

**Pennsylvania Housing Finance Agency
Meeting of the Board
April 14, 2016**

Members Present:

- *Robin Wiessmann, Chair
- *Thomas B. Hagen, Vice Chair
- *Craig H. Alexander
- *Maria F. Coutts
- *Ronald F. Croushore
- *Lisa Watson (serving in the stead of
Ted Dallas, Secretary, Department
of Human Services)
- *Kathy Possinger (serving in the stead of
Dennis Davin, Secretary of Department
of Community and Economic Development)
- *Noel Eisenstat
- *Lisa R. Gaffney
- *Ross Nese
- *John Paone
- *Keith Welks (serving in the stead of
Timothy Reese, State Treasurer)
- *Mark Schwartz

*On Telephone conference call

Others Present:

Brian A. Hudson, Executive Director
Rebecca L. Peace, Chief Counsel
William Fogarty, Director of Government Affairs
Carl Dudeck, Director of Housing Management
Holly Glauser, Director of Development
Bryce Maretzki, Director of Strategic Policy & Planning
Kate Newton, Director of Homeownership Programs
Kim Boal, Director of Information Technology
Scott Elliott, Director of Communications
John Zapotocky, Director of Accounting
JoLynn Stoy, Associate Counsel
Clay Lambert, Business Policy Officer
Thomas Brzana, Director of Loan Servicing
Joseph Knopic, Director of Finance
Steve O'Neill, Assistant Counsel
Chris Anderson, Communications Officer
David Doray, Manager of Multifamily Underwriting
Stan Salwocki, Manager of Architecture and Engineering
*Barbara Stephens, Public Affairs Officer
Lori Toia, Director of HEMAP

Members Absent:

Jada Greenhowe, Assistant Counsel
Cindy Daley, Housing Alliance
Maggie A. Strawser, Assistant Secretary
Charlotte L. Nelson, Assistant Secretary
Carrie M. Barnes, Secretary

A meeting of the Members of the Board of the Pennsylvania Housing Finance Agency was held on Thursday, April 14, 2016 at 10:30 a.m. at the offices of the Pennsylvania Housing Finance Agency, 211 North Front Street, Harrisburg, Pennsylvania.

In compliance with the provisions of the Sunshine Act, notification of this meeting appeared in the Legal Notices Section of *The Patriot News* in Harrisburg, Dauphin County on April 3, 2016.

1. CALL TO ORDER AND ROLL CALL

The meeting was called to order by Chair Wiessmann at 10:30 a.m. The roll was called and a quorum was present.

2. APPROVAL OF THE MINUTES FROM THE MARCH 10, 2016 BOARD MEETING

There were no additions or corrections to the minutes.

A motion that the minutes from the March 10, 2016 Board meeting be approved as submitted. This motion was seconded and was unanimously approved.

3. PROPERTY WORKOUT PRESENTATION

**A. Magnolia Mews
Philadelphia, Philadelphia County**

Mr. Dudeck outlined the project specifics. He reported that the owner has submitted a refinancing proposal for this property to make much needed capital improvements. The proposal includes paying off the primary mortgage loan and repaying 50 percent of the outstanding support loan as payment in full. Mr. Dudeck stated that the capital improvements are extensive. The owner has agreed to establish a reserve to partially cover the necessary improvements.

This project has a 20 year HAP contract that doesn't expire until 2032 so the property will remain as affordable housing.

Staff recommends approval of this refinancing request.

Chair Wiessmann asked if this is something the Agency has done in the past. Mr. Dudeck responded that this has been done several times. This refinancing will enable the owner to make the necessary capital improvements to benefit the tenants. The project is nearly 25 years old and definitely in need of improvements.

Mr. Hudson added that Agency staff will work with the owner to evaluate the capital improvements which need to be done.

Mr. Nese made a motion that the Board approve the resolution authorizing the workout for Magnolia Mews. This motion was seconded by Mr. Eisenstat and was unanimously approved. (See Appendix 1 of these Minutes.)

