

MONTANA BOARD OF HOUSING
SINGLE FAMILY PROGRAMS ASSUMPTION GUIDE

DECEMBER 1999

MONTANA BOARD OF HOUSING MORTGAGE ASSUMPTIONS

MONTANA BOARD OF HOUSING LOANS ORIGINATED PRIOR TO 1982:

Loans originated prior to 1982 do not require MBOH, FHA, or VA assumption approval. These assumptions are often referred to as Name Change only assumptions. However, a mortgagor may seek a release of liability for this type of loan, but only if they are the original mortgagor or the original mortgagor requested a release of liability and each subsequent mortgagor requested a release of liability. Loans originating from the following bond issues are included in the above requirements:

1977 Series A - 7 $\frac{1}{8}$ %
1977 Series B - 6 $\frac{7}{8}$ %
1978 Series A - 7 $\frac{1}{2}$ %
1979 Series A - 7 $\frac{3}{4}$ %
1980 Series A - 9 $\frac{3}{4}$ %

A letter from the Servicer or a copy of the FHA Mortgage Record Change Form (92080) must be sent to enable Montana Board of Housing to update existing files.

ALL ASSUMPTIONS OF LOANS ORIGINATED IN 1982 AND AFTER REQUIRE PRIOR BOARD APPROVAL.

These loans may be assumed upon PRIOR Board approval and compliance with FHA/VA/RD Assumption Requirements. The original mortgagor may be released from liability if approval is granted from FHA or VA. Board loan assumption documents will be provided to the servicing lender upon request. Requirements shall be satisfied as follows:

1. The residence must be owner-occupied and generally the property may not be used in a trade or business. See Exhibit A;
2. Unless the residence is located in a targeted area, the assuming borrower shall not have owned a principal residence in the three-year period preceding the date of the loan assumption. The determination of whether a county or city is targeted is based on the date the loan was originally placed in service and not on the date the mortgage loan is assumed. See Exhibit B for three-year rule and Schedule A for targeted areas;
3. The purchase price limits are subject to change by notice from the Department of Treasury. Current resale limits on assumptions are: See attachment, Maximum Purchase Price Limits, SA3.
4. Current Montana Board of Housing policy allows a homeowner to have only one Board loan at a time.
5. Recapture Tax Provisions may apply to assumptors of loans originated after January 1, 1991.

SIMPLE ASSUMPTION VERSUS FULL ASSUMPTION

Simple Assumption This is also referred to as a Name Change and is a process wherein a purchaser of the property takes title subject to an existing loan. The original borrower is not released of liability on the loan. Montana Board of Housing (MBOH) approval of a simple assumption does not constitute a release of liability. The seller may have contingent liability to be considered in applying for any new loan. If the assumptor defaults on the loan, the seller may be subject to IRS or other penalties, such as a collection procedure by the VA.

Full Assumption This is a process whereby the buyer files a loan application with the servicer. A creditworthiness review takes place and upon approval the seller is released of liability. For VA loans, the seller may also receive a restoration of entitlement, if the buyer has sufficient entitlement to substitute for that of the original borrower.

NOTE: Full Assumptions are required by:

1. FHA for loans closed after 12/1/89; and
2. VA for loans closed after 3/1/88.

Assumptions originated in 1982 and after require prior Board approval. This may prohibit some simple FHA assumptions.

Rural Development (formerly Farmer's Home Administration) assumptions require direct contact with their office. Please contact MBOH to process an assumption.

ASSUMPTION PROCEDURE

Written Requests for Assumption Documents All MBOH assumptions need a written request from the servicer for an assumption package. The request may be informally written or facsimile. Upon satisfactory completion of the assumption documents, MBOH will issue a letter to the servicer along with a copy of the Mortgage Loan Assumption Agreement. All other documentation relating to the assumption shall be retained by the servicing lender.

EXHIBIT A

Residence Requirement.

