

PHFA ISSUES ADVISORY ABOUT NEW CFPB 120 DAY
PRE-FORECLOSURE RULE AND ACT 91 NOTICES

In response to questions regarding recent regulations from the Consumer Financial Protection Bureau ("CFPB"), we are issuing this guidance for Pennsylvania lenders regarding the Act 91 Notice of Intention to Foreclose ("Act 91 Notice"). **Lenders are advised that they may continue to send Act 91 Notices to persons who are at least 60 days delinquent on their mortgage.**

In January 2013, the CFPB issued final rules affecting a wide array of mortgage servicing practices, effective January 10, 2014. One of these rules requires lenders to wait until a loan is at least 120 days delinquent before making the "first notice or filing required by applicable law" to initiate foreclosure (the "120 Day Rule", 12 C.F.R. § 1024.41(f)).

As originally published, the 120 Day Rule raised concerns that lenders would not be permitted to send an Act 91 Notice during this pre-foreclosure period. Through the notice and comment process, PHFA and other stakeholders explained that the Act 91 Notice informs delinquent borrowers of loss mitigation options including the Homeowner's Emergency Mortgage Assistance Program administered by PHFA. We informed the CFPB that a 60 day delay in Act 91 Notice would harm homeowners by delaying free housing counseling, would create additional costs for both homeowners and lenders, and would actually be counter-productive for achieving the CFPB's goal of protecting consumers.

In October 2013, the CFPB issued amendments to the new mortgage servicing rules. **These revisions clarify that the first notice or filing in a judicial state (Pennsylvania) is the filing of a complaint in foreclosure. Therefore, sending an Act 91 Notice when a person is 60 days delinquent is not prohibited by the 120 Day Rule.**

See 78 Fed. Reg. 60,382, 60,404-07 (Oct. 1, 2013) available at <http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-22752.pdf>.

PHFA urges lenders to continue to send Pennsylvania consumers the Act 91 Notice when they are 60 days contractually delinquent to provide maximum program benefit, counseling and loss mitigation opportunities.