4. REVIEW OF HEMAP GUIDELNES AND ACT 91 NOTICE

Mr. Hudson reported that the HEMAP and Policy Committees met prior to the Board meeting for an in depth review of the changes made to the HEMAP Guidelines and Act 91 Notice. He thanked the Agency's legal staff, Mr. Fogarty and Ms. Toia for their work during the process of updating the documents.

Mr. Paone, as Chair of the HEMAP Committee, reported that Ms. Peace gave a very thorough report of the changes made to both the Guidelines and the Act 91 Notice during the committee meeting. Committee members concurred that the changes were necessary and voted in favor of the suggested changes.

Mr. Schwartz, as Chair of the Policy Committee, reported that the Policy Committee members agreed that staff did a good job in revising the HEMAP documents and streamlining the process. He believes that the improvements made to these documents will encourage homeowners to apply for assistance.

Mr. Hudson reported that several staff members from the Department of Banking and Securities were very involved and he thanked Chair Wiessmann for allowing them to participate in this process.

Staff requests the Board's approval of the amended HEMAP Guidelines and Act 91 Notice.

Mr. Schwartz made the motion that the Board approve the updates to the HEMAP Guidelines and the Act 91 Notice as presented by staff. This motion was seconded by Mr. Paone and was unanimously approved. (See Appendices 2 and 3 of these Minutes.)

5. Other Business

A. Upcoming PHFA Board Meetings

Mr. Hudson reported that the May 12 meeting may be an in-person Board meeting if the budget for the fiscal year 2016-2017 is ready. The June 9 and/or July 14 meetings may also be in-person meetings as staff will be presenting the projects which have requested Low Income Housing Tax Credit allocations under the current cycle.

6. **ADJOURNMENT**

There being no further business to be discussed, a motion was made and seconded that the meeting be adjourned. The motion was unanimously approved. Chair Wiessmann adjourned the meeting of the Board at 10:45 a.m.

The next regularly scheduled meeting of the Members of the Board of the Pennsylvania Housing Finance Agency will be held on Thursday, May 12, 2016 at 10:30 a.m. at the offices of the Agency, 211 North Front Street, Harrisburg, Pennsylvania.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie M. Barnes".

Carrie M. Barnes
Secretary

**RESOLUTION OF THE PENNSYLVANIA HOUSING FINANCE AGENCY
AUTHORIZING PROPERTY WORKOUT FOR MAGNOLIA MEWS,
PHFA O-150**

WHEREAS, the Pennsylvania Housing Finance Agency (the "Agency") is authorized to make mortgage loans to mortgagors for such projects as in the judgment of the Agency have promise of supplying well-planned and well-designed apartment units for low and moderate income persons or families or the elderly or others in the Commonwealth of Pennsylvania; and

WHEREAS, the Agency originally provided a primary mortgage loan in the amount of \$1,116,696 (with a current outstanding balance of \$87,421) and a support mortgage loan in the amount of \$882,000 (with a current outstanding balance of \$731,054) to Magnolia Mews Limited Partnership, with Magnolia Mews Development Corp. as general partner, for the development of 63 multifamily residential rental units in Philadelphia known as Magnolia Mews, PHFA No. O-150; and

WHEREAS, the above development is in need of capital improvements and the owner proposes to refinance Magnolia Mews to pay for the capital improvements; and

WHEREAS, the owner proposes to refinance Magnolia Mews and pay-off the outstanding primary loan and requests that the Agency accept an amount equal to 50% of the outstanding support loan as payment in full; and

WHEREAS, the Agency has reviewed the development and its financial operations and has determined to approve the refinancing of the development and repayment of the loans associated with the development as set forth below.

NOW, THEREFORE, be it resolved by the members of the Pennsylvania Housing Finance Agency on this 14th day of April, 2016, as follows:

Section 1. The Agency staff is authorized to approve the refinancing of Magnolia Mews to accept payment in full of the outstanding primary loan, to accept an amount equal to 50% of the outstanding balance of the support loan as payment in full of the support loan and to take all actions necessary to accomplish the same.

