



Proposal to Adopt the Home Mortgage Bridge Loan Program

COMMITTEE ON BANKING LAW

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NEW YORK
CITY BAR

COMMITTEE ON BANKING LAW

**PROPOSAL TO ADOPT THE HOME MORTGAGE BRIDGE LOAN ASSISTANCE
ACT OF 2012**

The New York City Bar Association, through its Committee on Banking Law, urges adoption of the Home Mortgage Bridge Loan Assistance Act of 2012 ("HMBLAA," or the "Act"). The purpose of the Act is to institute a program that will provide temporary and repayable financial assistance through bridge loans to homeowners experiencing temporary difficulty in paying their mortgage loans through no fault of their own.

PURPOSE OF A BRIDGE LOAN MORTGAGE ASSISTANCE PROGRAM

New York and the nation have recently experienced the collapse of a sizable primary and secondary real estate market bubble with rarely preceded wealth destructive effects. One consequence has been protracted economic slowdown both nation- and state-wide, as consumers trim spending and concentrate upon paying down debt. This slowdown has, in turn, forced businesses to reduce investment and employment, placing downward pressure upon incomes and rendering mortgage payment difficult for many homeowners. Resultant mortgage foreclosures have had the effect of depressing home prices (though of course not mortgage debt) yet further, feeding back into a vicious cycle of economic contraction. Depressed housing prices and rising unemployment also have led to more abandoned housing stock and deteriorating buildings, loss of tax base, and steadily worsening social ills that can include homelessness, family breakup, and crime.¹

Across the nation, loss of income is now a primary cause of mortgage defaults. Large numbers of New Yorkers have been driven into temporary involuntary unemployment or underemployment, and in consequence have either fallen into or come close to mortgage delinquency. The capacity of such otherwise credit-worthy homeowners to remain current on mortgage payments will continue to be challenged by the current economic climate.

¹ Both the Federal Reserve Board and the Federal Reserve Bank of New York (FRBNY) have repeatedly, and recently, noted the drag on national economic recovery currently wrought by the continuing slump in the housing markets, and FRBNY President William Dudley has in consequence noted with favor the salutary effects wrought by bridge loan assistance programs like Pennsylvania's Home Emergency Mortgage Assistance Program (HEMAP). See, e.g., Federal Reserve Board, *The U.S. Housing Market: Current Conditions and Policy Considerations*, January 4, 2012, available at <http://federalreserve.gov/publications/other-reports/files/housing-white-paper-20120104.pdf> ; and William C. Dudley, *Housing and the Economic Recovery*, Remarks at the New Jersey Bankers Association Economic Forum, January 6, 2012, available at <http://www.newyorkfed.org/newsevents/speeches/2012/dud120106.html> .

While the current economic crisis demands immediate action to avoid unnecessary foreclosures and to help stabilize and reinvigorate mortgage lending, it also bears noting that business cycles have historically been part of the economic fabric of the state and the nation. A bridge loan mortgage payment assistance program to address the current economic crisis can accordingly be expected to prove helpful in connection with future, more conventional economic downturns as well.

Empirical evidence reveals that many temporarily troubled mortgage borrowers prove able to retain their homes and pay off their mortgages in full, without a loan agreement modification, when offered bridge loan assistance. Although there are few such bridge loan programs in existence upon which to base these findings, Pennsylvania's Homeowners' Emergency Mortgage Assistance Program ("HEMAP") has proved highly successful, over the course of three decades, in cost-effectively limiting foreclosure rates and attendant economic and social ills.² HMBLAA uses HEMAP as its principal template while making a number of suggested improvements, with the benefit of hindsight, as described below.

HMBLAA, an incrementally improved HEMAP-like statute, can be expected to provide similar benefits to the citizens of this state. Accordingly, the Association urges the Governor and the State Legislature to adopt HMBLAA, or a variation thereof, in New York. The Association will be available to provide assistance, as requested. HMBLAA as currently drafted appears in Appendix A.

