

STATEMENTS OF POLICY

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

HOUSING FINANCE AGENCY

[12 PA. CODE CH. 31]

Homeowner's Emergency Mortgage Assistance Program; Amendments

The Housing Finance Agency (Agency) amends Chapter 31, Subchapter B (relating to policy statement on Homeowner's Emergency Mortgage Assistance Program) to read as set forth in Annex A.

History

The Homeowner's Emergency Mortgage Assistance Program (HEMAP) was established by the act of December 23, 1983 (P.L. 385, No. 91) (Act 91). HEMAP is designed to provide emergency mortgage assistance to homeowners facing foreclosure because of circumstances beyond their control. Assistance is provided in the form of a loan. The amount of the loan will be sufficient to bring the homeowner's delinquent mortgages current and, in addition, the Agency may provide continuing monthly mortgage assistance, as needed by the homeowner, for a period of time as prescribed by Act 91. Act 91 contains notice requirements that lenders shall follow prior to foreclosure, prescribes procedures that a homeowner shall follow in applying to the Agency for mortgage assistance and prohibits a lender from conducting foreclosure proceedings during the HEMAP application process. Act 91 requires repayment of the HEMAP mortgage assistance loan based upon the financial ability of the homeowner.

On February 21, 1984, the members of the Board of the Agency adopted initial guidelines to implement HEMAP under the authority of section 401-C(b) of the Housing Finance Agency Law (act) (35 P.S. § 1680.401c(b)), which provides in part that the Agency shall adopt initial program guidelines and may revise the guidelines when appropriate. The initial guidelines were published at 14 Pa.B. 723 (March 3, 1984). The members of the Board of the Agency adopted the following amendments to the guidelines: October 18, 1985, published at 16 Pa.B. 2126 (June 14, 1986); May 12, 1994, published at 24 Pa.B. 3224 (July 2, 1994); 29 Pa.B. 2859 (June 5, 1999); and 38 Pa.B. 4859 (August 30, 2008), effective September 6, 2008. Under the Agency's authority to revise the statement of policy, the Agency adopts further amendments to Chapter 31, Subchapter B and the uniform Act 91 Notice (notice).

Summary of Public Comment and Responses to Proposed Amendments

The proposed statement of policy was published at 46 Pa.B. 221 (January 9, 2016). The Agency accepted formal written comments during a 35-day public comment period.

The Agency received comments from several interested parties, including the mortgage lending and servicing community, trade groups, counsel, consumer advocates, counseling agencies and public interest organizations. In

addition to review of the written submissions, the Agency held meetings with several commentators to discuss the proposed amendments.

Following is a summary of comments received and the Agency's response to the comments.

§ 31.201. Definitions

Reasonable attorneys' fees and costs

The Agency proposed to delete the detailed section from Chapter 31, Subchapter B setting forth levels and protocol for reimbursement of attorneys' fees to lenders and to provide information instead on the Agency's web site from time to time. Several commentators were concerned that posting all future revisions of this section on the Agency web site, rather than proposing changes in the *Pennsylvania Bulletin*, was an attempt by the Agency to circumvent the rulemaking process. Additionally, some commentators were concerned that failure to place an increase in reasonable attorneys' fees through the public comment process would deprive consumers of the opportunity to comment on potential increases. Others opined that the Agency should create a mechanism within Chapter 31, Subchapter B to challenge the reasonableness of attorneys' fees.

The Agency understands the concerns regarding reimbursement rates and has elected to publish the hourly reimbursement rate in the *Pennsylvania Bulletin* on an annual basis, regardless of whether the rate fluctuates. This publication will allow the Agency to appropriately adjust reimbursement levels in accordance with market conditions without amending Chapter 31, Subchapter B, while at the same time addressing the transparency issues raised by commentators. Much of the original definition of "reasonable attorneys' fees and costs" contained procedural elements regarding the method by which the Agency reimburses lenders for fees and costs associated with initiating a foreclosure action. The amendments to this section do not alter the definition of what the Agency considers an attorney fee or cost, but rather it removes the reimbursement process. Section 401-C(a) of the act authorizes the Agency to establish procedures for the administration of HEMAP. Nothing in the act, however, requires the Agency to subject its internal operating procedures to public scrutiny. To the extent that these procedures are not dictated by law, the Agency is permitted to update and amend them as necessary without soliciting public feedback.

Prior to reimbursing a lender for fees and costs actually incurred, the Agency assesses the reasonableness of the amount requested by reviewing an itemization of the fees and costs actually incurred if itemization is required. Homeowners seeking to challenge the legitimacy of attorneys' fees and costs after the Agency has completed its review process may address these concerns with their lenders or in a court of competent jurisdiction.

§ 31.202. Eligibility for mortgage loan assistance

Some commentators were concerned that the proposed amendments to § 31.202(g)(5)(i) and (ii) (relating to eligibility for mortgage loan assistance) created an unnecessary limitation on the application of an exception for spouses jointly owning a mortgaged property. Additionally, one commentator believed that revising the exception from joint ownership by a husband and wife to joint ownership by spouses as tenants by the entirety removed a class of persons from eligibility for a HEMAP loan.

After review, the Agency agrees with the commentators and deleted “as tenants by the entirety.”

One commentator suggested making occupancy by at least one of the individuals who acquires the property through inheritance an explicit requirement in § 31.202(g)(6). While supportive of the expansion of HEMAP eligibility, several commentators were concerned that the expansion was overly restrictive. Primarily, these commentators noted that heirs may have title challenges due to a split inheritance among multiple individuals. Further, heirs may have difficulty locating coheirs to an inheritance. These commentators suggested broadening the scope of this paragraph to permit either a single heir holding a majority ownership interest in a property or multiple heirs who collectively hold a majority ownership interest in a property to be eligible for HEMAP assistance, provided that the heir has made reasonable attempts to locate the remaining heirs and the heir-applicant resides in the property.

Language specifically requiring occupancy by at least one of the individuals who acquires the property through inheritance was already provided in the proposed amendments. While sympathetic to the challenges heirs may encounter when attempting to ascertain ownership of an inherited property, it is the Agency’s position that providing HEMAP assistance to a co-owner heir applicant without the consent of all co-owners is contrary to the type of assistance contemplated by the act. Specifically section 405-C(h) of the act (35 P.S. § 1680.405c(h)) creates a limited exception for joint mortgagors who are also spouses, which permits these individuals to obtain a HEMAP loan and execute the associated documents without the consent or signature of the other. Nowhere else in the act, however, is this type of exception to record ownership available to other classes of applicants. The Agency, through the implementation of policy, has applied this exception to co-owner spouses who are separated or divorced. Expanding the exception to other classes of co-owners in the manner suggested by commentators would create a number of challenges.

Primarily, allowing a single heir holding a majority ownership interest or multiple heirs with a collective majority ownership interest would require the Agency, in addition to reviewing other eligibility criteria, to conduct a legal assessment as to which heir or heirs own what percentage of the property. In cases when an heir claimed difficulty locating a co-owner heir, the Agency would be required to make a determination of what constituted a “reasonable attempt” to locate co-owners. Furthermore, allowing an heir to encumber the property without the consent of any ascertained or unascertained co-owners jeopardizes the Agency’s lien interest and may subject the Agency to litigation concerning the validity of a lien, including actions to quiet title in the case of conflicting interests. Given these considerations, the Agency believes that the amendments are consistent with the intent of the act and declines to extend the eligibility criteria beyond the bounds delineated in the act.

Two commentators were opposed to proposed § 31.202(g)(7) due to concerns about the balance of power between a seller and purchaser subject to an installment sales contract. These commentators opined that sellers under installment sales contracts tend to be more sophisticated than buyers under these contracts and often have more leverage in these transactions. Requiring that a buyer who is not the record owner of the subject property obtain the seller’s signature, according to these commentators, further shifts the balance of power in

favor of a seller and creates an opportunity for a seller to strategically allow the contract to default if the value of the subject property has increased. These commentators were also concerned that the proposed paragraph was beyond the scope of permissible actions by the Agency. Further, they believed that the Agency should draft a separate uniform notice specifically for installment sales contracts as they believe that much of the information contained in both the current and proposed notice is inapplicable to these types of agreements.