Section 2. This resolution shall take effect immediately.

HOUSING FINANCE AGENCY
[12 PA. CODE CH. 31]
Homeowner's Emergency Mortgage Assistance Program; Proposed Amendments

The Housing Finance Agency (Agency) proposes to amend Chapter 31, Subchapter B (relating to policy statement on Homeowner's Emergency Mortgage Assistance Program).

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). The 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 the HEMAP under the authority of section 401-C(b) of the Housing Finance Agency Law (35 P.S. § 1680.401c(b)), which provides in part, that the Agency shall adopt initial program guidelines and may revise the Guidelines whenever 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); 38 Pa.B. 4859 (August 30, 2008), effective September 6, 2008. Under the Agency's authority to revise the statements of policy, the Agency adopts further amendments to the policy statement and the uniform notice.

Summary of Public Comment and Responses to Proposed Revisions

Notice of the proposed changes was published at 46 Pa.B. 221 (January 9, 2016). The Agency accepted formal written comments during a 35-day public comment period that began upon the publication of the proposed revisions and ended on February 12, 2016.

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.

Section 31.201. Definitions. Reasonable attorneys' fees and costs. The Agency proposed to remove the detailed section from the Policy Statement on Homeowner's Emergency Mortgage Assistance Program (hereinafter, Policy Statement) setting forth levels and protocol for reimbursement of attorneys' fees to lenders and to provide information instead on its web site from time to time. Several commentators were concerned that posting all future revisions of this section to the Agency web site, rather than proposing such 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 such potential increases. Others opined that the Agency should create a mechanism within the Policy Statement to challenge the reasonableness of attorneys' fees.

Response: The Agency understands the concerns related to 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 going through a Policy Statement revision, 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 related to the method by which the Agency reimburses lenders for fees and costs associated with initiating a foreclosure action. The proposed change to this section does not alter the definition of what the Agency considers an attorney fee or cost, but rather it removes the reimbursement process. The Housing Finance Agency Law (35 P.S. §1680.401c(a)) (hereinafter, HFA Law or HEMAP Act) authorizes the Agency to establish procedures for the administration of HEMAP. Nothing in that law, 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 such itemization is required. Homeowners seeking to challenge the legitimacy of attorneys' fees and costs after the Agency has completed its review process may address such concerns with their lender or in a court of competent jurisdiction.

Section 31.202(g)(5)(i) and 31.202(g)(5)(ii). Eligibility for mortgage loan assistance. Some commentators were concerned that the revision to this section 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.

Response: After review, the Agency agrees with the commentators and has returned the prior language to this provision with the exception of usage of the word "spouse(s)" in exchange for the phrase, "husband and wife."

Section 31.202(g)(6)(i). Eligibility for mortgage loan assistance. One commentator suggested making occupancy by at least one of the individuals who acquires the property through inheritance an explicit requirement in this section. 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 amongst multiple individuals. Further, such heirs may have difficulty locating co-heirs to an inheritance. These commentators suggested broadening the scope of this provision 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 or heirs have made reasonable attempts to locate the remaining heirs and the heir-applicant resides in the property.

Response: 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 or applicants, without the consent of all co-owners is contrary to the type of assistance contemplated by the HFA Law. Specifically, 35 P.S. §1680.405c(h) creates a limited exception for joint mortgagors who are also spouses, which permits such individuals to obtain a HEMAP loan and execute the associated documents without the consent or signature of the other. Nowhere else in the statute, 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 that 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 where 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 such 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 such a lien, including actions to quiet title in the case of conflicting interests. Given these considerations, the Agency believes that its proposed amendments are consistent with the intent of the statute and declines to extend the eligibility criteria beyond the bounds delineated in the statute.

Section 31.202(g)(7). Eligibility for mortgage loan assistance. Two commentators were opposed to the proposed amendment 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 such 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 addition of this amendment to the Policy

Statement is 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 uniform notice is inapplicable to these types of agreements.