SUPPORT FOR A NEW YORK BRIDGE LOAN MORTGAGE ASSISTANCE PROGRAM

Anecdotal evidence from housing counselors, homeowners and media sources suggests that the federal Home Affordable Modification Program ("HAMP") has become bogged down. It might even have resulted in some erroneous foreclosures, owing to difficulties in communicating with lenders and servicers, repeated losses of documents, and servicer errors. While recent improvements made to HAMP might well avoid such difficulties, complications of one sort or another are bound to emerge in connection with any loan modification program. In cases where modification, as distinguished from temporary assistance, is unnecessary, those complications can be avoided by a well crafted bridge loan assistance program. One of the major benefits of a home mortgage bridge loan assistance program is that it helps to avoid both unnecessary foreclosures and other restructuring-related complications by eliminating the need to negotiate loan modification terms with lenders and loan servicers at all. More broadly, such a program avoids unnecessary foreclosures precisely by capitalizing upon the fact that many foreclosures stem not from unsound mortgage loan structures or the fundamental non-creditworthiness of borrowers, but simply from *temporary income loss*. For the same reason, moreover, a well-structured bridge loan assistance program can also become substantially self-perpetuating

² James Orr, John Sporn, Joseph Tracy and Junfeng Huang. 2011. "Help for Unemployed Borrowers: Lessons from the Pennsylvania Homeowners' Emergency Mortgage Assistance Program." Federal Reserve Bank of New York, Vol. 17, No. 2, www.newyorkfed.org/research/current_issues. (Cited herein as "FRBNY Study.")

through borrower repayment of principal and interest on underlying loans once regular incomes are restored.

Most of the few mortgage bridge loan assistance programs thus far tried in the United States are of recent origin.³ There is in consequence insufficient data available to judge performance or recommend program improvements in their cases.⁴ HEMAP, on the other hand, which has a track record of over twenty-five years, does provide sufficient data on which to judge performance and recommend a similar, but improved, program for New York and elsewhere.

Economists and others at the Federal Reserve Bank of New York ("FRBNY") recently have conducted a thorough examination of HEMAP's performance. Key measures of HEMAP's success are: (1) the extent to which the program prevents borrowers from losing their homes; and (2) the extent to which bridge loans are repaid. Given that around eighty percent of HEMAP loan recipients have retained their residences and repaid their bridge loans in full, both performance measures are favorable in its case.

One key to HEMAP's success is the care with which applications for assistance have been screened. As one goal of a bridge loan mortgage assistance program is to protect program funding, the FRBNY Study found that approval rates under HEMAP tend to be low:

[S]ince HEMAP's introduction in 1983, roughly 183,000 mortgagors have applied for a loan and 43,000, or about 23 percent, have been approved. On average, 85 percent of denials are triggered by the applicant's circumstances, such as being fired from his or her job, quitting voluntarily, or lacking reasonable prospects of resuming full mortgage payments within twenty-four or thirty-six months based on income history. In 2009, for example, 14,000 borrowers applied for HEMAP loans and 3,250, or 23 percent, were approved. About 15 percent of the 2009 applicants were rejected for failing to provide proper income and employment verification documents to the administrator.

³ Connecticut's Emergency Mortgage Assistance Program ("EMAP"), which took effect on July 1, 2008, is very similar in design to HEMAP, except that a homeowner may also qualify for mortgage bridge loan assistance if delinquency is anticipated due to financial hardship beyond his or her control. On the federal level, the Emergency Homeowners' Loan Program ("EHLP"), introduced by the Department of Housing and Urban Development in August 2010, is a program to assist delinquent mortgagors. EHLP was established under the Dodd-Frank Wall Street Reform and Consumer Protection Act to provide interest-free loans to borrowers who experience a significant loss of income. Like HEMAP, EHLP and HMBLAA provide loans to pay arrearages plus a portion of the monthly mortgage payment. However, unlike EHLP, HEMAP and HMBLAA do not provide borrowers with interest-free loans. Payments made by the state, as proposed under HMBLAA, are loans which must be repaid at market interest rates. For information on a HEMAP-like program being operated by the Government of Ireland, see http://www.citizensinformation.ie/en/social_welfare_payments/supplementary_welfare_schemes/mortgage_interest_supplement.html.