The Agency recognizes the challenges posed by installment sales contracts and has elected to retain the language currently in Chapter 31, Subchapter B and has not adopted proposed § 31.202(g)(7). The Agency has determined, however, that it is not necessary to create a separate notice for installment sales contracts. Section 401-C(a) of the act affirmatively makes the act and the corresponding notice applicable to land sales agreements. Notwithstanding several of the identified methods by which a buyer’s ownership interest may be terminated, the majority of the notice is applicable to land sale agreements or installment sales contracts. Given the rarity of applicants subject to installment sales contracts, the Agency declines to promulgate a separate notice at this time.

§ 31.203. Notice; application procedures

A number of commentators supported the proposed amendment to § 31.203(a) (relating to notice; application procedures) and requested that the Agency create a presumption of invalidity applicable to notices that fail to comply with this subsection. The commentators believed that the Agency could better enforce this provision with the addition of the presumption. The commentators, however, were concerned that inclusion of language that would permit the Agency to update this section on its web site would allow the Agency to make substantive changes to the notice while circumventing the public comment process.

The objective of the amendment was to maintain the consistency and clarity of the notice. This objective directly corresponds to the intent of the act, which requires the Agency to promulgate a uniform notice providing homeowners with necessary information regarding access to HEMAP. Accordingly, the language is added to avoid confusion that may stem from a mortgagee’s addition of content to the notice. Inclusion of lender letterhead or changes in font, language or style negates the purpose of having a uniform, clear and concise notice. The Agency has vigorously advised lenders over the history of HEMAP to maintain the exact structure and format of the published notice.

The Agency is aware that Pennsylvania courts have increasingly examined whether lenders strictly comply with the form and content requirements of the notice when reviewing the legitimacy of a foreclosure action. Strict adherence to the form is accordingly advised, and failure to comply with the exact contours and instructions in Chapter 31, Subchapter B may unnecessarily jeopardize legal process. While the Agency views any deviation as a violation of the requirements in the act applicable to foreclosure actions in this Commonwealth, the act does not provide the Agency with enforcement authority over lenders. Thus, courts are the appropriate forum to adjudicate matters related to the validity of the notice. Therefore, although the Agency encourages lenders to comply with the adopted language, the Agency refrains from a presumption of invalidity.

Furthermore, the intent of the proposed amendment was to allow the Agency to update the list of consumer credit counseling agencies as necessary due to the changes that may occur in the roster of active counseling agencies from time to time. Recognizing the concern of the commentators, the Agency amended the proposed language to reflect that updates made under this subsection on the Agency's web site will solely be to the list of consumer credit counseling agencies. A list of scheduled periodic updates to the consumer credit counseling agency roster will be published annually in the *Pennsylvania Bulletin* simultaneously with the publishing of the annual interest and attorneys' fee reimbursement rates.

Commentators indicated that proposed amendments to § 31.203(a)(3) were narrow and suggested that it be expanded to require lenders to send the notice in the preferred language of the homeowner. Specifically, commentators believed that the language of the notice should be dictated by prior communications the lender has had with the homeowner, placing the lender on notice that English or Spanish is not the homeowner's primary language.

The Agency declines to require lenders to send the notice in the preferred language of the homeowner. In recent years, a large, non-native English speaking population has developed in this Commonwealth. A vast percentage of that population is comprised of native Spanish-speakers. In an attempt to create greater access to HEMAP for these residents, the Agency has required that the notice be sent in Spanish and English. The Agency also recognizes, however, that the diverse population in this Commonwealth is comprised of residents who may not be fluent in either English or Spanish, yet may require access to HEMAP benefits. In furtherance of its access-driven mission, the Agency has elected to make the notice available in the six most widely used languages in this Commonwealth based on population. These languages will initially include English, Spanish, Chinese, Russian, Vietnamese and Cambodian. An independent language translation agency was hired to generate the notices in languages other than English.

While the Agency will not require the notice to be sent in languages other than English and Spanish at this time, lenders are encouraged to utilize translated notices as a supplement to the required notice form when the lender communicates with the homeowner in a language other than English or Spanish. Translated notices will be available on the Agency's web site at www.phfa.org. The Agency also urges lenders to have resources and staff available to assist homeowners who speak languages other than English in addition to ensuring that these resources are available to assist consumers with accessing HEMAP. Lenders are also advised that while the act may not require communication of the notice in alternative languages, other consumer protection statutes and certain Federal and State laws may mandate that lenders provide translation services to their consumers. The Agency also reminds lenders that they shall comply with all applicable laws regarding services to persons with disabilities.

Commentators suggested that "and" be added between each of the first three subsections in § 31.203. While the commentators were supportive of the restrictions on altering the notice, they encouraged the Agency to require that language be added to the outside of the envelope indicating that the notice is inside.

The Agency believes that the changes adequately convey that all four subparts are required, therefore

making the suggested "and" superfluous. The Agency declines to make the suggested revision.

Placing language on the envelope that contains the notice raises a variety of privacy implications and potential legal issues. While the objective of revising the notice is to promote greater access to HEMAP and to encourage homeowners to take advantage of the benefits offered, it is not clear that placing text on the envelope is necessary to assist homeowners. At the same time, placing information on the outside of an envelope may alert people seeing the envelope to the fact of the recipient's delinquency or default, creating privacy concerns as well as litigation risk under Federal consumer protection laws. The Agency is open to considering options that will promote HEMAP and inform homeowners about the availability of government assistance. The addition of language to notice envelopes, however, will not be mandated at this time.

Regarding § 31.203(b)(4), several commentators requested that the Agency require lenders to provide information within forbearance agreements advising homeowners that they may apply for HEMAP if they are eventually unable to fulfill the terms of the agreement.

The act gives the Agency the authority to regulate the implementation of HEMAP as well as to mandate a uniform notice that shall be sent to homeowners prior to the commencement of foreclosure proceedings. The delegated authority in the act, however, does not give the Agency the authority to regulate the content of underlying loan documents. Therefore, attempting to require lenders to include information regarding HEMAP in forbearance agreements is beyond the Agency's authority.

The Agency encourages lenders to provide this information at the time of execution of an agreement. Further, Chapter 31, Subchapter B requires counseling agencies that may be involved with facilitating the execution of a forbearance agreement or payment arrangement between a homeowner and lender notify both parties of this provision, which does not require the lender to send a new notice in the event that the homeowner is not able to fulfill the terms of the agreement. The Agency will also continue to actively pursue methods of better informing consumers of assistance that may be available.

Several comments were received regarding § 31.203(b)(5) requesting that the Agency maintain the legal standard known as the "mailbox rule." The Agency proposed establishment of a strict 30-day time period for receipt of the application, rather than allowing an extra 3 days under the legal mailing convention. Commentators were concerned that requiring that the Agency receive HEMAP applications within 30 days of the consumer's face-to-face meeting with the counseling agency provides more work for homeowners by requiring that they physically deliver the application to the Agency or another location designated by the Agency for HEMAP application delivery. Other commentators were concerned that this requirement could result in increased operating costs for counseling agencies, which may elect to use Priority Mail to ensure receipt by the Agency within the 30-day time frame. The commentators were also concerned that the Agency would deviate from its current practice of accepting applications that were initially lost in the mail, provided that the counseling agency is able to provide proof of the original mailing date.

Commentators also requested that the current required 33 days for timely face-to-face meetings be measured from the date of postmark of the notice, as opposed to the date

printed on the notice. This request originated from a concern that the 33-day period was being shortened due to the date on the notice and the postmark date on the envelope, in certain cases, not matching, with the latter being later in time.

The Agency reconsidered its position and will retain the 3-day allowance for mail receipt. Consistent with the act, however, the Agency will continue to instruct its counseling agencies to expeditiously submit applications within the 30-day time period proscribed in the act. Further, the Agency declines to adopt the postmark date as the sole measure for timely face-to-face meetings, and instead has adopted a presumption that the date printed on the notice is also the date of mailing. In the event of a discrepancy between the two dates, the Agency will consider the later of the two dates for purposes of establishing timeliness of face-to-face meetings with a counseling agency.

Commentators suggested an amendment to § 31.203(b)(12)(ii) that would stay foreclosure procedures while a HEMAP appeal to the Agency is pending.

