

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

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Source

The provisions of this Subchapter B adopted March 2, 1984, effective March 3, 1984, 14 Pa.B. 723, unless otherwise noted.

§ 31.201. Definitions.

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

Act 91 Notice—The notice of intention to foreclose required to be sent to a mortgagor prior to the filing of a foreclosure action under the act in the form prescribed in this subchapter.

Applicant—A person who has received the notice described in Appendix A and who has submitted an application to the Agency under this subchapter.

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 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. Future updates of this list will only appear on the Agency's web site, www.phfa.org, and will be updated on a regular basis as changes occur.

Gross household income—The total income of the applicant, all other owners-occupants of the residence, any spouse and children residing in the same household as the applicant and other residents of the household declared by the mortgagor as dependents for Federal tax purposes. The term does not include the income of minor children. The income of adult children or other unrelated individuals residing in the household shall be considered part of gross household income only to the extent that their income is available to the household.

Homeowner—The owner occupant of a one- or two-family residential structure or the owner-occupant of a cooperative or condominium unit who is also the borrower, debtor or obligor on a mortgage encumbering the residence. The term is interchangeable with the term “mortgagor.”

Installment sales contract or agreement—An agreement or contract under which the seller of residential real property conveys ownership of or an equitable interest in real estate which constitutes the principal residence of the buyer wherein the seller finances the purchase by the buyer through contract, agreement, note or other security interest, if that contract or agreement does not constitute a default under the terms of a pre-existing mortgage between the seller and the seller's mortgagee.

Mortgage—A lien, other than a judgment, on a fee simple or leasehold interest in real property which constitutes the principal residence of the mortgagor, obligor or debtor, located in this Commonwealth together with credit instruments secured thereby. The term includes an installment sales agreement or installment sales contract. The term also includes an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

Mortgagee—A lender whose debt is secured by a mortgage.

Mortgagor—The owner occupant of a one- or two-family residential structure or the occupant of a cooperative or condominium unit who is also the borrower, debtor or obligor on a mortgage encumbering the residence. This term is interchangeable with the term “homeowner.”

Net effective income—Gross household income less city, State and Federal income and Social Security taxes.

Noncorporate seller—A person holding a mortgage who is not a bank, a savings and loan association, a mortgage bank, a consumer discount company or other entity in the mortgage lending business.

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:

(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.

Source

The provisions of this § 31.201 amended through June 13, 1986, effective June 14, 1986, 16 Pa.B. 2126; amended July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective June 5, 1999, 29 Pa.B. 2859; amended August 29, 2008, effective September 6, 2008, 38 Pa.B. 4859. Immediately preceding text appears at serial pages (256039) to (256040) and (256727) to (256728).

Notes of Decisions

Ownership

While the Pennsylvania Housing Finance Agency may not base a determination of ownership on compliance with the recording laws for purposes of 35 P. S. § 1680.402(c) governing mortgage assistance they may require recordation as evidence of ownership under the housing finance regulations in the *Pennsylvania Code*. *Land v. Housing Finance Agency*, 515 A.2d 1024 (Pa. Cmwlth. 1986).

§ 31.202. Eligibility for mortgage loan assistance.

(a) Property shall 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 the National Housing Act (12 U.S.C.A. § § 1701—1715z-18) 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 401C—410C of the act (35 P. S. § § 1680.103 and 1680.401c—1680.410c). 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 one of the following applies:

(1) The mortgage 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 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, except as follows:

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

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

Source

The provisions of this § 31.202 amended through June 13, 1986, effective June 14, 1986, 16 Pa.B. 2126; amended July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective June 5, 1999, 29 Pa.B. 2859. Immediately preceding text appears at serial pages (230786) and (236165) to (236166).

Notes of Decisions

Applications

Requiring all co-owners to apply jointly for mortgage assistance is plainly within the scope of authority delegated to the Housing Finance Agency. *Anela v. Housing Finance Agency*, appeal granted 675 A.2d 1252 (Pa. 1996); reversed 690 A.2d 1157 (Pa. 1997). (*Editor's Note*: The court cited former 16 Pa. Code § 40.202 in its decision. 16 Pa. Code § 40.202 was renumbered as 12 Pa. Code § 31.202, at 27 Pa.B. 2415 (May 17, 1997).)