(a) **Definition.** For purposes of this Requirement, the term "Residence" means a one unit, single-family, owner-occupied home located in the State, and includes a condominium unit in a structure containing multiple dwelling units. The term also includes factory-made housing permanently affixed to real property. The determination of whether factory-made housing is permanently fixed to real property shall be made on the basis of the facts and circumstances of each particular case. Land appurtenant to a Residence shall be considered as part of the Residence only if such land reasonably maintains the basic livability of the Residence and does not provide, other than incidentally, a source of income to the mortgagor.

(b) **General.** At the time the Mortgage Loan is executed, the Residence, as defined above, must reasonably be expected to become the principal Residence of the mortgagor(s) within a reasonable time after the financing is provided. This requirement may normally be met if the mortgagor(s) executed an affidavit of intent to use the Residence as a principal Residence within sixty (60) days after the financing is provided.

(c) **Affidavit.** Whether a Residence is used as a principal Residence depends upon all facts and circumstances of each case, including the good faith of the mortgagor(s). The Mortgagor's Affidavit and Certification contains a representation to this effect as does the Uniform Rider to Trust Indenture. Unless the Mortgage Lender is aware of other facts which would produce doubt as to the truth of these representations they may be relied upon unless the Mortgage Lender knows or has reason to know that the affidavits are false. The Mortgage Lender will, of course, be deemed to have knowledge of all information contained in the loan file. Care should be taken to make sure there is no inconsistency with the affidavit before the loan is closed.

(d) **Non-Residential Uses.** A Residence which can reasonably be expected to be used (I) in a trade or business, (ii) as an investment property, or (iii) as a recreational home does not satisfy this Residence Requirement. A Residence which is primarily intended to be used in a "trade or business" does not meet the Residence Requirement. Any use, however, which fails to give rise to a deduction allowable for certain expenses incurred in connection with the business use of a home, pursuant to Section 280A of the Code, shall not be treated as use in a "trade or business." Further, if more than 15 percent of the total area of a Residence is expected to be used primarily in a trade or business, then such Residence does not meet the Residence Requirement. Although the Board may be able to issue advisory letters on this question in cases which seem clear enough at the time, there is still some risk of a subsequent interpretation by the U.S. Treasury which would necessitate a buy back. Examples are as follows:

Example 1. A condominium unit at a ski resort is recreational and would not normally be eligible. However, certain mortgagors who have full time, year-

round jobs at the resort may be able to demonstrate use as a "principal residence."

Example 2. Lake front property or property in a resort area may or may not be recreational. Extreme caution should be exercised by originating Mortgage Lenders in evaluating the other surrounding facts and circumstances.

Example 3. A combination barber shop and Residence is a Residence used in a trade or business and is eligible for a deduction under Section 280A of the Code. If the barber shop accounts for more than fifteen percent (15%) of the total building area, the property will not be eligible.

Example 4. A parcel containing two or three building lots which is capable of being subdivided and sold or rented separately from the portion used as a residence will normally be considered as investment property even if less than one acre is involved.

(e) Excess Land. Unless specifically approved by the Board, the Residence must not have more land appurtenant to it than that required to maintain the basic livability of the residence and parcels of land cannot exceed the size limitations of the Small Tract Financing Act and in any case the value of the lot cannot exceed 35% of the loan.

(f) Income Test. The Residence and associated land should not provide more than incidentally a source of income to the mortgagor.

(g) Personal Property. No part of the proceeds of the Mortgage Loan may be used to finance anything other than the Residence. A Residence may include fixtures such as light fixtures, curtain rods and wall-to-wall carpeting but the mortgagor must pay for any items of personal property such as refrigerators, stoves, washers and dryers with other sources of funds. To avoid difficulty, these items should not be included in the buy-sell agreement.

EXHIBIT B

Three-Year Requirement.

(a) General. Each mortgagor must have had no present ownership interest in a principal Residence at any time during the three-year period prior to the date on which the Mortgage Loan is assumed. For purposes of the preceding sentence, the mortgagor's interest in the Residence with respect to which the financing is being provided shall not be taken into account. In the event that there is more than one mortgagor with respect to a particular Residence, each of such mortgagors must meet the Three-Year Requirement. A person who is liable under a note secured by the Mortgage but who does not have a present ownership interest in a Residence subject to the Mortgage need not meet the Three-Year Requirement. For example, where a parent of a home purchaser cosigns the note but the parent takes no interest in the Residence, it is not necessary that the parent meet the Three-Year Requirement since the parent is not a mortgagor of the Residence.

