effective advocacy in light of myriad consumer issues facing target homeowners.

## Budget

**COMMENT:** The Treasury Department's guidance provides that up to 5% of HAF funds can be used for housing counselors and legal services "targeted to households eligible to be served with funding from the HAF related to foreclosure prevention or displacement." The Agency's draft plan indicates that up to 15% of the total funds (approximately $41 million) may be used for administrative costs, but the rest of the funds will be dedicated to assisting homeowners. This language suggests the agency has not currently planned to allocate any funds for legal services and housing counselors.

As noted above, we believe it is essential for the Agency to include funds for legal services as part of its HAF plan. It is likely that many homeowners will have pending mortgage foreclosures, tax foreclosures, mobile home repossessions, legal actions or title issues that threaten to displace them from their homes. Mortgage borrowers without legal counsel have little hope of slowing down or stopping foreclosure actions and will assume that, if they are in default, there is nothing to be done to prevent the loss of their homes. Funding legal services is therefore critical to help homeowners avoid foreclosure and displacement as well as to help perform vital outreach to make consumers aware that there are ways to prevent unnecessary foreclosures by accessing these HAF funds. We also note that several finance agencies across the country have committed up to 5% of their HAF funds for legal services and housing counseling, including Missouri, Washington, Minnesota, and New Jersey.

Legal services and housing counselors can assist NCHFA in making HAF a successful tool for economic recovery in North Carolina, but they will require funding to meet the demands of this challenge.

Thank you for your consideration of our suggestions. We would appreciate the opportunity to meet with the appropriate NCHFA staff to discuss our proposals in more detail. Please contact Jason Pikler at (919) 863-2403; jason.pikler@ncjustice.org with any questions and to set up a time to meet to discuss our comments.

Sincerely yours,

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