Bankrupt Mortgagor

A debtor in bankruptcy may only receive emergency mortgage assistance from the Housing Finance Agency if the automatic stay has been lifted. *Watts v. Housing Finance Agency*, 876 F.2d 1090 (3rd. Cir. (Pa.) 1989).

Construction with Statutes

The enabling statute, 35 P. S. § 168.401(c)(a)(2), will not be read narrowly by reason of a grammatical interpretation so as to exclude one-family dwellings from the "owner-occupied" requirement for emergency mortgage assistance; therefore this section is consistent with the statute. *Hawkins v. Housing Finance Agency*, 595 A.2d 712 (Pa. Cmwlth. 1991).

Evidence of Ownership

While the Housing Finance Agency may not base a determination of ownership on compliance with the recording laws for purposes of 35 P. S. § 1680.402(c) governing mortgage assistance they may require recordation as evidence of ownership under the housing finance regulations in the *Pennsylvania Code*. *Land v. Housing Finance Agency*, 515 A.2d 1024 (Pa. Cmwlth. 1986).

Joint Applications

This policy statement requiring all co-owners, except separated spouses or ex-spouses, to jointly apply for mortgage assistance conflicts with 35 P. S. § § 1680.401c—1680.411c. *Anela v. Pennsylvania Housing Finance Agency*, 663 A.2d 850 (Pa. Cmwlth. 1995).

Physical Presence

The occupancy requirements which must be met in order to be eligible for emergency mortgage assistance require physical presence in the dwelling and assistance was properly denied to an incarcerated applicant. *Hawkins v. Housing Finance Agency*, 595 A.2d 712 (Pa. Cmwlth. 1991).

Cross References

This section cited in 12 Pa. Code § 31.203 (relating to notice; application procedures); 12 Pa. Code § 31.204 (relating to agency review); and 12 Pa. Code § 31.210 (relating to periods of high unemployment).

§ 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 form set forth in Appendix A, 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.

(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, 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.

(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 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 the mortgagee advise the homeowner of this provision at the time the 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 provided, however, that an application for mortgage assistance may be submitted beyond the time periods specified (that is, 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 determination under a mortgage 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). 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.

Source

The provisions of this § 31.203 amended December 13, 1985, effective December 14, 1985, 15 Pa.B. 4435; amended July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective July 1, 1999, 29 Pa.B. 2859; amended August 29, 2008, effective September 6, 2008, 38 Pa.B. 4859. Immediately preceding text appears at serial pages (256730) to (256733).

Notes of Decisions

Due Process

Administrative hearing provided after agency decision, which revised prior agency determination of qualification for mortgage assistance, satisfied due process consistent with *Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Compensation Board of Review*, 10 Pa. Commw. 90, 309 A.2d 165 (1973). *Hessler v. Housing Finance Agency*, 500 A.2d 914 (Pa. Cmwlth. 1985).

Notice

Submission of Act 91 Notice is not required for emergency mortgage assistance because this section did not require its submission. *Vianello v. Housing Finance Agency*, 562 A.2d 441 (Pa. Cmwlth. 1989); appeal denied 575 A.2d 573 (Pa. 1990).

Cross References

This section cited in 12 Pa. Code § 31.210 (relating to periods of high unemployment).

§ 31.204. Agency review.

(a) The applicant shall apply for a loan on the form provided by the Agency. An applicant-homeowner who intentionally misrepresents financial information in conjunction with the filing of an application for assistance may be denied assistance or be required to immediately repay the amount of assistance made as a result of the misrepresentation. The mortgagee may then take legal action to enforce the mortgage without further restrictions or requirements.

(b) Agency responsibilities include the following:

(1) The Agency shall receive from the homeowner full disclosure of assets and liabilities, whether singly or jointly held, and household income regardless of source. For purposes of this subsection, the following are included as assets:

(i) The sum of the household's savings and checking accounts, market value of stocks, bonds and other securities, other capital investments, pensions and retirement funds, personal property and equity in real property including the subject mortgage property. Income derived from family assets is considered as income. Equity is the difference between the market value of the property and the total outstanding principal of loans secured by the property and other liens.