The act clearly delineates the limitations on staying the foreclosure process in the act. Specifically, section 403-C(b)(7) of the act (35 P.S. § 1680.403c(b)(7)) states that “[a] late application or an administrative appeal will not stay foreclosure proceedings” As such, a proposed expansion of this limitation falls beyond the scope of the Agency’s administrative powers. Furthermore, it is the Agency’s position that the requested amendment is unnecessary as the act provides a remedy in the event that a denial of HEMAP assistance is reversed through the administrative appeals process. Section 403-C(b)(7) of the act also states that “in the event the application is approved by the agency, a commenced foreclosure proceeding shall be stayed unless and until the mortgagor fails to proceed to closing and the agency rescinds its approval.” Thus, the Agency declines to further stay the foreclosure process beyond the time frame designated in the act.

§ 31.205. Financial hardship due to circumstances beyond the homeowner’s control

Regarding § 31.205(c) (relating to financial hardship due to circumstances beyond the homeowner’s control), commentators suggested exempting necessary and ordinary expenses from the determination of whether a homeowner is suffering financial hardship due to circumstances beyond the homeowner’s control. Several commentators expressed concern that applicants will be denied based on expenditures made towards items other than mortgage payments, such as expenses related to the death or illness of a family member or necessary home repairs.

The Agency’s practice, as identified in Chapter 31, Subchapter B, has been and will continue to be to consider all relevant factors when assessing a homeowner’s financial circumstances and whether the financial hardship was beyond the homeowner’s control. Chapter 31, Subchapter B affirmatively exempts necessary and ordinary expenses from the determination of eligibility. Specifically, § 31.205(c)(4)(i) states that “[t]he homeowner’s continued payment of normal and necessary living expenses after the financial hardship occurred will not be considered evidence of poor financial management.” Chapter 31, Subchapter B also provides for the consideration of unanticipated and extraordinary expenses when determining eligibility for assistance. Examples of extraordinary expenses delineated in § 31.205(c) include “expenses related to death or illness

in the homeowner’s household or of family members living outside the household” in paragraph (6) as well as “expenses actually incurred related to uninsured damage or costly repairs to the mortgaged premises affecting its habitability” in paragraph (5). The amendments to Chapter 31, Subchapter B simply provide transparency regarding the Agency’s criteria and review process.

Several commentators opined that the proposed amendment to § 31.205(c)(4)(ii) was impermissible under the act. In addition to making HEMAP eligibility more stringent, the commentators believed that the proposed amendment placed an unduly burdensome requirement on homeowners, which may be difficult to fulfill.

The act delegates authority to the Agency to promulgate rules to administer HEMAP. Specifically, section 401-C(c) of the act states that “[t]he agency shall develop uniform notices and rules and regulations in order to implement the provisions of this article.” Therefore, the authority granted by the act allows the Agency to provide and apply its interpretation of the language in the act, unless the interpretation is clearly erroneous.

The act itself does not define “circumstances beyond his control,” thus the Agency’s interpretation is entitled to great weight and deference. Among the criteria assessed when determining whether a homeowner is suffering from circumstances beyond his control is whether the financial hardship was a result of money mismanagement or an over extension of credit to the homeowner. Terms and phrases such as “money mismanagement” and “over extension of credit” also remain undefined. Thus, the amendments to this section both clarify the Agency’s interpretation of that language and codify the Agency’s application of that criteria toward an eligibility determination.

When conducting an eligibility assessment, the Agency considers all relevant factors. The assessment recognizes that homeowners shall maintain normal and ordinary expenses. Conversely, the analysis also recognizes that some homeowners may struggle with financial management and that monetary mismanagement may be evidenced by certain unnecessary expenditures. A determination of eligibility for emergency mortgage assistance is made with consideration of the homeowner’s circumstances in their totality. Given these considerations, the Agency believes that the amendment is consistent with the act and the manner in which this criteria has been applied.

§ 31.205. Financial hardship due to circumstances beyond the homeowner’s control

§ 31.206. Reasonable prospect of resuming mortgage payments and paying mortgage by maturity

Several commentators believed that the proposed amendments to § 31.205(c) and (f) and § 31.206(a)(7) (relating to reasonable prospect of resuming mortgage payments and paying mortgage by maturity) are inflexible and should provide an additional means for homeowners to demonstrate that they have filed taxes. Furthermore, the commentators requested that the Agency delineate what forms will acceptably demonstrate that a homeowner is not required to file taxes.

The objective of the proposed amendment is to enable the Agency to obtain an accurate assessment of a homeowner’s finances, rather than, as the commentators suggest, verify whether a homeowner has, in fact, filed taxes. Much of the HEMAP eligibility criteria is predicated on a homeowner’s financial circumstances—

past, present and future. Accordingly, generating an accurate accounting of a homeowner's income is necessary.

Tax returns have proven to be an efficient and effective way to establish annual income for the current year and prior years. While homeowners often submit other financial documentation, such as bank statements and paystubs, these documents provide limited information as they may cover a shorter or erratic time frame. This type of documentation may also derive from various sources that calculate income slightly differently or contain different tax deductions. For example, an applicant who submits paystubs from a time period when he had seasonal employment in addition to full-time employment may appear to earn more income if paystubs solely from that time period are submitted and reviewed. In turn, a determination of eligibility based on that financial data alone may unfairly prejudice an otherwise eligible applicant. Similarly, an applicant who resides in this Commonwealth and has employment in another state may have different tax deductions, which affect gross income.

Time and resource restraints do not permit the Agency to assess an entire year of paystubs and bank statements, particularly when the analysis may yield less than accurate results. The Agency recognizes that other tax documents, such as Internal Revenue Service Form W-2, may also provide the necessary financial data and will permit applicants to submit Internal Revenue Service Form W-2, tax returns, tax transcripts and other documentation deemed acceptable by the Agency as fulfillment of the proposed requirement. Applicants who are not required to file taxes shall certify this on HEMAP applications. In cases when nontaxable, monetary benefits are received, applicants shall provide documentation demonstrating receipt of the benefit. In this circumstance, other financial documents evidencing household income may be submitted instead of Internal Revenue Service Form W-2, tax returns and tax transcripts.

§ 31.209. Appeals

Regarding § 31.209(e) (relating to appeals), commentators suggested that the Agency should retain the option of in-person hearings. The commentators also opined that TTY access and limited English proficiency interpreters should be provided for both telephonic and in-person hearings, and that the Agency should ensure this access in Chapter 31, Subchapter B.

The Agency discontinued in-person hearings in 2010 due to safety concerns raised as a result of several face-to-face appeal hearings. It is the Agency's position that telephonic hearings afford applicants the same rights and benefits that may be derived from in-person hearings without the expense and inconvenience to the applicant of traveling to Harrisburg. Discerning no distinction between the two forums and in the interest of preserving the well-being of its employees, additional amendments will not be made to this subsection. The Agency, however, will explore mechanisms to provide appeal hearings by other methods, such as video-conferencing.

Further, the Agency has consistently provided appropriate accommodations for applicants with hearing impairments as well as those that require the assistance of a language interpreter without cost to the applicant. Language interpreters are procured from an independent agency. Upon reasonable notice of the need for an accommodation, the Agency secures the necessary service. Access to this accommodation becomes available to the applicant on the date of the appeal hearing. Hearing

dates have also been postponed, when necessary, to acquire the necessary assistance for applicants who have failed to provide the Agency with prior notice.

Appendix A. Uniform notice

Several commentators suggested changes to the form of the notice. In general, the comments focused on stylistic and design elements aimed at drawing the attention of the consumer. Commentators opined that a lack of design may derogate the objective of creating greater access if the notice failed to capture the attention of the consumer. They suggested revisions to font, word placement and other similar visual changes. While the Agency recognizes these concerns and seeks to encourage homeowners to read the notice, it is the Agency's position that the notice is an informative, legal document and that design elements such as the ones suggested may detract from the information in the notice. The Agency declines to make the changes.

The Agency received a number of comments regarding the act of January 30, 1974 (P.L. 13, No. 6) (Act 6) (41 P.S. §§ 101—605), known as the Usury Law. Although the notice is promulgated under the act, section 403-C(b)(1) of the act references Act 6. Section 403-C(b)(1) of the act states that "[t]he agency shall prepare a notice which shall include all the information required by this subsection and by section 403 of the act of January 30, 1974 (P.L. 13, No. 6), referred to as the Loan Interest and Protection Law and referred to commonly as the Usury Law." Section 506 of Act 6 (41 P.S. § 506) sets forth that the Office of Attorney General and the Department of Banking and Securities (Department) have the authority to enforce Act 6.