⁴ The New England Public Policy Center, established by the Federal Reserve Bank of Boston, produced a paper which, among other things, provides both a summary of several mortgage bridge loan assistance programs in New England and an analysis of program features to consider in developing such a program. See Robert Clifford. 2011. "State Foreclosure Prevention Efforts in New England: Mediation and Assistance" New England Public Policy Center, Research Report 11-3. (Cited herein as, "Public Policy Center Study.")

EMAP, Connecticut's mortgage bridge loan assistance program modeled on HEMAP, had only a 6.7 percent approval rate in its first year of operation. This was at a time when EMAP defined a qualifying financial hardship to require loss of at least 25 percent of income. When it was subsequently determined that a much more modest loss of income or increase in housing expense could lead to delinquency, the state liberalized its definition of financial hardship by permitting the agency administering the program greater discretion in assessing it. After that, the "application approval rate rose to 17.6 percent over the next 12 months, and the number of loans quadrupled to 156. As of January 31, 2011, EMAP had received 2,500 applications and made 342 loans."⁵

HEMAP's success in screening applicants appears to be closely related to administrators' accurately verifying applicant satisfaction of several underwriting criteria:

- (1) the borrower must be suffering financial hardship due to circumstances beyond his or her control, including unemployment, illness or divorce;
- (2) there must be a reasonable prospect of resuming mortgage payments before the state's mortgage supplemental payments cease; and
- (3) the mortgagor must have a favorable mortgage payment history prior to the current financial hardship.

These criteria require a state program administrator both to obtain and verify evidence from sources other than the applicant and to exercise good judgment. Determining satisfaction of criterion (2) in particular requires discernment. Pennsylvania seems to have mastered that skill, given that approximately 80 percent of HEMAP loan recipients have retained their homes and paid back their bridge loans.

The Association would urge New York to adopt Pennsylvania's and some additional underwriting criteria in its own bridge loan mortgage assistance program. These additional criteria include that the applicant be a domiciliary of New York and that state supplemental mortgage assistance payments be limited both to a total number of monthly payments and to a total dollar cap. Total monthly payments under HEMAP, for example, are limited to 24 unless there is "high" unemployment (defined as Pennsylvania's unemployment rate's equaling or exceeding 6.5 percent), in which case total monthly payments are limited to 36. Total loan assistance payments under HEMAP are capped at \$60,000. The same time periods and dollar limit have been incorporated in HMBLAA. Additional program parameters are described below.

Because a bridge loan mortgage assistance program is tailored to helping financially troubled homeowners who are most likely to avoid foreclosure if assisted financially, it is not a comprehensive solution to the mortgage crisis or to the broader economic crisis. It is, however, one potentially effective arrow in the state's quiver for addressing certain important aspects of the current economic crisis, with potentially wide-ranging effects if adopted in other states or by the federal government.

⁵ Public Policy Center Study, *idem*, at 18.

QUALIFICATIONS FOR BRIDGE LOAN MORTGAGE ASSISTANCE

Bridge loans under HMBLAA would be available for the payment of mortgages on 1-to 4-family residences and for single-family residences in condominiums, housing cooperatives or manufactured homes located in New York. The mortgaged property would also have to be the mortgagor's principal residence; the mortgagor could not own other residential property subject to a mortgage lien. The mortgagor must be suffering temporary financial hardship due to unemployment, underemployment, or other cause specified by regulation, under circumstances beyond his or her control. Furthermore, the mortgagor must not have been more than 60 days delinquent on any residential mortgage (a) within 5 years preceding the delinquency for which assistance is requested, or (b) within 5 years prior to filing for assistance, if the mortgagor is not contractually delinquent at the time of such filing. The only exception to a delinquency within the 5 year time period is when the mortgagor can demonstrate that the prior mortgage delinquency itself resulted from circumstances beyond his or her control.

