



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.  
330 East Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141  
414-727-WILL (9455)  
Fax 414-727-6385  
www.will-law.org

January 12, 2022

Governor Tony Evers  
State of Wisconsin  
115 East State Capitol  
Madison, WI 53072

**Re: Wisconsin's Homeowner Assistance Fund**

Dear Governor Evers:

The Wisconsin Institute for Law & Liberty (WILL) is a law and policy center dedicated to enforcing the rule of law and protecting constitutional rights. As relevant here, WILL's Equality Under the Law Project files strategic litigation to enforce the constitutional guarantee of equal treatment under law.

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) containing \$1.9 trillion in new spending. ARPA establishes numerous new federal programs, including several programs that discriminate based on race. WILL has successfully challenged two of these programs in court: the Restaurant Revitalization Fund, a \$28.6 billion fund providing a preference to non-white restaurant owners, and the Farmer Loan Forgiveness Program, a \$4 billion program designed to forgive loans to non-white farmers. Both programs were halted by injunctions sought by WILL in federal court. See *Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021); *Faust v. Vilsack*, 519 F. Supp. 3d 470 (E.D. Wis. 2021).

A third new major federal race-based program is about to come online. And for the first time, Wisconsin state officials will have a hand in implementing its racially discriminatory provisions.

Under Section 3206 of APRA, Wisconsin received [\\$92.7 million](#) to establish a Homeowner Assistance Fund. You have labeled this program as the "Wisconsin Help for Homeowners" program, or [WHH](#). The program is administered by your Department of Administration.

The WHH will provide housing grants of up to \$40,000 to owner-occupied households who have experienced a COVID-related financial hardship. According to your website, a financial hardship is defined as a "material reduction in income or material increase in living expenses associated with the coronavirus pandemic."

Hardships could be demonstrated by job loss, reduction in income, increased healthcare costs, or other increased costs, such as those resulting from the need to care for a family member, according to the U.S. Department of Treasury.

Under ARPA, a homeowner assistance program, like WHH, must contain certain income limitations. Congress required states to target funds to homeowners “having incomes equal to or less than 100 percent of the area median income for their household size,” also known as “AMI.” For example, in Milwaukee County, a family of four would be eligible so long as their total family income was less than \$84,400.

Congress also authorized states to expand this program to include higher income limits, but with an important restriction. A state may expand the income eligibility up to 150% of AMI, but if a state makes that choice, then only “socially disadvantaged individuals” with incomes in that higher bracket may receive a benefit. The phrase “socially disadvantaged individuals,” which was also at issue in the *Faust* and *Vitolo* lawsuits, is defined as including only “Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders.” As DOA officials themselves noted in the [draft report](#) on the WHH, “socially disadvantaged” means “those whose householder is in any racial or ethnic group besides non-Hispanic/Latinx White.”

On behalf of Wisconsin, your administration chose to create a homeowner assistance fund with these unconstitutional racial qualifications. Again, Wisconsin did not need to make this choice. [Many states](#) chose the alternative, which was to provide all their ARPA funds to the neediest homeowners (those with AMI of 100% or less), regardless of the homeowners’ race.

DOA’s report calculates that there are 914,307 households in Wisconsin with an income of 100%–150% AMI. But only 60,879 of these households will be eligible for your program because they are non-white. The remaining households—over 850,000 white households—are ineligible for your grant program simply because of the color of their skin.

Below is a chart depicting the various racial disparities around the state created by your new program. This chart focuses on households of four, but anyone wishing to see the income limitation for their family size can do so [here](#). To be eligible for your program, white families are limited to income below 100% of AMI, while non-white families may have income up to 150% of AMI.

County	Income Limit for <u>White</u> Household of 4	Income Limit for <u>Non-White</u> Household of 4
Brown	\$80,700	\$121,050
Dane	\$103,100	\$154,650
Eau Claire	\$80,000	\$120,000
Kenosha	\$81,500	\$122,250
Marathon	\$79,900	\$118,950
Milwaukee	\$84,400	\$126,600
Outagamie	\$85,600	\$128,400
Rock	\$79,900	\$109,500
Waukesha	\$84,400	\$126,600

Such racial classifications are illegal. Government policies that classify people by race are presumptively invalid under the 14th Amendment to the United States Constitution and Article 1, Section 1 of the Wisconsin Constitution. While courts may sometimes authorize the use of race when a government is attempting to remedy a past episode of intentional race discrimination that the government had a hand in, such exceptions to the general rule are exceedingly rare. In reviewing the materials prepared by your officials, we see no evidence that DOA is attempting to remedy some past episode of intentional race discrimination by state government officials. Therefore, your race-based classifications are illegal.

We are asking you to postpone the start of WHH pending a thorough legal review and revision of the program to remove any racial classifications.

Thank you for your attention to this important matter.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY



Rick Eisenberg  
President & General Counsel  
Rick@will-law.org



Daniel P. Lennington  
Deputy Counsel  
Dan@will-law.org