As the entity charged with enforcing Act 6, the Department has consistently collaborated with the Agency regarding the revision of the notice from its inception and has played a considerable part in its development. The Department took a primary role in drafting much of the language pertaining to Act 6 in the notice, therefore ensuring its compliance with the statutory requirements of the act. Following the close of the comment period, the Department vigilantly assessed the comments relevant to Act 6 and, working closely with the Agency, developed responses to commentators' concerns. The positions of the Department and the Agency regarding the notice and its conformity to the requirements of Act 6 are summarized as follows.

Generally, the comments regarding Act 6 focused on section 403(c)(2), (5) and (6) of Act 6 (41 P.S. § 403(c)(2), (5) and (6)) and section 403(c)(3) of Act 6 (specifically, references to section 404(a), (b)(1) and (3) and (c) of Act 6 (41 P.S. § 404(a), (b)(1) and (3) and (c))). As a preliminary note, the Department and the relevant case law do not interpret Act 6 to mandate a verbatim recitation of the law in a foreclosure provided that the notice references the required topics. Comments regarding the Act 6 requirements are addressed in numerical order.

Section 403(c)(2) of Act 6. Comments were received which expressed concern that the notice fails to "clearly and conspicuously state the nature of the default claimed."

The Agency considered this comment and declines to make a change to the notice. The notice, including the account summary, references, multiple times, that the nature of the default is a mortgage debt. The account summary clearly and conspicuously displays the debtor's default information and requires lenders to not only list

the nature of the default, but to itemize fees and costs that shall be paid in addition to any other action that must be taken by the debtor.

Section 403(c)(3) of Act 6. A number of commentators questioned whether the notice incorporated the language of section 404(a), (b)(1) and (3) and (c) of Act 6 as cross-referenced by section 403(c)(3) of Act 6.

Section 403(c)(3) of Act 6 instructs lenders to advise debtors of the right to cure a default “as provided in section 404 of this act and exactly what performance including what sum of money, if any, must be tendered to cure the default.” Overall, section 404 of Act 6 sets timing limits on the rights of a residential mortgage debtor (debtor) to cure (subsection (a)), lists the requirements a debtor shall meet to cure a default (subsection (b)) and explains the position of a debtor after curing a default. Following is a discussion of section 404 of the act as it relates to section 403 of the act.

Section 404(a) of Act 6—This subsection limits a debtor’s right to cure a default to 1 hour prior to a sheriff sale or other judicial sale and to cure no more than three times in a calendar year. Although subsection (a) limits the timing of right rather than setting forth the information statutorily required under 403(c)(3) of Act 6, the Agency added “no more than three times in any calendar year” to the fifth paragraph of the notice for further clarification.

Section 404(b)(1) of Act 6—Under this subsection, a debtor is required to pay or tender “all sums which would have been due at the time of payment or tender in the absence of default and the exercise of an acceleration clause, if any” to cure a default. The Agency determined that no changes to the notice were necessary. The account summary section of the notice includes a box that requires a lender to itemize and describe the total amount past due that the debtor shall pay to cure the default and also reminds debtors that fees and costs continue to accrue from the date printed on the account summary.

Section 404(b)(3) of Act 6—Debtors are required to “[p]ay or tender any reasonable fees allowed under section 406 and the reasonable costs of proceeding to foreclosure as specified in writing by the residential mortgage lender actually incurred to the date of payment.” Section 406 of Act 6 (41 P.S. § 406) outlines the situations when a lender may require a debtor to pay attorney’s fees. After a thorough review, the Agency declined to make revisions related to this section as the fifth paragraph of the notice states that to cure the default the debtor must pay “attorney’s fees” in addition to any other amounts due, such as reasonable late charges and other fees necessary to bring the mortgage current.

Section 404(c) of Act 6—This subsection explains that the curing of a default “restores the residential mortgage debtor to the same position as if the default had not occurred.” Section 404(c) of Act 6 is a legal statement of the position of the debtor after the curing of a default. A recitation of this statement is unnecessary because it is not a condition of section 403(c)(3) of Act 6. Section 403(c)(3) of Act 6 obligates a lender to provide notice of the right to cure a default and the requirements placed on the debtor to cure the default. Thus, the Agency declines to make any further revision.

Section 403(c)(5) of Act 6. Commentators questioned whether the notice stated “the method or methods by

which the debtor’s ownership or possession of the real estate may be terminated” as stated in section 403(c)(5) of Act 6.

The foreclosure process ending in a sheriff’s sale is the method in this Commonwealth for a lender to terminate a debtor’s ownership or possession of the real estate. The notice references foreclosure and sheriff’s sale multiple times. The Agency will not further revise the notice as this requirement of Act 6 is satisfied.

Section 403(c)(6) of Act 6. Commentators expressed concern that the notice failed to address the right of the debtor in some circumstances to “transfer the real estate to another person subject to a security interest or to refinance the obligation and of the transferee’s right, if any, to cure the default” as stated in section 403(c)(6) of Act 6.

The Agency declines to make additional changes as the options in section 403(c)(6) of Act 6 are outlined under the third bullet in the third paragraph of the notice. Furthermore, the Agency added language to the fifth bullet in the notice advising homeowners of their right to challenge the debt as well as to assert other defenses to the foreclosure action.

Summary of Changes

In general, this final statement of policy incorporates several program clarifications and amendments to the notice. The most significant amendments:

- Relocate the existing parameters for mortgagees’ reimbursement of fees and costs by the Agency from Chapter 31, Subchapter B to the Agency’s web site to enable the Agency to update the parameters on a more frequent basis.
- Establish the requirements for receiving emergency mortgage assistance for an inherited property.
- Replace Appendix A, which sets forth the notice that lenders are required to send to homeowners who are delinquent in their home mortgages. The notice retains its status as a combined notice and continues to retain the information required under Act 6. The amendments significantly reduce and streamline the content of the notice and contain two pages. The first page describes HEMAP and how a homeowner may obtain an application for assistance, in addition to other rights prescribed by Act 6. The notice also includes an Account Summary, where mortgagees provide homeowner account and default information as required under Acts 6 and 91.
- Require mortgagees to send both English and Spanish language versions of the information on the first page of the notice.
- Provide guidance on implementing the revised notice.

Fiscal Impact

The Agency does not anticipate fiscal impact from the amendments to Chapter 31, Subchapter B.

Effective Date

The amendments to Chapter 31, Subchapter B will become effective upon publication. The revised notice must be used by September 1, 2016. Prior to that date, either the revised notice or the previously published notice may be used.

BRIAN A. HUDSON, Sr.,
Executive Director

(Editor's Note: Title 12 of the *Pennsylvania Code* is amended by amending statements of policy in §§ 31.201—31.207, 31.209 and 31.211 to read as set forth in Annex A, with ellipses referring to the existing text.)

Fiscal Note: Fiscal Note 39-11 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART I. GENERAL ADMINISTRATION

Subpart D. HOUSING FINANCE AGENCY

CHAPTER 31. HOUSING FINANCE AGENCY

Subchapter B. POLICY STATEMENT ON HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCE PROGRAM

§ 31.201. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

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Consumer credit counseling agency—A nonprofit corporation or governmental entity located in this Commonwealth which has been designated by the Agency to provide Homeowner's Emergency Mortgage Assistance Program counseling. A qualified consumer credit counseling agency shall either be certified as a housing counseling agency by the United States Department of Housing and Urban Development or otherwise be determined acceptable by the Agency. A list of counseling agencies approved by the Agency is set forth in Appendix C. This list was last updated and includes all changes through April 1, 2016. Future updates of this list will only appear on the Agency's web site at www.phfa.org, and will be updated on a periodic basis as changes occur. The Agency will annually publish a schedule for updates to the list, and mortgagees will be expected to update their lists in accordance with the schedule.

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Reasonable attorneys' fees and costs—Fees for legal services and reasonable and necessary costs related thereto, which are actually incurred by a mortgagee, in commencing or pursuing an action of mortgage foreclosure. The Agency will reimburse lenders for reasonable attorneys' fees and reasonable and necessary costs, which are actually incurred by a mortgagee, in commencing or pursuing an action of mortgage foreclosure and which meet the requirements or limitations on the Agency's web site at www.phfa.org. The Agency will reimburse lenders based upon a reasonable hourly rate as may be established by the Agency annually and published by the Agency in the *Pennsylvania Bulletin*.

Total housing expense—The sum of the mortgagor's monthly mortgage payments, including escrows, utility costs, hazard insurance expenses, real property taxes and, in the case of cooperatives and condominiums, the maintenance expense shall consist of the monthly amount the unit is assessed for the maintenance of common elements.