(b) Factory-Made Housing. Generally, ownership of factory-made housing, including a mobile home not permanently affixed to land owned by the mortgagor, will not disqualify a mortgagor. However, due to the difficulty of establishing the operative facts, Mortgage Lenders should not accept applications where a mortgagor owned the land on which factory-made housing was located unless there is clearly established proof of the personal property character of the mobile home.

(c) Present Ownership Interests. Examples of interests which constitute present ownership interests are the following:

- i) A fee simple interest in the form of a deed;
- ii) A joint tenancy, a tenancy in common, or tenancy by the entirety, such as co-ownership by spouses;
- iii) The interest of a tenant-shareholder in a cooperative;
- iv) A life estate under a parent's will or trust or otherwise;
- v) A contract to purchase residential real estate (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time); and
- vi) An interest held in trust for the mortgagor (whether or not created by the mortgagor) that would constitute a present ownership interest if held directly by the mortgagor.

(d) Other Interests. Examples of interests which do not constitute present ownership interests are the following:

- (i) A remainder interest such as an interest which is subject to a life estate held by someone else;
- (ii) A lease with or without an option to purchase;
- (iii) A mere expectancy to inherit an interest in a principal Residence;
- (iv) The interest that a purchaser of a Residence acquires on the execution of a purchase contract; and
- (v) An interest in other than a principal Residence during the previous three years.

(e) Examples. The following are intended to broadly illustrate the foregoing rules:

Example 1. A separated or divorced person that was a co-owner of a house during the three-year period is not eligible.

Example 2. Sons or daughters that inherit a house are eligible so long as they did not occupy the house as a principal Residence after the death of their parent.

Example 3. A mortgagor who occupied a principal Residence under a contract-for-deed will not qualify.

Example 4. A mortgagor that leased a principal Residence with an option to buy is not disqualified. However, a lease for a term of more than 24 months may fail to satisfy the New Mortgage Requirement.

Example 5. A mortgagor who owned a mobile home, took the wheels and axle off and installed it on a leased pad in a mobile home park is not disqualified.

(f) Affidavit and Tax Returns. The Mortgagor's Affidavit and Certification contains representation of compliance with the Three-Year Requirement and Income Requirement and also requires the attachment of the mortgagor's tax returns for the last three years (unless they were not required to be filed). The mortgagor must provide copies of his or her tax returns as filed with the IRS or copies of such returns as certified by the IRS in accordance with the procedures set forth in Section 6103 of the Code. A copy of IRS Form 4506 will be provided upon request. The tax returns must show no deductions for interest or real estate taxes on a principal residence. The Mortgage Lender is entitled to rely on the affidavit and tax return unless he knows or has reason to believe the affidavit is false.

The following are examples of the Three-Year Requirement:

Example 1. A mortgagor supplies tax returns for calendar years 1996, 1995 and 1994 but has not yet filed a return for 1997. The returns show no deductions for real estate taxes or interest on home mortgages. The Mortgage Lender has no reason to believe the mortgagor owned a principal Residence during 1997. The Three-Year Requirement is satisfied.

Example 2. The tax returns show deductions for interest and taxes on a dwelling that the mortgagor swears in the affidavit was an investment property. The Mortgage Lender has no reason to believe the affidavit is false, i.e., the mortgagor has shown that he had another principal Residence that he rented. The Three-year Requirement is satisfied.

EXHIBIT C

MONTANA BOARD OF HOUSING INCOME DETERMINATION GUIDE FOR SINGLE FAMILY PROGRAMS

Income Determination Definition

Gross Annual Income is the anticipated total income, from all sources and before taxes or withholding, of the mortgagors(s), the spouse of a mortgagor, and any other adult person who lives in the Residence being financed or who is secondarily liable on the Mortgage Loan. Based on income information received through the loan application process, household income shall be projected for the 12-month period following the date of application.

All income should be included, whether received by check, in cash, or in the form of goods and services. Income includes, but is not limited to, the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and any other compensation.