Response: The Agency recognizes the challenges posed by installment sales contracts and has elected to retain the language currently contained in the Policy Statement. The Agency has determined, however, that it is not necessary to create a separate notice for installment sales contracts. 35 P.S. §1680.401c(a) affirmatively makes the statute 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.

Section 31.203(a). Notice; Application Procedures. A number of commentators supported the proposed amendment and requested that the Agency create a presumption of invalidity applicable to Notices that fail to comply with this subsection. Such commentators believed that the Agency could better enforce this provision with the addition of the presumption. These same 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.

Response: The objective of the revision to this section is to maintain the consistency and clarity of the Notice. This objective directly corresponds to the intent of the statute, which requires the Agency to promulgate a uniform notice providing homeowners with necessary information regarding access to HEMAP. Accordingly, the proposed language was added to the Policy Statement 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 the program 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 proposed form is accordingly advised, and failure to comply with the exact contours and instructions set forth in the Policy Statement may unnecessarily jeopardize legal process. While the Agency views any deviation as a violation of the HFA Law requirements applicable to foreclosure actions in the Commonwealth, the HFA Law provides the Agency with no 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 proposed language, the Agency refrains from a presumption of invalidity.

Furthermore, the intent of the proposed revision is 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 has 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.

Section 31.203(a)(3). Notice; Application Procedures. Commentators indicated that this proposed revision is 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.

Response: The Agency declines to require lenders to send the Notice in the preferred language of the homeowner. In recent years, the Commonwealth has developed a large, non-native English speaking population. 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 as well as English. The Agency also recognizes, however, that the Commonwealth's diverse population 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 the 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 (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 such resources are available to assist consumers with accessing HEMAP. Lenders are also advised that while the HEMAP 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 must comply with all applicable laws regarding services to persons with disabilities.

Section 31.203(a)(4). Notice; Application Procedures. The Agency received comments suggesting that the word "and" be added between each of the first three subsections. While commentators were supportive of the restrictions on altering the Notice, such commentators encouraged the Agency to require that language be added to the outside of the envelope indicating that a Notice is contained inside.

Response: The Agency believes that the proposed 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.

Section 31.203(b)(4). Notice; Application Procedures. 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.

Response: The HEMAP Act gives the Agency the authority to regulate the implementation of HEMAP as well as to mandate a uniform notice that must be sent to homeowners prior to the commencement of foreclosure proceedings. The delegated authority in the statute, 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 such information at the time of execution of any agreement. Further, the Policy Statement, as currently written, 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.

Section: 31.203(b)(5). Notice; Application Procedures. Several comments were received 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 three 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 timeframe. Such 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.

Response: The Agency has reconsidered its position and will retain the three-day allowance for mail receipt. Consistent with the HEMAP Act, however, the Agency will continue to instruct its counseling agencies to expeditiously submit applications within the 30-day time period proscribed in the HEMAP 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 shall consider the later of the two dates for purposes of establishing timeliness of face-to-face meetings with a counseling agency.

Section: 31.203(b)(12)(ii). Notice; Application Procedures. Commentators suggested an amendment that would stay foreclosure procedures while a HEMAP appeal to the Agency is pending.

Response: The HFA Law clearly delineates the limitations on staying the foreclosure process in the HEMAP Act. Specifically, 35 P.S. §1680.403c(b)(7) states that, “A late application or an administrative appeal will not stay foreclosure proceedings...”. As such, any 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 1680.403c(b)(7) 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 timeframe designated in the statute.

Section: 31.205(c). Financial hardship due to circumstances beyond the homeowner’s control. Disallowance. 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.