It is possible that there will occasionally be circumstances where an otherwise eligible applicant for mortgage bridge loan assistance will not qualify for assistance under the generally worded eligibility criteria in the Act, yet warrants partial waiver of those criteria in light of the Act's purpose. For this reason, the Act expressly allows for waiver of the general eligibility criteria under some circumstances, provided that such waiver is consistent with the purpose of the Act. For example, mortgagors who have not been obligors on residential mortgage debt for at least five years, but who otherwise have a satisfactory credit history, may still be eligible for assistance. Thus, more recent homeowners whose loans were prudently underwritten, but who are unable to make mortgage payments due to unemployment may have the opportunity to apply for a bridge loan.

A determination as to whether the financial hardship is temporary is tied to the likelihood that the mortgagor will prove able to resume full mortgage payments not later than 24 months after the commencement of bridge loan assistance payments. In periods of high unemployment, this period may be extended to 36 months. Factors considered in making a determination that financial hardship is temporary and that the mortgagor will be in a position to resume making full mortgage payments within 24 or 36 months include prior work history, opportunities for retraining, noncash benefits that reduce household expenses, potential for repaying short-term debt, a favorable work and credit history, and any other relevant factors necessary to determine whether financial hardship is temporary. The same underwriting factors used to determine whether financial hardship is temporary and whether full mortgage payments are reasonably likely to be resumed within 24 to 36 months also implicitly determine a mortgagor's likelihood of repaying the state's bridge loan assistance itself. Under HMBLAA, the determination of whether the financial hardship is beyond the control of the mortgagor is based on loss of employment or a reduction in the hours employed, or any other financial hardship determined by regulation. Loss of employment or underemployment may not be voluntary if bridge loan assistance is to be had. An applicant who has quit or been terminated with cause from paid employment is not eligible for assistance.

Although other bridge loan assistance programs have been drafted flexibly to allow for nonemployment-related financial hardship such as might result from divorce, death of a

breadwinner, injury, or catastrophic medical costs, the FRBNY Study cautions that "programs of financial assistance are likely to be more efficient if focused on those experiencing financial hardship due to unemployment." A minority of borrowers under HEMAP experienced a financial hardship unrelated to job loss. However, because almost half of the borrowers in HEMAP who failed to repay their loans cited financial hardship rooted in some cause other than unemployment, the FRBNY Study concludes that "factors such as serious illness or divorce may be better handled in programs tailored to those specific needs." HMBLAA is drafted accordingly; it is only by implementing regulations under HMBLAA that nonemployment-related financial hardship may be considered as a criterion for determining whether to extend mortgage payment assistance. The guiding idea is that the program will do best, at least at its start, to focus upon the single most common and readily verifiable cause of temporary financial hardship – involuntary unemployment or underemployment. Once expertise in administering the program has developed, other causes might be considered as well.

It should be recognized that underwriting bridge loans for mortgagors who are unemployed or underemployed may be as much an art as a science. Underwriting factors therefore must be applied flexibly, on a case-by-case basis. Not all underwriting factors are likely to be of equal weight. Although underwriting determinations are likely to become more accurate as the state gains experience in administering the program, the assessment of repayment ability already can be enhanced by taking into account certain considerations not previously considered. The FRBNY Study notes, for example, that the default rate on bridge loan assistance may be reduced by placing limits on a mortgagor's total recurring debt-to-income ratio. Selecting mortgagors with lower amounts of short-term installment debt, or who are in a position to pay off such debt quickly, would accordingly be likely to enhance repayment rates on HMBLAA loans.

Some programs with aims similar to those of HMBLAA impose requirements that back-end DTI ratios be capped. For example, the standard for determining whether a homeowner has a reasonable likelihood of repaying emergency assistance under HUD's EHLF program⁶ is that the homeowner have a back-end DTI ratio "of below 55 percent (principal, interest, taxes, insurance, revolving and fixed installment debt divided by total monthly income), or such other DTI as may be specified by HUD." The calculation is done before the event leading to financial hardship has occurred.