§ 31.202. Eligibility for mortgage loan assistance.

(a) Property must be all of the following:

(1) A one- or two-family owner-occupied residence.

(2) Secured by a mortgage, or other security interest in the case of a cooperative or condominium.

(3) The principal residence of the mortgagor.

(4) Located within this Commonwealth.

(b) A mortgage which is insured under Subchapter II of the National Housing Act (12 U.S.C.A. §§ 1707—1715z-25) and mortgages where the secured property is used primarily for commercial or business purposes are not eligible for assistance.

(c) A mortgage held by a noncorporate seller is not eligible for assistance unless the noncorporate seller elects, in writing, in the mortgage or elsewhere to be covered by sections 103 and 401-C—409-C of the act (35 P.S. §§ 1680.103 and 1680.401c—1680.409c). This election may be indicated by the issuance of an Act 91 notice—see Appendix A.

(d) A mortgagor is not eligible for a mortgage assistance loan if any of the following apply:

(1) The mortgage is more than 24 months delinquent or in default for more than 24 months under the terms of the mortgage.

(2) The aggregate amount of assistance needed to bring the mortgage delinquencies current exceeds \$60,000.

(3) The property is encumbered by more than two mortgages, other than a mortgage filed by the agency to secure repayment of the mortgage assistance loans, or by other liens or encumbrances which would unreasonably impair the security of the Agency's mortgage as determined by the Agency.

(e) The mortgagee shall have indicated to the homeowner, using the notice referred to in Appendix A, its intention to foreclose or initiate other legal action to take possession of the secured real property. This notice need not be sent to homeowners who do not qualify under subsection (a), (b), (c) or (d).

(f) If a homeowner is in bankruptcy and the automatic stay under 11 U.S.C.A. § 362 is still in effect, the lender is legally prevented from foreclosing. A homeowner who has been sent the notice referred to in Appendix A may apply to the Agency for a mortgage assistance loan while protected by the automatic stay. If the Agency approves the application and the homeowner is still protected by the automatic stay, the approval will be contingent upon the trustee and the bankruptcy court approving the incurring of the mortgage assistance loan by the homeowner.

(g) The homeowner shall meet all of the following requirements:

(1) Be a permanent resident of this Commonwealth.

(2) Have had a favorable residential mortgage credit history for the previous 5 years, as determined under § 31.205(c)(5) (relating to financial hardship due to circumstances beyond the homeowner's control).

(3) Be suffering financial hardship due to circumstances beyond his control which renders the homeowner presently unable to correct the delinquencies within a reasonable time and unable to make full mortgage payments. In determining if circumstances are beyond the homeowner's control, the Agency will consider the homeowner's credit history, employment record, assets, current and past household income, net worth and other relevant factors.

(4) Have a reasonable prospect of resuming full mortgage payments within 24 months after the beginning

of the period for which assistance payments are provided by the Agency and be capable of making any payments then remaining due on the mortgage in full by the maturity date or a later date to be agreed upon by the mortgagee.

(5) All owners of the residence shall execute—either personally or through a valid power of attorney—the mortgage and other related loan documents required by the Agency, except as follows:

(i) When the residence is owned by spouses who are separated and the applicant is occupying the mortgaged premises.

(ii) When the residence is jointly owned by former spouses, who are divorced, and the applicant, who is occupying the mortgaged premises, is unable to locate a former spouse or the applicant is unable to obtain a former spouse's consent to join in the application or sign the Agency's loan documents.

(6) When an individual has acquired the residence through inheritance, is able to demonstrate ownership of the residence, has assumed the mortgage and is occupying the mortgaged premises, the individual may be eligible for mortgage assistance provided that all other eligibility criteria are fulfilled. When more than one individual acquires a residence through inheritance, all owners of the residence shall execute—either personally or through a valid power of attorney—the mortgage and other related loan documents required by the Agency.

§ 31.203. Notice; application procedures.

(a) Before a mortgagee accelerates the maturity of a mortgage obligation, commences legal action including mortgage foreclosure to recover under the obligation or takes possession of a security of the mortgage debtor for the mortgage obligation, the mortgagee is required to give notice in accordance with the guidance and form set forth in Appendix A and subject to the following requirements:

(1) The notice is comprised of a one-page English language version with a Spanish language version on the reverse side. Following is an Account Summary which shall be completed by the mortgagee and which must contain all relevant account and default information. The form of notice is set forth in Appendix A. The form in Appendix A includes embedded instructions on format and fonts, which mortgagees should not include in final prepared notices to homeowners. The form in Appendix A may be available in downloadable form on the Agency's web site at www.phfa.org.

(2) Except for the entry of the date at the top of each page and the entry of the relevant homeowner account information on the Account Summary, the notice shall be sent without modification or alteration of its form or substance. The notice may not appear on company letterhead. Other changes including formatting changes to font or type size or the alteration of language contained in the body of the notice are not permitted.

(3) The portion of the notice entitled Account Summary may be amended to include the relevant homeowner's complete account information only. The mortgagee may increase or decrease the height of cells within the table to accommodate the homeowner account information specifically indicated. In no circumstance may a mortgagee add or remove any additional fields or cells. Fields that do not apply to a homeowner's account shall be filled "Not Applicable" or "N/A."

(4) Each notice must include the English and Spanish language versions set forth in Appendix A, with the

Spanish language version appearing on the reverse side of the English language version. In addition to the required mailing of the English and Spanish versions set forth in Appendix A, mortgagees are encouraged to send other translated versions of the first page of the notice when reasonably necessary. Several alternative language versions of the notice are available on the Agency's web site at www.phfa.org. Mortgagees are also encouraged to ensure information is available to homeowners who have limited English proficiency. Mortgagees are reminded that they are required to provide accommodations for persons with disabilities as may be required by law.

(5) Each notice must include the list of consumer credit counseling agencies as updated periodically on the Agency's web site at www.phfa.org. While this list of counseling agencies will be continuously available on the Agency's web site a schedule of maintenance updates to the list will be provided by the Agency on an annual basis in the *Pennsylvania Bulletin*. It is the Agency's intention that the annual notice be provided to the industry to reflect new addresses, updates in contact information and other timely adjustments to the list. Mortgagees are expected to check the Agency's web site on the scheduled dates to ensure they are providing the most current counseling agency contact information in the notice. Counseling agencies must provide the Agency with any updates to mailing addresses, phone numbers and any other pertinent updates as these changes occur.

(6) The notice shall be sent:

(i) By first class mail to the last known address of all homeowners and, if different, the residence which is the subject of the mortgage.

(ii) By registered or certified mail.

(iii) Without any other information or materials.

(iv) If using a window mailing envelope, with either of the following:

(A) An addressed single sheet of plain, white paper.

(B) A mailing insert containing either the last known address of the homeowner or the residence which is the subject of the mortgage.

(7) The notice should be sent at the point the homeowner is at least 60 days contractually delinquent in his mortgage payments or is in violation of other provisions of the mortgage. When the original mortgagor is deceased, mortgagees are encouraged to send the notice to the mortgaged premises at the point that mortgage payments are at least 60 days contractually delinquent.

(8) A mortgagee is not required to send the notice required by this subchapter (unless the homeowner has cured his mortgage delinquency, by means of a mortgage assistance loan or otherwise) as follows:

(i) To homeowners who do not qualify for mortgage assistance under § 31.202(a), (b) or (c) (relating to eligibility for mortgage loan assistance).

(ii) To homeowners who are more than 24 months delinquent or in default for more than 24 months under the terms of the mortgage.

(iii) If the aggregate amount of arrearages due to a mortgagee pursuant to the terms of the mortgage, without regard to any acceleration under the mortgage including the amount of principal, interest, taxes, assessments, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums, exceeds the sum of \$60,000.

(iv) To a homeowner who has already been sent the notice and who did not apply for a mortgage assistance loan, or who applied for a mortgage assistance loan but whose application was denied, or whose mortgage assistance disbursements were terminated by the Agency for any reason.

(9) Unless the homeowner has cured his mortgage delinquency, by means of a mortgage assistance loan or otherwise, receipt of partial payments of arrears from the homeowner, subsequent to the sending of the notice, does not mean that the mortgagee shall send a new notice to the homeowner prior to legal action being taken to enforce the mortgage.