Eligible Borrower Gross Annual Limits

The Board establishes income limits for each program, based on the Internal Revenue Code of 1986, as amended. Lenders need to refer to each individual program's documents or Schedule A for Gross Annual Income Limits.

Those persons' incomes included in determining Gross Annual Income are those who are expected to live in the residence or who will be legally responsible for the payment of the loan for the residence to be financed by the Board. For example, two unrelated persons who are planning to live in the residence would provide data on both incomes if both are expected to sign the note or, through a side agreement, have arranged to share responsibility for payment. Similarly, a relative who gives a guarantee of the loan and expects to live in the residence must give income information. For these purposes, husbands and wives will be considered jointly responsible for the loan and residents of the dwelling, absent satisfactory evidence to the Board of Housing which conclusively demonstrates otherwise and that the spouse is not a member of the armed services. By contrast, a guarantee by a relative, such as a parent or in-law, who does not intend to live in the residence except as an occasional guest, will not cause the inclusion of that relative's income. Similarly, the income of a parent, grandparent, or other relative (except a spouse) who is expected to live in the home, but will not be legally responsible for the loan, does not need to be included.

Income Calculations - Salaried Borrowers

In calculating the income of each borrower, the lender shall project each borrower's verified gross monthly income over twelve (12) months following the date the application is made. Projected salary increases which are verified by the employer shall be included in the income calculation. Overtime earnings shall be included when calculating the borrower's gross annual income. To calculate the amount of overtime earnings used to determine the borrower's income eligibility, the Lender shall use the total amount of overtime earnings received by the borrower for the preceding 12-month period. The Lender shall also use tips, fees, bonuses, dividends and profits, interest and insurance payments received by the borrower for the preceding 12-month period.

Income Calculations - Self Employed Borrowers

Self employed persons shall submit their I.R.S. tax returns (including any depreciation schedules) for the previous two (2) years. Each borrower shall certify that each return is a complete, true and exact copy of the original submitted to the I.R.S. Business income that cannot be supported by an income tax return shall not be included in the income calculations.

If the borrower is a partner in a partnership or has an ownership interest in a small corporation (i.e. assets of one million dollars or less), the partnership or corporation returns, together with all schedules, must be submitted with the loan application.

The lender shall calculate the gross annual income for each self-employed borrower by averaging the reported net income plus declared depreciation expense for the previous two (2) years.

If the borrower is self-employed for less than two (2) years, the most recent year's tax returns with all schedules, plus a current year-to-date professionally prepared profit and loss statement, together with a one (1) year projected income statement must be submitted.

Commission Income

Income derived from commissions may be substantiated from at least two (2) years tax returns with all schedules. The average of the past two (2) years' commissions will be used to calculate income.

Other Income Included

As part of the determination of a borrower's eligibility, other income which the borrower must disclose on the Income Eligibility Worksheet shall include:

child support; alimony or separate maintenance payments; periodic payments from trusts, annuities, inheritance, insurance policies, pensions, retirements funds, and lotteries; all public assistance payments (excluding Medicaid and food stamps) including any amount by which educational grants, scholarships, and/or Veterans Administration educational benefits exceed expenses for tuition, fees, books, and equipment and reasonable rent and utility costs for a student living away from home; recurring investment income, not including gains on a one-time sale or any gains from the sale of the borrower(s) prior

residence; all public assistance payments; payments in lieu of earnings, including social security, unemployment benefits, worker's compensation, severance pay, disability or death benefits; income from partnerships; undisbursed profits from business owned by borrower(s) in whole or part; regular cash contributions received from persons not living in the household.

Other Income Excluded

As part of the determination of a borrower's eligibility, the following types of income shall not be included:

income from employment of children (including foster children) under the age of 18 years; payments received for the care of foster children; lump sum additions to household assets, such as inheritances, insurance payments (including payments under health and accident insurance), settlement for personal or property losses; amounts received by the household that are specifically for, or in reimbursement of, the costs of medical expenses for any household member; income of a live-in aide; amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student provided that any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income; amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.

INCOME LIMITS

For Bond Series 1977A through 1985B, there is no imposed income limit on assumptions.