(ii) Lump-sum additions to family assets, such as inheritances, capital gains, insurance payments included under health, accident, hazard or workmen's compensation policies, and settlements, verdicts or awards for personal or property losses or transfer of assets without consideration within 1 year of the time of application. Pending claims for these items shall be identified by the homeowner as contingent assets.

(2) The Agency will determine whether the homeowner is suffering financial hardship due to circumstances beyond the homeowner's control which render the homeowner unable to correct the delinquency within a reasonable period of time.

(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 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 still eligible for assistance under this subchapter.

(4) The Agency will make a determination of eligibility within 60 days of receipt of the application.

(c) If the Agency has determined that the homeowner is eligible, and if funds are available, the Agency will do the following:

(1) Pay the mortgagee an amount, negotiated between the mortgagor, the mortgagee and the Agency, sufficient to bring the mortgage current. This includes principal, interest, taxes, mortgage insurance, credit and hazard insurance, assessments, late charges, ground rents, reasonable court costs and reasonable attorney fees already incurred by the mortgagee.

(2) Make payments to the mortgagee on behalf of the homeowner for a period not to exceed 24 months after the beginning of the period for which assistance payments are provided the Agency. Payments may stop if the Agency determines that, because of changes in the homeowner's financial circumstances, the payments are no longer necessary or because the homeowner no longer meets the eligibility criteria of § 31.202(a)—(f) (relating to eligibility for mortgage loan assistance). A recipient of assistance has a duty to inform the Agency of a material change in financial circumstances.

(3) Establish the homeowner's monthly contribution in an amount which does not cause the homeowner's total monthly housing expense to exceed 40% of the homeowner's net effective income. Beginning February 1, 1999, and continuing thereafter, a mortgagor approved for continuing monthly mortgage assistance or whose continuing mortgage assistance is approved after being recertified by the Agency, shall pay to the Agency a minimum monthly payment of at least \$25 for each mortgage being assisted. After the Agency has notified the homeowner in writing of loan approval and, in the case of a continuing loan, of the homeowner's minimum required monthly contribution, the homeowner may agree in writing to contribute a greater percentage of net effective income or to waive receiving continuing monthly disbursements. The Agency will determine and collect monthly mortgage contributions from the homeowner to be forwarded to the mortgagee with the Agency's disbursement. Contributions shall be made at least 15 days before the monthly mortgage payment is due to avoid late charges being imposed by the mortgagee.

(4) Review the homeowner's financial circumstances if the homeowner fails to make payment of an amount due within 15 days of the due date. If the delinquency is not a result of a material change in the homeowner's financial circumstances, the Agency will notify the mortgagee, mortgagor and consumer credit counseling agency and terminate the assistance. The mortgagee may then commence foreclosure upon the mortgage. If the delinquency is the result of a material, adverse change in the homeowner's financial circumstances, the Agency will modify the homeowner's required payments, as the Agency will determine.

(5) Review the homeowner's financial circumstances at least annually to determine the amounts of repayment required, or more frequently, if the homeowner requests so in writing. As a condition of continued assistance or forbearance of the entire amount of assistance, together with interest, becoming immediately due, the homeowner is required to fully disclose a change in the homeowner's financial circumstances and to cooperate with the Agency in performing its annual review.

(d) As an alternative to monthly assistance payments, the parties may agree to restructuring of future payment requirements or, in cases when the balance of the mortgage is minimal in comparison to the monthly mortgage assistance disbursements to be made, to a purchase of the mortgage by the agency and an assignment of the mortgage debt to the agency.

(e) Net income shall be determined as follows:

(1) During the period that the homeowner may be eligible for assistance, and for purposes of calculating the amount of repayment to be required, the homeowner will not be required to pay more than 40% of net effective income toward total housing expenses.

(2) To determine the maximum total housing expense payment, multiply net effective income by .40. If the homeowner's total housing expense is less than 40% of net effective income, the mortgagor shall repay to the Agency the difference between 40% of the mortgagor's net effective income and the mortgagor's total housing expense unless otherwise determined by the Agency after examining the mortgagor's financial circumstances and ability to contribute to repayment of the mortgage assistance.