(10) A notice sent to the homeowner, while the homeowner was in bankruptcy, shall be valid and no new notice need be provided as a result of any discharge or dismissal of the bankruptcy petition or relief from the automatic stay.

(11) A notice sent under this subchapter, in the form prescribed in Appendix A, shall be instead of any other notice required by State law. If notice is not required to be sent under this subchapter, the mortgagee may still be required to send the 30-day notice required by the act of January 30, 1974 (P.L. 13, No. 6) (41 P.S. §§ 101—605), known as the Usury Law.

(b) When the homeowner has been sent a notice as required under this subchapter—see Appendix A—by the lender holding the mortgage, the following apply:

(1) The homeowner shall arrange for and attend a face-to-face meeting with a consumer credit counseling agency listed in the notice. The meeting shall be held within 30 days of the date printed on the notice, plus an additional 3 days to allow for mailing period. The Agency presumes that the date printed on the notice is the same as the postmark date of the notice. When the date printed on the notice and the postmark date are not the same as determined by the Agency, the later date will be used to measure the timeliness of the face-to-face meeting.

(2) If the homeowner meets with a consumer credit counseling agency within the period specified in paragraph (1), notice of the holding of and date of the meeting shall be given within 5 business days of the meeting by the consumer credit counseling agency to known mortgagees holding a mortgage on the principal residence of the homeowner. For the purpose of this subchapter, it is the obligation of the mortgagor to notify the consumer credit counseling agency of the name and address of all mortgagees. A mortgagee may not pursue legal action against the homeowner's property if the homeowner meets with the consumer credit counseling agency within 33 days of the postmark date of the notice and for an additional period of 30 days subsequent to the meeting between the homeowner and the consumer credit counseling agency, while the application is being prepared to be sent to the Agency. A mortgagee may not proceed with legal action against the homeowner once an application has been approved by the Agency and shall cooperate with the Agency in obtaining reinstatement figures and executing a reinstatement agreement.

(3) The consumer credit counseling agency notice—see Appendix B—to the mortgagee will indicate that the homeowner intends to apply for homeowner's emergency mortgage assistance payments.

(4) If after a face-to-face meeting, the homeowner/mortgagor and mortgagee reach an agreement to resolve the delinquency or default as stated in paragraph (1) and if, because of circumstances beyond the homeowner's

control, the homeowner is unable to fulfill the obligations of that agreement, the homeowner may apply to the Agency or its authorized agent for homeowner's emergency mortgage assistance payments within 30 days of a default in payment under the agreement previously reached. The mortgagee is not required to send an additional notice under this provision. The Agency encourages the mortgagee to advise the homeowner of this provision at the time any loss mitigation or forbearance agreement is arranged. If a consumer credit counseling agency is involved, the counseling agency shall notify both the homeowner and the mortgagee of this provision at the time the forbearance agreement is arranged.

(5) An application for assistance may only be obtained from a consumer credit counseling agency. The consumer credit counseling agency will assist the homeowner in preparing and submitting an application. This application shall be postmarked or filed at the offices of the Agency or at a location designated by the Agency within 30 days of the initial meeting between the homeowner and the consumer credit counseling agency.

(6) If the consumer credit counseling agency assists the homeowner in the preparation or submittal of an application for assistance, it will, within 5 business days, inform the known mortgagees of the date of the application submittal.

(7) If the homeowner does apply to the Agency, the Agency will notify known mortgagees holding a mortgage on the principal residence of the homeowner of the receipt of the application.

(8) The Agency will determine eligibility for assistance within 60 days of receipt of the application, during which time no mortgagee may pursue legal action to foreclose upon the mortgage on the homeowner's principal residence.

(9) Within 5 business days of making the determination of the eligibility for assistance, the Agency will notify known mortgagees as to whether the application has been approved, disapproved or if funds are not available. If the mortgagee does not receive this notice of disposition or determination within 60 days—plus 5 business days for notification—of receipt of the application by the Agency, or if the notice indicates the application has been disapproved, the applicant was determined to be ineligible for assistance or that funds are not available, the mortgagees may then take legal action to enforce the mortgage.

(10) If after receiving an Appendix A notice the homeowner cures the delinquency or default with or without mortgage assistance from the Agency and the homeowner subsequently becomes more than 60 days delinquent, the mortgagee shall again provide the Appendix A notice before taking legal action.

(11) If the homeowner fails to meet with an approved consumer credit counseling agency within the period specified or fails to meet other time limitations in this subchapter, the mortgagee may take legal action to enforce the mortgage. A homeowner may file a late application and in that case the Agency will make a determination within 60 calendar days of receipt of the application. A late application will not prevent the lender from starting and pursuing a foreclosure action, but if the application is eventually approved at any time before a sheriff's sale, the foreclosure must be stopped.

(12) If the Agency determines that the applicant does not qualify for assistance, the following apply:

(i) The applicant may not reapply for assistance for 24 months from the date of eligibility determination under a

mortgage obligation unless there is a material change in the applicant's financial circumstances.

(ii) An applicant who is denied a mortgage assistance loan may request an administrative hearing under § 31.209 (relating to appeals). This request does not prohibit a mortgagee from pursuing legal action to enforce the mortgage.

(c) Payments under this subchapter shall be provided for a period not to exceed 24 months, either consecutively or nonconsecutively, whether the payments are on account of arrears, continuing monthly assistance or any combination thereof, and may not exceed the sum of \$60,000 on behalf of any mortgagor.

§ 31.204. Agency review.

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(b) Agency responsibilities include the following:

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(3) The Agency will determine whether the homeowner has a reasonable prospect of being able to resume full mortgage payments within 24 months after the beginning of the period for which assistance payments are provided by the Agency and of being able to pay the mortgage in full by the maturity date or by a later date agreed to by the mortgagee for completing mortgage payments. If the term of the mortgage matures prior to or during the period of assistance, the mortgagor may still be eligible for assistance under this subchapter, except as provided in § 31.206(d) (relating to reasonable prospect of resuming mortgage payments and paying mortgage by maturity).

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§ 31.205. Financial hardship due to circumstances beyond the homeowner's control.

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(c) *Disallowance.* The following circumstances will not be considered by the Agency to be beyond the mortgagor's control:

(1) The mortgage of the property for commercial or business purposes.

(2) Termination of employment by the homeowner without a necessitous cause or termination of the homeowner's employment by an employer for willful misconduct.

(3) When the homeowner had sufficient income to pay his mortgage, but failed to do so. In this regard, if the homeowner's total housing expense is less than or equal to 40% of net effective income, and no reasonable cause for financial hardship is demonstrated by the homeowner, nonpayment of the mortgage debt will not be considered to be a circumstance beyond the homeowner's control.

(4) When the homeowner's financial hardship was a result of money mismanagement or an over-extension of credit to the homeowner. In this regard, the Agency will consider the following in determining whether the homeowner used prudent financial management:

(i) The homeowner's continued payment of normal and necessary living expenses after the financial hardship occurred will not be considered evidence of poor financial management. The homeowner's continuing to make reasonable payments on debts reasonably incurred prior to the financial hardship also will not be considered evidence of poor financial management.

(ii) Debts incurred, expenditures made by the homeowner for non-necessities or failure to evidence reasonable efforts to modify or reduce unnecessary expenses during the financial hardship, which exceeded the homeowner's ability to pay, will be considered evidence of poor financial management.

(5) When the homeowner has had an unfavorable mortgage credit history prior to the present delinquency. The Agency will determine that a homeowner has had an unfavorable residential mortgage credit history if, prior to the present mortgage delinquency, the homeowner was in arrears on a residential mortgage for more than 3 consecutive months within the previous 5 years, except for delinquencies which were the result of financial hardship due to circumstances beyond the homeowner's control.

(d) *Eligibility.* The fact that a circumstance which was beyond the homeowner's control occurred before the homeowner actually ceased making mortgage payments does not preclude eligibility. A homeowner may, for example, suffer a loss in income but continue to pay the mortgage from savings, inheritance or borrowing and then later fall behind when the savings or other sources of funds run out.

(e) *Cause of financial hardship.* In determining the cause of the financial hardship, the Agency will determine whether the cause is one event—such as the loss of a job, separation or divorce, sickness or injury—or whether a series of factors beyond the homeowner's control, in combination, caused the financial hardship.