For Bond Series 1987A through 1997A, the following table applies:

FEDERALLY IMPOSED MAXIMUM INOCME LIMITS BY AREA:

As adopted March 1, 1999

<u>Area</u>	Household size	Household size
	<u>Small**/Large ***</u>	<u>Small**/Large ***</u>
	<u>PROGRAM ELIGIBILITY</u>	<u>RECAPTURE TAX FORM</u>
Billings/Yellowstone	\$43,900/\$50,485	\$45,100/51,865
City of Billings		
(Census Tracts 1 & 3)*	52,680/61,460	54,120/63,140
Blaine*	45,000/52,500	45,960/53,620
Town of Browning*	45,000/52,500	45,960/53,620
Town of Busby*	45,000/52,500	45,960/53,620
City of Great Falls*	45,000/52,500	45,960/53,620
Deer Lodge County*	45,000/52,500	45,960/53,620
Flathead County*	45,000/52,500	45,960/53,620
Gallatin County	40,600/46,690	41,600/47,840
City of Helena		
(Census Tract 9796)*	53,280/62,160	55,080/64,260
Hill County*	48,960/57,120	50,040/58,380
Jefferson County	49,900/57,385	52,200/60,030
Lewis & Clark County	44,400/51,060	45,900/52,785
Liberty County	38,200/43,930	38,300/44,045
Mineral County*	45,000/52,500	45,960/53,620
Missoula County*	48,360/56,420	49,560/57,820
Town of Roberts*	45,000/52,500	45,960/53,620
Rosebud County	44,300/50,945	44,300/50,945
Town of St. Marie*	45,000/52,500	45,960/53,620
Sanders County*	45,000/52,500	45,960/53,620
Silver Bow County*	45,720/53,340	45,960/53,620
Stillwater County	39,700/45,655	41,000/47,150
Sweetgrass County	39,300/45,195	39,800/45,770
Toole County	38,600/44,390	40,400/46,460
<u>Other Counties and Areas</u>	37,500/43,125	38,300/44,045

*Targeted Areas

**Small household is defined as two persons or less

***Large household is defined as three persons or more

Maximum Purchase Price Limits

Area	Existing	Maximum Cost for New Construction	Maximum Mortgage for New Construction**
City of Billings	102,500	138,000	115,200
(Census Tracts 1 & 3)*	115,200	155,500	115,200
Blaine*	115,200	155,500	115,200
Town of Browning*	115,200	155,500	115,200
Broadwater County	104,500	141,500	115,200
Town of Busby*	115,200	155,500	115,200
City of Great Falls*	115,200	155,500	115,200
Carbon County	113,000	152,500	121,500
Deer Lodge County*	115,200	155,500	115,200
Flathead County*	115,200	155,500	115,200
Gallatin County	122,500	155,500	128,250
Hill County*	115,200	155,500	115,200
Jefferson County	115,200	155,500	115,200
Lake County	103,500	139,500	115,200
Lewis & Clark County	103,500	139,500	115,200
Madison County	115,200	155,500	115,200
Mineral County*	115,200	155,500	115,200
Missoula County*	116,300	157,000	116,350
Town of Roberts*	115,200	155,500	115,200
Town of St. Marie*	115,200	155,500	115,200
Ravalli	109,500	147,500	127,300
Sanders County*	115,200	155,500	115,200
Silver Bow County*	115,200	155,500	115,200
Sweet Grass County	102,500	138,000	121,600
Other Counties and Areas	102,500	138,000	115,200