(f) The Agency may determine that a homeowner can reasonably contribute a lump sum towards the mortgage arrearage and may either require the homeowner to pay that sum into the Agency in advance of closing the Agency's loan or to bring the sum with him when the Agency's loan is closed. The Agency may waive or reduce the lump sum amount originally required if the homeowner needed to use the funds for necessities prior to closing.

(g) The Agency may establish a reasonable closing fee for loans that are approved to help defray the cost of administering the program. This closing fee will be advanced to the Agency as part of the loan disbursement, and subject to repayment by the homeowner as provided by § 31.207 (relating to repayment).

(h) A mortgagee entitled to payments under this subchapter shall provide to the Agency, within 30 days of the Agency's request, the following documents and information:

(1) An itemized statement of the amounts due under the mortgage including all corporate advances incurred for which reimbursement from the mortgagor is demanded by the mortgagee. Demands for attorney fees, court costs and other advances shall be reasonable and reflect the amount of work and expenses actually expended and may not include any amounts incurred during the period a stay is in effect under this subchapter.

(2) Copies of the following documents from the original mortgage transaction:

(i) The HUD 1 Settlement Statement

(ii) The mortgage and note

(iii) The appraisal, if an appraisal has been performed during the last 5 years

(3) Failure to provide in a timely fashion the documents and information required under this subsection, will result in the mortgagee's forfeiture of the right to receive any late fees and attorney fees, costs and expenses.

(i) Upon the Agency's payment of the initial payment to the mortgagee, including any corporate advances allowed by the Agency, the mortgagee shall adjust its accounts to reflect that the mortgage obligation is, as of the date of receipt of the funds, reinstated and current for all

purposes. The subsequent imposition by a mortgagee, its successors or assigns, of any charges, fees or other amounts that were paid or disallowed by the Agency, or waived by the mortgagee, shall be in violation of the Unfair Trade and Consumer Protection Law (73 P. S. § § 201-1—209-6).

Source

The provisions of this § 31.204 amended through June 13, 1986, effective June 14, 1986, 16 Pa.B. 2126; amended July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective July 1, 1999, 29 Pa.B. 2859; amended August 29, 2008, effective September 6, 2008, 38 Pa.B. 4859. Immediately preceding text appears at serial pages (256733) to (256736).

Notes of Decisions

Debtor In Bankruptcy

A debtor in bankruptcy may only receive emergency mortgage assistance from the Pennsylvania Housing Finance Agency if the automatic stay has been lifted. *Watts v. Housing Finance Co.*, 876 F.2d 1090 (1989).

Cross References

This section cited in 12 Pa. Code § 31.210 (relating to periods of high unemployment).

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

(a) *General.* The Agency will consider all relevant factors when evaluating whether the homeowner is suffering financial hardship and whether the financial hardship is due to circumstances beyond the homeowner's control, including the following:

- (1) The homeowner's past and present household income and reasons for reductions in household income.
- (2) Assets which were or are available and could have been or can be liquidated to correct the mortgage delinquency. The Agency will not consider assets in a pension, profitsharing, annuity or similar retirement plan or contract as available for liquidation to the extent that these funds are reasonably necessary for the support of the homeowner, or dependents or the surviving spouse of the homeowner.
- (3) The homeowner's credit history.
- (4) The homeowner's employment history—including unemployment, underemployment and the reasons therefore—and eligibility for other types of financial assistance.

(b) *Examples.* Examples of circumstances beyond the mortgagor's control which result in financial hardship to the mortgagor include the following:

- (1) Unemployment or underemployment, through no fault of the homeowner.
- (2) Loss, reduction or delay in receipt of Federal, State or other Government benefits (for example, Social Security, Supplemental Security Income, Public Assistance, Government Pensions), or of private benefit payments—for example, pensions, annuities, retirement plans.
- (3) Loss, reduction or delay in receipt of income because of the death or disability of a person who contributed to the household income.
- (4) Unanticipated increases in payments to a mortgage escrow account to compensate for past underestimates of escrow requirements by the mortgagee.
- (5) Expenses actually incurred related to uninsured damage or costly repairs to the mortgaged premises affecting its habitability.
- (6) Expenses related to death or illness in the homeowner's household or of family members living outside the household which reduce the amount of household income.
- (7) Loss of income or substantial increase in total housing expenses because of a divorce, abandonment, separation from a spouse or failure to support.
- (8) Participation by the homeowner in a recognized labor action, such as a strike.