Response: The Agency’s practice, as identified in the Policy Statement, 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. The Policy Statement, as currently written, affirmatively exempts necessary and ordinary expenses from the determination of eligibility. Specifically, 12 Pa. Code §31.205c(4)(i) states that, “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 Policy Statement also provides for the consideration of unanticipated and extraordinary expenses when determining eligibility for assistance. Examples of such extraordinary expenses delineated in the Policy Statement include, but are not limited to, “expenses related to death or illness in the homeowner’s household or of family members living outside the household,” as well as “expenses actually incurred related to uninsured damage or costly repairs to the mortgaged

premises affecting its habitability.” The revisions to the Policy Statement simply provide transparency regarding the Agency’s criteria and review process.

Section 31.205(c)(4)(ii). Financial hardship due to circumstances beyond the homeowner’s control. Disallowance. Several commentators opined that the addition of the proposed language was impermissible pursuant to the HFA Law. In addition to making HEMAP eligibility more stringent, these commentators believe that the proposed language places an unduly burdensome requirement on homeowners, which may be difficult to fulfill.

Response: The HFA law delegates authority to the Agency to promulgate rules to administer HEMAP. Specifically, 35 P.S. §1680.401c(c) states that, “the agency shall develop uniform notices and rules and regulations in order to implement the provisions of this article.” Therefore, the authority granted to the Agency within the text of the statute allows the Agency to provide and apply its interpretation of the language contained therein, unless such interpretation is clearly erroneous.

The statute 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 or her 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 proposed changes to this section both clarify the Agency’s interpretation of that language and codify the Agency’s application of that criteria towards an eligibility determination.

When conducting an eligibility assessment, the Agency considers all relevant factors. Such assessment recognizes that homeowners must maintain normal and ordinary expenses. Conversely, such analysis also recognizes that some homeowners may struggle with financial management and that such 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 proposed language is consistent with both the statute and the manner in which this criteria has been applied.

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

Response: The objective of the proposed language 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, as well as, prior years. While homeowners often submit other financial

documentation, such as bank statements and pay stubs, these documents provide limited information as they may cover a shorter or erratic timeframe. 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 where he or she 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 the Commonwealth, but 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 of such may yield less than accurate results. The Agency recognizes that other tax documents, such as W-2 Forms, may also provide the necessary financial data and will permit applicants to submit W-2 Forms, tax returns, tax transcripts and any other documentation deemed acceptable by the Agency as fulfillment of the proposed requirement. Applicants who are not required to file taxes must certify to such on HEMAP applications and, in cases where non-taxable, monetary benefits are received, provide documentation demonstrating receipt of such benefit. In this circumstance, other financial documents evidencing household income may be submitted in lieu of the W-2 Forms, tax returns and tax transcripts.

Section 31.209(e). Appeals. The Agency received comments suggesting that it should retain the option of in-person hearings. Such commentators also opined that teletypewriter (TTY) access and Limited English Proficiency (LEP) interpreters should be provided for both telephonic and in-person hearings, and that the Agency should ensure such access in its amendments to the Policy Statement.

Response: 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, the amendment of this section will be retained. The Agency, however, will explore mechanisms to provide appeal hearings via 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 such accommodation becomes available to the applicant on the date of the appeal hearing. Hearing dates have also been postponed, when necessary, in order to acquire the necessary assistance for applicants who have failed to provide the Agency with prior notice.

Appendix A. Uniform Notice.

General. Several comments were received suggesting changes to the form of the Notice. In general, these 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. Such commentators 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 contained therein. The Agency therefore declines to make such changes.

The Agency received a number of comments regarding provisions of the Loan Interest and Protection Law (hereinafter, Act 6), 41 P.S. § 101 *et seq.* Although the Notice is promulgated under the HFA Law, 35 P.S. § 1680.403c(b)(1) of that law references Act 6. 35 P.S. § 1680.403c. Section 1680.403c(b)(1) 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." *Id.* Act 6 sets forth that the Attorney General's Office and the Department of Banking and Securities (hereinafter, Department) have the authority to enforce Act 6. 41 P.S. § 506.

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 contained 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 commentator's concerns. The positions of both the Department and the Agency regarding the Notice and its conformity to the requirements of Act 6 are summarized through the responses to public comments below.