(f) *Information required.* The homeowner shall provide sufficient information, including tax returns, Internal Revenue Service Form W-2, tax transcripts and other documentation deemed acceptable by the Agency to allow the Agency to assess household income and the reasons for the mortgage delinquency. The Agency will base its decision on the information received from the homeowner or other sources. The lack of sufficient information from the homeowner which is reasonably available to the homeowner, or the receipt of knowingly false or misleading information from the homeowner may result in a denial of the application on the merits.

§ 31.206. Reasonable prospect of resuming mortgage payments and paying mortgage by maturity.

(a) In general, the Agency will consider all relevant factors when evaluating whether the homeowner has a reasonable prospect of being able to resume full mortgage payments within 24 months after the beginning of the period for which assistance payments are provided the Agency and of being able to pay the mortgage in full by maturity or by a later date agreed to by the mortgagee, including the following:

(1) The homeowner's prior work history, experience, training, opportunities for retraining and similar factors which may affect the homeowner's future employment opportunities.

(2) Potential for future changes in the homeowner's financial prospects through re-employment, schooling, training or debt reduction, or other income changes sufficient to enable the homeowner to resume full mortgage payments.

(3) Noncash benefits that may reduce household expenses, such as food stamps, free medical services for military or low-income families, a company-provided automobile, or receipt of food or clothing from family members living outside the household.

(4) Changes in income or recurring expenses, or both, that may be affected by changes in the age, composition or employment of members of the household.

(5) Potential for repayment of short-term or installment debt.

(6) Delinquencies in other debts which seriously jeopardize continued ownership of the home, which cannot be cured by a mortgage assistance loan.

(7) A homeowner's demonstrated ability to make regular monthly mortgage payments, even though those payments represented most of the homeowner's income. In determining whether the homeowner's future job and income prospects will be sufficient to enable the homeowner to pay the mortgage debt—including principal, interest, taxes and insurance—the Agency will take into consideration the amount of household income available to the homeowner for a reasonable period of time not to exceed 24 months prior to the circumstances which caused the mortgage delinquency and whether the income was sufficient as evidenced by documentation, including tax returns, Internal Revenue Service Form W-2 and tax transcripts. If a homeowner is not required to file taxes, certification of this fact is mandatory at the time of application. In cases when nontaxable income is earned or financial government benefits are received, documentation evidencing receipt of the income or benefits shall be provided.

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§ 31.207. Repayment.

(a) The Agency will establish loan repayment schedules and prepare appropriate forms, instructions and documents concerning repayments or the security for its assistance.

(b) The Agency will enter into an agreement with the homeowner for repayment of mortgage assistance plus interest.

(1) Interest shall accrue at the rate of 9% per year except for loans closed starting January 1, 2009, and thereafter, in which case the rate of interest will be determined by the Agency under section 406-C(5) of the act (35 P.S. § 1680.406c(5)) and as set forth on the Agency's web site at www.phfa.org.

(2) Except as provided in subsection (c), interest shall start to accrue when the homeowner begins to make repayment, and will accrue only during the period in which the homeowner is required to make repayment. Interest will not accrue in an amount greater than the amount of repayment required.

(3) When the mortgage for which mortgage assistance was made under this program is paid, and the homeowner's emergency mortgage assistance payments are still due to the Agency, interest will begin to accrue on the outstanding balance, including accrued interest, of the payments made on the homeowner's behalf at the same interest rate and on the same basis as specified in the mortgage for which assistance payments were made.

(4) If the residence is no longer owner occupied, the entire balance of the homeowner's emergency mortgage assistance loan will immediately be due and payable. The Agency will permit an assumption of the mortgage debt in appropriate cases, such as when the original mortgagor dies and a family member becomes the owner-occupant of the property and wishes to become legally responsible for the debt.

(c) Beginning February 1, 1999, and continuing thereafter, a mortgagor who has received mortgage assistance shall pay to the Agency a minimum monthly repayment of at least \$25 for each mortgage that was assisted. The minimum monthly repayment shall be applied to the principal of the debt and will not result in the accrual of interest on the mortgage assistance loan.

(d) The Agency will require full or partial repayment of the mortgage assistance loan once the mortgagor has established credit to the extent that there is sufficient equity in the property for the mortgagor to be able to refinance their mortgage obligations at reasonable rates and terms as determined by the Agency.

§ 31.209. Appeals.

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(e) The hearing examiner will notify the appellant as to the date and time of the hearing, as determined by the Agency. The Agency will attempt to schedule hearings within 30 days after the request is received. The hearing may be conducted by a telephone conference call. The hearing examiner shall also provide notice to the mortgagees that an administrative appeal has been filed.

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§ 31.211. Act 91 Notices; information to be supplied to the Agency.

(a) *Notification.* The mortgagee or other person sending the Act 91 Notice shall either send a copy of the notice or information concerning notices sent to the Agency in either of the following manners:

(1) *Electronic reporting.* Instead of sending an actual copy of each notice as set forth in paragraph (2), the Agency recommends that the mortgagee or other person sending the Act 91 Notice provide the Agency with a report of notices sent as an e-mail attachment to Act91@phfa.org including the following information and in the following format:

- (i) The date of the Act 91 Notice.
- (ii) The name of lender/servicer on whose behalf it was sent.
- (iii) The street address of the property being foreclosed upon, divided by Address Line 1 and Address Line 2. When there is not an Address Line 2, the field may be left blank.
- (iv) The city, state and zip code, including the four-digit zip code extension (if available), of the address being foreclosed upon. If the four-digit zip code extension is not available, this field may be left blank.

Date of Act 91 Notice	Address 1	Address 2	City	State	5-digit zip	4-digit extension	Current Lender
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(2) *Copy of the notice.* The mortgagee may send an actual copy of each notice sent to the Agency by one of the following methods:

(i) Regular mail addressed as follows:

PHFA-HEMAP
P.O. Box 15530
Harrisburg, PA 17105-5530

(ii) Overnight mail addressed as follows and hand deliveries to:

PHFA-HEMAP
211 North Front Street
Harrisburg, PA 17101

(iii) Facsimile sent to either of the following fax numbers:

Toll free: (877) 207-0205
Local: (717) 780-4340

(iv) E-mail a scanned copy to Act91@phfa.org.

(b) *Multiple notices.* If more than one notice is sent (such as, when the mortgagors live somewhere other than the mortgaged property or when there are multiple mortgagors and individual notices are sent to each) only one entry should be made in the report since only one property is being foreclosed upon.

(c) *Frequency of reports.* The mortgagee may send a report as set forth in subsection (a)(2) on a monthly basis, for notices sent during the previous month, or they may send a report on a quarterly basis listing the notices sent during the prior calendar quarter. Quarterly reports shall be sent within 30 days after the end of each calendar quarter.

(d) *Effective date.* Copies of notices or reports, or both, as set forth in this section shall be sent for notices sent on or after October 1, 2008.

APPENDIX A

All paragraphs contained within the body of the notice shall appear in 12 point font.

Date: _____

Act 91 Notice* (24 point font, bold)

La Notificación de Acto 91* (14 point font, bold)

Save Your Home From Foreclosure (20 point font, bold)

This is an official Act 91 Notice. You are receiving this notice because Pennsylvania law requires mortgage lenders to send it to homeowners facing foreclosure. This notice contains important legal information about your rights and how you can save your home. **YOU MAY BE ELIGIBLE FOR STATE FUNDED ASSISTANCE** from the Homeowner's Emergency Mortgage Assistance Program (HEMAP), a program of the Pennsylvania Housing Finance Agency (PHFA).

CALL A COUNSELING AGENCY FOR A MEETING. APPLYING FOR HEMAP MAY TEMPORARILY STOP A FORECLOSURE ACTION.

To apply, you **must** have a face-to-face meeting with a HEMAP-approved Consumer Credit Counseling Agency **within 33 days** of the date of this notice. This meeting is free and is the only way to apply for HEMAP. A list of approved Counseling Agencies is attached. A list is also available at <http://www.phfa.org/counseling/hemap.aspx>. If after speaking with a Counseling Agency you have further questions about HEMAP, please call 1 (800) 342-2397. Individuals with hearing impairment may call 711 (RELAY).

To make sure you meet the deadline, please call a Counseling Agency **immediately** to schedule a face-to-face meeting. Take this entire Act 91 Notice, including the attached Account Summary, with you to your face-to-face meeting. A counselor can:

- Help you apply for HEMAP and explain how the program works.
- Talk with your lender about a loan modification or other repayment plan.
- Explain possible options to avoid foreclosure such as loss mitigation, refinancing your loan, selling or transferring your property to a third party or having a third party cure the delinquency on your behalf through a short sale or assumption of mortgage.
- Provide referrals for other assistance, programs or services.
- Explain other rights you may have, including your right to assert the non-existence of the debt and any other defenses you may have.