(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 or expenditures made by the homeowner for non-necessities, 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 to allow the Agency to assess 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.

Source

The provisions of this § 31.205 amended July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective July 1, 1999, 29 Pa.B. 2859. Immediately preceding text appears at serial pages (230793) to (230795).

Cross References

This section cited in 12 Pa. Code § 31.202 (relating to eligibility for mortgage loan assistance); and 25 Pa. Code § 31.210 (relating to periods of high unemployment).

§ 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 prior to the circumstances which caused the mortgage delinquency and whether the income was sufficient.

(b) The Agency will generally determine that a homeowner demonstrates a reasonable prospect of resuming mortgage payments and paying the mortgage by maturity, despite his current unemployment, if the homeowner is suffering a financial hardship through no fault of his own and can demonstrate the following:

(1) A favorable work and credit history.

(2) The ability and history of paying the mortgage when employed.

(3) The lack of an impediment or disability that prevents reemployment.

(4) That he is actively seeking work, as evidenced by a written statement to that effect.

(c) When the homeowner attributes the mortgage default to alcoholism or other chemical dependency and claims that the dependency impaired his ability to handle financial obligations, the homeowner shall provide the Agency with a physician's written diagnosis of the dependency condition and documentation of a pattern of behavior which supports the homeowner's claim. The Agency will not consider rehabilitation efforts in determining whether the circumstances were beyond the mortgagor's control, but will consider these efforts in evaluating the homeowner's reasonable prospects of resuming mortgage payments.

(d) A mortgage will not be assisted unless installments of principal and interest due under the mortgage are structured so that the loan is fully amortized by regular and periodic payments over a designated period of time. A mortgage in which the balance is due upon demand or the balance is due in a lump sum or balloon payment at the end of a term is not eligible for mortgage assistance except as follows:

(1) In cases where the homeowner is in need of a noncontinuing loan to pay arrearages due, the loans are only eligible if the lump sum or balloon payment is not due or the demand for payment has not been made prior to the Agency's disbursement of funds.

(2) In cases where the homeowner is in need of continuing monthly mortgage assistance disbursements, the loans are only eligible if the lump sum or balloon payment comes due or the demand may be made more than 24 months after the beginning of the period for which assistance payments are provided the Agency.

(3) When the homeowner and mortgagee agree to reamortize the mortgage debt or extend the maturity date.

(e) The homeowner shall provide sufficient information to allow the Agency to assess the homeowner's future ability to pay the mortgage debt. 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.

Notes of Decisions

Re-employment

The hearing examiner did not err as a matter of law in denying the application for mortgage assistance based on his conclusion that the applicant's future income was speculative, where there was no evidence as to when the applicant could expect to earn \$280,000 to \$330,000 per year from the practice of law, or why he has been essentially unsuccessful in these endeavours since his return to work. *R. M. v. Housing Finance Agency*, 740 A.2d 302 (Pa. Cmwlth. 1999); appeal denied 754 A.2d 390 (Pa. 2000).

Statement of Policy

This section is a statement of policy, not a regulation, and thus it does not have the force and effect of law, since the Housing Finance Agency has consistently classified this section as a “statement of policy,” since the substantive content of the four factors favors a finding that this section does not create a binding norm, since the fact that the hearing examiner relied upon the criteria of this section is not particularly probative on whether the section is substantive, and since the agency is free to consider in toto the four factors, as well as other factors, and then, based on that guidance and their own judgment, decide whether an applicant is qualified for mortgage assistance. *R. M. v. Housing Finance Agency*, 740 A.2d 302 (Pa. Cmwlth. 1999); appeal denied 759 A.2d 390 (Pa. 2000).

Source

The provisions of this § 31.206 amended July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective July 1, 1999, 29 Pa.B. 2859. Immediately preceding text appears at serial pages (230796) to (230797).

Cross References

This section cited in 12 Pa. Code § 31.210 (relating to periods of high unemployment).

§ 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 the provisions of section 406-C(5) of the act (35 P. S. § 1680.406c(5)).

(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 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.