Generally, the comments received by the Agency regarding Act 6 focused on sections 403(c)(2); 403(c)(3) (specifically, references to sections 404(a), 404(b)(1), 404(b)(3) and 404(c)); 403(c)(5); and 403(c)(6). 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). Notice of Intention to Foreclose. Comments were received which expressed concern that the Notice fails to "clearly and conspicuously state the nature of the default claimed." 41 P.S. § 403(c)(2).

Response: The Agency considered this comment, but declined to make any changes 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 all fees and costs that must be paid in addition to any other action that must be taken by the Debtor.

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

Response: Section 403(c)(3) 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.” 41 P.S. § 403(c)(3). Overall, Section 404 sets timing limits on the rights of a residential mortgage debtor (Debtor) to cure (subsection (a)), lists the requirements a Debtor must 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 as it relates to Section 403.

a. *Section 404(a). Right to Cure Default.* This subsection limits a Debtor’s right to cure a default to one hour prior to a Sheriff Sale or other judicial sale and to cure no more than three times in any calendar year. Although subsection (a) limits the timing of right rather than setting forth the information statutorily required under 403(c)(3), the Agency has added the language “no more than three times in any calendar year” to the fifth paragraph of the Notice for further clarification.

b. *Section 404(b)(1). Right to Cure Default.* 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. 41 P.S. § 404(b)(1). 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 must pay to cure the default and also reminds Debtors that fees and costs continue to accrue from the date printed on the Account Summary.

c. *Section 404(b)(3). Right to Cure Default.* Debtors are required to “pay 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.” 41 P.S. § 404(b)(3). Section 406 outlines the situations where a lender may require a Debtor to pay attorney’s fees. After a thorough review, the Agency declined to make any 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.

d. *Section 404(c). Right to Cure Default.* 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.” 41 P.S. § 404(c). Section 404(c) 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 403(c)(3). Section 403(c)(3) 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). Notice of Intention to Foreclose. 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.” 41 P.S. § 403(c)(5).

Response: The foreclosure process ending in a Sheriff’s Sale is the method in Pennsylvania for a lender to terminate a Debtor’s ownership or possession of the real estate. The Notice references

both “foreclosure” and “Sheriff’s Sale” multiple times. As such, the Agency will not further revise the Notice as this requirement of Act 6 is satisfied.

403(c)(6). Notice of Intention to Foreclose. 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.” 41 P.S. § 403(c)(6).

Response: The Agency declines to make additional changes as the options listed in Section 403(c)(6) are outlined under the third bullet point in the third paragraph of the Notice.

Summary of Changes

In general, the revised Policy Statement incorporates several program clarifications and makes amendments to the uniform Act 91 Notice. The most significant amendments:

- Relocate the existing parameters for mortgagees’ reimbursement of fees and costs by the Agency from Chapter 31 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 current Appendix A, which sets forth the uniform Act 91 Notice that lenders are required to send to homeowners who are delinquent in their home mortgages. The Act 91 Notice retains its status as a combined notice and continues to retain the information required under the act of March 14, 1978 (P.L. 11, No. 6) (Act 6). The amendments significantly reduce and streamline the content of the Act 91 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. Act 91 Notice also includes an Account Summary, where mortgagees provide homeowner account and default information as required by Act 91 and Act 6.
- Require mortgagees to send both an English and Spanish language versions of the information on the first page of the Act 91 Notice.
- Provide guidance on implementing the revised Act 91 Notice.

Fiscal Impact

The Agency does not anticipate any fiscal impact from the proposed amendments to the Policy Statement.

Effective Date

The amendments to Chapter 31 will become effective on 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

Fiscal Note:

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:

* * * * *

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 **[August 1, 2008] April 1, 2016**. Future updates of this list will only appear on the Agency's web site, www.phfa.org, and will be updated on a **[regular] 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.**

* * * * *

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 **[and which meet the following requirements or limitations:]**. **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.**

[(i) The agency will reimburse lenders for attorneys fees, only after receipt of a detailed, itemized statement showing services rendered, dates and time spent. The agency will reimburse lenders based upon an hourly rate of up to \$100 per hour or other reasonable hourly rate as may be established by the agency and published by the agency in the

Pennsylvania Bulletin. The agency will average in attorney, and paralegal-or legal assistant-time actually billed to the lender in calculating the hourly rate.