*Targeted Areas

**Maximum Mortgage Limits for Existing homes are the Purchase Price Limits

BOND ISSUE	MORTGAGE RATE	SERIES #	OWNER OCCUPANCY REQUIRED	INCOME LIMITS Apply on Assumptions	ASSUMPTION Requires Prior Board Approval	RESALE Price limits*	TARGETED AREAS			BUSINESS USE LIMITS	RECAPTURE TAX MAY	30 MILE LIMIT
							Yellowstone	Blaine	City of Billings -			
							Custer	Deer Lodge	Census Tract #1 and #3			
							Dawson	Flathead	Town of Busby-Census Tract #9642			
							Lincoln	Hill	Town of Browning-Census Tract #9762			
							Richland	Mineral	City of Great Falls-Census Tract #6			
							Rosebud	Missoula	City of Helena-Census Tract #9796			
								Sanders	City of Missoula-Census Tract #2.01			
								Silver Bow	Town of Roberts-Census Tract #9655			
								City of Great Falls	Town of St. Marie-Census Tract #9549			
								Town of Wyola				
1977A	7.125	060	No	No	No**	No	n/a	n/a	n/a	n/a	no	
1977B	6.875	060	No	No	No**	No	n/a	n/a	n/a	n/a	no	
1978A	7.500	060	No	No	No**	No	n/a	n/a	n/a	n/a	no	
1979A	7.750	025	No	No	No**	No	n/a	n/a	n/a	n/a	no	
1980A	9.750	051	No	No	No**	No	n/a	n/a	n/a	n/a	no	
1982A	12.500	006	Yes	No	Yes	Yes	yes	yes	n/a	15%	no	Yes
1983A	9.750	021	Yes	No	Yes	Yes	yes	yes	n/a	15%	no	Yes
1983B	9.875	022	Yes	No	Yes	Yes	yes	yes	n/a	15%	no	Yes
1983C	10.000	009	Yes	No	Yes	Yes	yes	yes	n/a	15%	no	Yes
1984A	10.375	010	yes	No	Yes	Yes	no	yes	n/a	15%	no	Yes
1985A	9.750	011	yes	No	yes	Yes	no	yes	n/a	15%	no	Yes
1985B	9.750	012	yes	No	yes	Yes	no	yes	n/a	15%	no	Yes
1987A	8.750	060	yes	Yes	yes	Yes	no	yes	n/a	15%	no	Yes
1987B	9.125	060	yes	Yes	yes	Yes	no	yes	n/a	15%	no	Yes
1988A	8.750	060	yes	Yes	yes	Yes	no	yes	n/a	15%	no	Yes
1988B	8.500	013	yes	Yes	yes	Yes	no	yes	n/a	15%	no	Yes
1989A	8.770	014	yes	Yes	yes	Yes	no	yes	n/a	15%	no	Yes
1990A	8.250	015	yes	Yes	yes	Yes	no	yes	n/a	15%	yes	Yes
1990B	8.250	016	yes	Yes	yes	Yes	no	yes	n/a	15%	yes	Yes
1990C	8.450	017	yes	Yes	yes	Yes	no	yes	n/a	15%	yes	Yes
1991A	7.900	018	yes	Yes	yes	Yes	no	yes	n/a	15%	yes	Yes
1991B	7.850	019	yes	Yes	yes	Yes	no	yes	n/a	15%	yes	Yes
1992A	7.370	020	yes	Yes	yes	Yes	no	yes	n/a	15%	yes	Yes
1994A	5.500	021	yes	Yes	yes	Yes	no	yes	yes	15%	yes	Yes
1994B	6.120	022	yes	Yes	yes	Yes	no	yes	yes	15%	yes	Yes
1994C	7.000	023	yes	Yes	yes	yes	no	yes	yes	15%	yes	Yes
1995A	6.750	024	yes	Yes	yes	yes	no	yes	yes	15%	yes	No
1995B	6.750	025	yes	Yes	yes	yes	no	yes	yes	15%	yes	No
1996A	7.000	026	yes	Yes	yes	yes	no	yes	yes	15%	yes	no
1997A	6.500	060	yes	Yes	yes	yes	no	yes	yes	15%	yes	no
1998A	5.875	027	yes	Yes	yes	yes	no	yes	yes	15%	yes	no
1998B	5.875	028	yes	Yes	yes	yes	no	yes	yes	15%	yes	no
1999A	6.500	061	yes	Yes	yes	yes	no	yes	yes	15%	yes	no
*	See Attachment, Maximum Purchase Price Limits, SA-3											
**	Loans originated under NHS and CAP Programs, etc., require Board approval for assumptions. Contact MBOH on a loan by loan basis for criteria and documents.											

Schedule A