Source

The provisions of this § 31.207 amended July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective July 1, 1999, 29 Pa.B. 2859; amended August 29, 2008, effective September 6, 2008, 38 Pa.B. 4859. Immediately preceding text appears at serial pages (266496) to (266498) and (256055).

Cross References

This section cited in 12 Pa. Code § 31.203 (relating to notice; application procedures); and 12 Pa. Code § 31.204 (relating to agency review).

§ 31.208. Insufficient funds.

If, in the Agency's determination, the Homeowner's Emergency Mortgage Assistance Fund contains insufficient funds to assist eligible applicants, a notice to this effect will be published by the Agency in the *Pennsylvania Bulletin* at least 60 days prior to the funds being depleted. The notice will include a date certain, which will be at least 90 days after publication of the notice, after which mortgagees will no longer be required to comply with the act. If funds are replenished in sufficient amount, the Agency will publish a similar notice, effective immediately, announcing that fact and that mortgagees are again subject to the requirements of the act. During the time after the initial notice is published and before a renewal notice is published, the selection of those to receive financial assistance will be determined by the Agency on a first-come, first-served basis.

Source

The provisions of this § 31.208 adopted July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224.

§ 31.209. Appeals.

(a) An applicant who is denied a mortgage assistance loan or an applicant or lender aggrieved by another decision of the Agency in implementing the Homeowners' Emergency Mortgage

Assistance Program may request the Agency to conduct an administrative hearing on that grievance.

(b) A hearing may only be requested from a decision of the Agency on an issue of fact determined on that application that constitutes an adjudication under 2 Pa.C.S. § 101 (relating to definitions).

(c) The Executive Director of the Agency may designate Agency hearing examiners to hear grievances under this process.

(d) Requests for a hearing shall be made in writing and shall be submitted to the Agency within 15 days of the postmark date of the mailing of the decision or determination of the Agency. Requests for hearings shall state the reasons that a hearing is requested and be sent by first class, registered or certified mail to the following address:

Chief Counsel-Appeal Requests
Pennsylvania Housing Finance Agency
2101 North Front Street
P. O. Box 15628
Harrisburg, Pennsylvania 17105.

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

(f) This appeals process and administrative hearings held thereunder will be administered under the requirements of 2 Pa.C.S. § § 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

Source

The provisions of this § 31.209 adopted July 1, 1994, effective July 2, 1994, 24 Pa.B. 3224; amended June 4, 1999, effective July 1, 1999, 29 Pa.B. 2859; amended August 29, 2008, effective September 6, 2008, 38 Pa.B. 4859. Immediately preceding text appears at serial pages (256055) to (256056).

§ 31.210. Periods of high unemployment.

(a) *Months of assistance available.* The 24 month limit on mortgage assistance available under § 31.203(d), and the 24 month periods referred to in § § 31.202(d)(1), 31.203(a)(3)(ii), 31.204(c)(2) and 31.206(a) and (d)(2) shall increase to 36 months if during the month the homeowner submits an application for assistance the Agency has determined that a period of high unemployment exists.

(b) *Housing expense formula.* The 40% ratio referred to in §§ 31.204(c) and (e) and 31.205(c)(3) (relating to agency review; and financial hardship due to circumstances beyond the homeowner's control) shall be reduced to 35% if during the month the homeowner submits an application for assistance the Agency has determined that a period of high unemployment exists.

(c) *Definition; declaration.* There shall be a "period of high unemployment" if the average rate of unemployment in this Commonwealth equals or exceeds 6.5%. This determination will be made by the Agency on a monthly basis based upon seasonably adjusted unemployment figures for the most recent 3 months for which the data for this Commonwealth is published. If the Agency determines that a period of high unemployment exists, the Agency will immediately publish a notice to that effect in the *Pennsylvania Bulletin* consistent with this section.

Source

The provisions of this § 31.210 adopted June 4, 1999, effective July 1, 1999, 29 Pa.B. 2859.

§ 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: 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).

(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[copy] with the following headings:

Date of Notice	Lender/Servicer	Property Address
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(e) *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.

Source

The provisions of this § 31.211 adopted August 29, 2008, effective September 6, 2008, but shall only apply to notices issued on or after October 1, 2008, 38 Pa.B. 4859.