(ii) When the foreclosure action was instituted by the lender, not contested by the homeowner, and proceeded to judgment, the agency may reimburse the lender for attorney fees in an amount equal to the amount established by the Federal National Mortgage Association (Fannie Mae) for its lenders in this Commonwealth, for a standard, completed, uncontested foreclosure, without requiring an itemization of services rendered.

(iii) The agency will reimburse lenders for attorney fees or costs incurred in connection with a bankruptcy filed by the homeowner, only if the fees or costs were incurred after the sending of the notice required by the act.

(iv) The agency will reimburse lenders for attorney fees or costs only if the lender has provided the notice required by the act and the services were not rendered or costs incurred after an applicant has been approved for a mortgage assistance loan by the agency and the lender has been notified of the approval.

(v) The agency will reimburse lenders for the cost of an appraisal of the property only if the homeowner was untimely in making application to the agency and the appraisal was procured after judgment was rendered in the foreclosure action.

(vi) Prior to the commencement of an action in mortgage foreclosure, the agency will reimburse lenders attorneys' fees and costs in an amount which may not exceed the sum of \$50.

(vii) Attorneys' fees and costs will not be allowed, nor be the subject of reimbursement by the Agency, if the services are rendered or the costs incurred prior to or during the 30-day notice period required by section 403 of the act of January 30, 1974 (P.L. 13, No. 6) (41 P.S. § 403), known as the Usury Law.

(viii) Attorneys' fees and costs will not be allowed nor be the subject of reimbursement by the agency, if the services are rendered or the costs incurred during the notice and application periods when the homeowner is protected by a stay against legal action as imposed by sections 402-C and 403-C of the act (35 P.S. §§ 1680.402c and 1680.403c). Section 402-C of the act prohibits a mortgagee from entering judgment by confession pursuant to a note accompanying a mortgage and from proceeding to enforce the obligation without giving notice and following the procedures provided in the act.]

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.

* * * * *

(b) A mortgage which is insured under **subchapter II of** the National Housing Act (12 U.S.C.A. §§ [1701—1715z-18] 1707—1715z-25) and mortgages where the secured property is used primarily for commercial or business purposes are not eligible for assistance.

* * * * *

(d) A mortgagor is not eligible for a mortgage assistance loan if **[one] any** of the following applies:

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

* * * * *

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

* * * * *

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

(i) When the residence is **[jointly owned by a husband and wife] owned by spouses** who are separated and the applicant is occupying the mortgaged premises.

(ii) When the residence is jointly owned by **[a former husband and wife] former spouses**, who are divorced, and the applicant, who is occupying the mortgaged premises, is unable to locate **[his] a** former spouse or the applicant is unable to obtain **[his] a** former spouse's consent to join in the application or sign the **[agency's] 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 **[the] accordance with the guidance and** form set forth in Appendix A **and** subject to the following requirements:

[(1) The notice shall be sent by first class mail to the last known address of the homeowner and if different, to the residence which is the subject of the mortgage. The notice shall also be sent by registered or certified mail.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) A notice sent under this subchapter, in the form prescribed in Appendix A, shall be in lieu 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. §§ 401—605), known as the Usury Law.]

(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 must 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. Notices 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 both 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 web site, it is the Agency's intention that annual notice be provided to the industry to reflect new addresses, updates in contact information and other timely adjustments to the list. This schedule of maintenance updates will be provided by the Agency on an annual basis in the *Pennsylvania Bulletin*. Mortgagees are expected to check the web site on the scheduled dates to ensure they are providing the most current counseling agency contact information contained within 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 and 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(s) 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.

[3] **(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:

* * * * *

[4] **(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.

[5] **(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.