Even if you miss the deadline, you may still apply for HEMAP, but a late HEMAP application will not stop your lender from foreclosing. However, if your application is approved, a HEMAP assistance loan will bring your mortgage current and stop the foreclosure. HEMAP may also temporarily help you make future mortgage payments.

Alternatively, you may save your home from foreclosure by curing your default. That means paying your lender all amounts currently due, including reasonable late charges, attorney fees and other costs and by otherwise fulfilling your mortgage obligations. You may cure the default at any time up to one hour before a Sheriff's Sale, up to three times in any calendar year.

If you have filed a petition in **bankruptcy**, this notice is provided for informational purposes only and is not an attempt to collect a debt. If you are protected by a bankruptcy filing you may still apply for HEMAP assistance.

*CONSULTE AL DORSO LA TRADUCCIÓN DE ESTA NOTIFICACIÓN IMPORTANTE, O LLAME AL 1.800.342.2397.

Fecha: _____

Notificación sobre la Ley 91*

Act 91 Notice*

Salve a su Hogar de la Ejecución Hipotecaria

La presente es una notificación oficial sobre la Ley 91. Usted está recibiendo esta notificación porque la ley de Pennsylvania requiere que los prestamistas hipotecarios la envíen a los propietarios de viviendas que se encuentren enfrentando una ejecución hipotecaria. Este aviso contiene información legal importante acerca de sus derechos y de lo que puede hacer para salvar su hogar. **ES POSIBLE QUE SEA ELEGIBLE PARA OBTENER AYUDA CON FONDOS ESTATALES** del Programa de Asistencia de Emergencia Hipotecaria para Dueños de Hogares (HEMAP, por sus siglas en inglés), un programa de la Agencia de Financiamiento de Hogares de Pennsylvania (PHFA, por sus siglas en inglés).

**LLAME A UNA AGENCIA DE ASESORAMIENTO PARA CONCERTAR UNA REUNIÓN.
LA SOLICITUD PARA EL HEMAP PUEDE DETENER DE FORMA TEMPORARIA LA EJECUCIÓN DE UNA HIPOTECA.**

Para presentar su solicitud, debe celebrar una reunión presencial con una Agencia de Asesoría Crediticia para el Consumidor aprobada por el HEMAP, antes de que transcurran 33 días, a partir de la fecha de esta notificación. Esta reunión es gratuita y es la única manera de solicitar el HEMAP. Se adjunta una lista de Agencias de Asesoría aprobadas. También puede encontrar una lista en <http://www.phfa.org/counseling/hemap.aspx>. Si luego de hablar con una Agencia de Asesoría tiene alguna pregunta sobre el HEMAP, por favor llame al 1 (800) 342-2397. Las personas con discapacidades auditivas pueden llamar al 711 (RELÉ).

Con el fin de asegurar que cumpla con el plazo, por favor llame a una Agencia de Asesoría y programe una reunión presencial **de inmediato**. Lleve esta Notificación sobre la Ley 91, junto con el Resumen de Cuenta adjunto, a su reunión presencial. Un asesor puede:

- Ayudarlo a presentar su solicitud al HEMAP y explicarle cómo funciona el programa.
- Hablar con su prestamista acerca de una modificación del préstamo u otro plan de pago.
- Explicarle las opciones posibles para evitar la ejecución de la hipoteca, como la mitigación de pérdidas, la refinanciación del préstamo, la venta o transferencia de su propiedad a un tercero, o que un tercero pague el atraso en su nombre, a través de una venta al descubierto o asumiendo la hipoteca.
- Derivarlo a otro tipo de asistencia, programa o servicio.
- Explicarle otros derechos que pueda tener, incluido su derecho de reivindicar la no existencia de la deuda y cualquier otra defensa que tenga.

Incluso si no cumple con el plazo, es posible presentar su solicitud para el HEMAP, pero la solicitud tardía al HEMAP no impedirá que su prestamista ejecute la hipoteca. Sin embargo, si se aprueba su solicitud, el préstamo de ayuda del HEMAP pondrá su hipoteca al día y detendrá la ejecución. El HEMAP también puede ayudarlo, de manera temporal, a realizar los pagos de hipoteca futuros.

También puede optar por la alternativa de subsanar el incumplimiento para salvar a su hogar de la ejecución hipotecaria. Eso significa pagarle a su prestamista todos los montos adeudados a la actualidad, incluidos los cargos moratorios, los honorarios de abogados y otros costos razonables, y cumplir con sus obligaciones hipotecarias. Puede subsanar el incumplimiento en cualquier momento, hasta una hora antes de la subasta judicial, un máximo de tres veces por cada año calendario.

Si usted ha presentado una solicitud de quiebra, esta notificación se proporciona solo con fines informativos y no es un intento de cobrar una deuda. Usted puede solicitar la ayuda del HEMAP, incluso si está protegido por una declaración de quiebra.

*SEE REVERSE SIDE FOR TRANSLATION OF THIS IMPORTANT NOTICE OR CALL 1.800.342.2397. (10 POINT FONT)

ACT 91 NOTICE

PAGE 2

STATEMENTS OF POLICY

ACT 91 NOTICE (12 point font, bold)
Account Summary (12 point font, bold)

Your Loan Details: (16 Point Font, Bold)¹

Name(s) on Account: (12 Point Font) ²	[Name(s)] The name(s) of the homeowner(s) and any other name appearing on the account; if the notice is being provided to additional parties not appearing on the account, the names of the additional parties shall be included under the names of the homeowner and other names appearing on the account. (12 Point Font) ³
Address of Mortgaged Property:	[Address] The address of the mortgaged property. [Address]
Account Number:	[Account Number] The account number used by the mortgagee to reference the homeowner's account.

How to Contact Your Lender:

Current Lender or Servicer:	[Lender or Servicer Name] The name of the current Lender/Servicer for the account.
Lender or Servicer Address:	[Address] The address of the current Lender/Servicer [Address] for the account.
Lender or Servicer Phone Number:	[Phone Number] The general phone number for the Lender/Servicer (i.e., a 1(800) number).
Contact Person:	[Name] The name of a contact person at Lender/Servicer for the account.
Phone Number:	[Phone Number] The direct phone number for the contact person for the account.
Fax Number:	[Fax Number] The fax number for the contact person for the account.
Email:	[Email Address] The email address for the contact person for the account.

Default Information:

Monthly Payments Missed:	[Months missed e.g., Jan. 2014-August 2014]
Total Amount Past Due:	\$(amount(s))⁴ ; itemize and describe; <i>*Please be aware that fees and costs may continue to accrue through the duration of the delinquency.</i> An itemization of all amounts necessary to cure the delinquency, including fees and costs. Language regarding the continued accrual of fees should appear at the end of the itemization.

¹ All Table headings shall appear in 16 point font, bold.

² All Field headings shall appear in 12 point font.

³ All account information shall appear in 12 point font unless otherwise indicated.

⁴ All amounts listed in this field shall appear in 12 point font, bold. The itemization and description of the amounts shall not appear in bold.

How to Cure the Default:

Within 30 Days of the Date on This Notice:	Pay \$[amount] ⁵ , plus any payment and other charges that have become due to your lender or servicer by cash, cashier's check, certified check or other means acceptable to both parties.
Send Payment and Make Payable to:	[Lender or Servicer Name]Lender/Servicer name and [Address]address where the Lender/Servicer receives [Address]payment.
To Cure "Other Default":	[describe]Action homeowner must take to remedy a default other than a financial default.
Is the Mortgage Assumable?	Language indicating whether the mortgage is assumable. If the mortgage is assumable, the text in this box should read, "Yes, you may sell or transfer your home to a buyer or transferee who will assume the mortgage debt, if all the outstanding payments, charges and attorneys fees and costs are paid prior to or at the sale and if the other requirements of the mortgage are satisfied." If the mortgage is not assumable, the text in this box should read "No" only. If the mortgage is not assumable under the terms of the contract, but the Lender is willing to discuss the possibility of allowing an assumption of the mortgage, the text in this box should read "No, but please contact your Lender to discuss your options."

⁵ All amounts listed in this field shall appear in 12 point font, bold.
 ACT 91 NOTICE PAGE 4