[6] **(11)** A notice sent under this subchapter, in the form prescribed in Appendix A, shall be in lieu 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. §§ 401—605), known as the Usury Law.

(b) When the homeowner has been sent a notice as required by 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 **[postmark date of the notice] date printed on the notice**, plus an additional 3 days to allow for mailing period. **[For example, a notice mailed on March 9 is presumed to have been delivered on March 12. Therefore, the homeowner shall hold a face-to-face meeting within 30 days of March 12, or on or before April 11.]** **The Agency presumes that the date printed on the notice is the same as the postmark date of the notice. In cases where the date printed on the notice and the postmark date is not the same as determined by the Agency, the later date will be used to measure the timeliness of face-to-face meetings.**

* * * * *

(4) If after a face-to-face meeting, the homeowner/ mortgagor and mortgagee reach an agreement to resolve the delinquency or default as mentioned 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 **[suggests that] encourages** the mortgagee **to** advise the homeowner of this provision at the time **[the] 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.

* * * * *

(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 **[provided, however, that an application for mortgage assistance may be submitted beyond the time periods specified (that is, a "late application")]**. **A homeowner may file a late application** and in that case the Agency will make a determination within **[60-calendar] 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 [§ 31.207 (relating to repayment)] **§ 31.209 (relating to appeals)**. This request does not prohibit a mortgagee from pursuing legal action to enforce the mortgage.

* * * * *

§ 31.204. Agency review.

* * * * *

(b) Agency responsibilities include the following:

* * * * *

(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 [is] **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)**.

* * * * *

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

* * * * *

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

* * * * *

(4) When the homeowner's financial hardship was a result of money mismanagement or an [over extension] **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:

* * * * *

(ii) Debts incurred [or], 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.

* * * * *

(f) *Information required.* The homeowner shall provide sufficient information, **including tax returns, W2 Forms, tax transcripts and any 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:

* * * * *

(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, W2 Forms 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 where non-taxable income is earned or financial government benefits are received, documentation evidencing receipt of the income or benefits shall be provided.**

* * * * *

§ 31.207. Repayment.

* * * * *

(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 **[the provisions of] 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.**

* * * * *

§31.209. Appeals.

* * * * *

(e) The hearing examiner will notify the appellant as to the **[time and place] 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.

* * * * *

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

[(a) General.

(1) 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 the following manner:

(i) Sending a copy of the notice. The mortgagee may send an actual copy of each notice sent to the Agency, by one of the following methods:

(A) Regular mail addressed as follows:

PHFA-HEMAP 211 North Front Street P. O. Box 15530 Harrisburg, PA 17105-5530

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

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

(ii) Electronic mail. (email): Send a scanned copy to: Act91@phfa.org.

(2) *Electronic reporting.* In lieu of sending an actual copy of each notice as set forth in subparagraph (i), the mortgagee or other person sending the Act 91 Notice may provide the Agency with a report of notices sent listing at least the following information:

(i) The date Act 91 Notice was mailed.

(ii) The name of lender/servicer on whose behalf it was sent.

(iii) Street address of the property being foreclosed upon including its 5 digit or 9 digit zip code (as applicable).]

(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.

<u>Date of Act 91 Notice</u>	<u>Address 1</u>	<u>Address 2</u>	<u>City</u>	<u>State</u>	<u>5-digit zip</u>	<u>4-digit extension</u>	<u>Current Lender</u>
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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 paragraph (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) *Format of reports.* Electronic reports sent under paragraph (2), shall be sent as an attachment, by means of an email sent to the above email address using the latest version of EXCEL© with the following headings:

Date of Notice	Lender/Service	Property Address
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(e) (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.

(Editor's Note: As part of this proposed statement of policy, the Agency is replacing the form in Appendix A, which appears in 12 Pa. Code pages 31-36.4--31-42, serial pages (341930) and (336321)--(336326), with the following form.)

4/14/16

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.**

Notificación sobre la Ley 91

La Notificación de Acto 91*

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 (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.