Although regulations implementing HMBLAA could ultimately adopt DTI ratios for determining repayment ability, the Association believes it may be appropriate to permit flexibility in the program's underwriting standards. Some potential borrowers might be confronted with circumstances that will permit them quickly to reduce their DTIs after the events causing their financial hardships. For others seeking assistance, this might not be possible. Still other potential borrowers with DTI ratios below an established threshold might suffer from other negative underwriting risks that would render them poor credit risks on balance. DTI ratios therefore are probably best not categorically capped but instead treated as but one consideration, even if an important one, among many in determining repayment ability.

The Association also believes that bridge loan assistance should not be extended to mortgagors in upper income brackets. Mortgagors with higher incomes typically have more resources to rely

⁶ See supra, note 3, for more on EHLF.

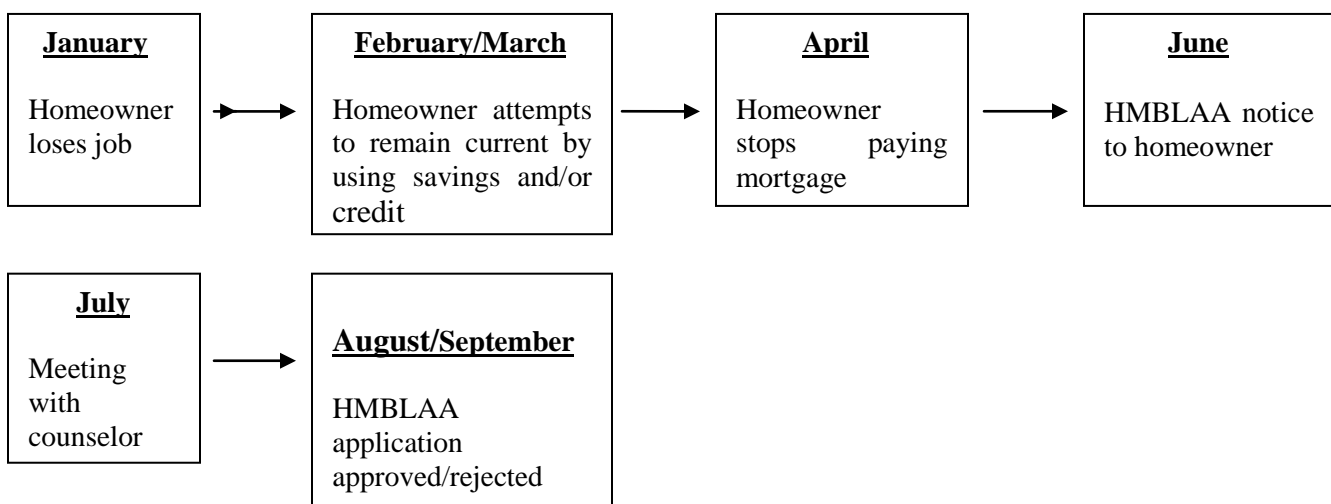
upon. Hence another important qualification for receiving bridge loan assistance under HMBLAA is that the borrower be classified as low, moderate, or middle income. For this purpose, the program defines eligible beneficiaries as mortgagors who, prior to the event triggering financial hardship, had income “that was less than 120 percent of the median family income for the metropolitan statistical area or statewide nonmetropolitan area where the property is located, as most recently determined and published by the Department of Housing and Urban Development.”

TIMELINES FOR MAKING A BRIDGE LOAN AND ITS REPAYMENT

There are several possible bridge loan underwriting timelines under HMBLAA. One such timeline is triggered by mortgage delinquency. Another is triggered by a prospective beneficiary’s filing for unemployment insurance. Where a mortgagor is at least 60 days contractually delinquent on his or her mortgage, the mortgagee or servicer must provide the mortgagor with a notice advising of the delinquency and the procedures for applying to the state for a mortgage assistance bridge loan. The mortgagor has 30 days to meet with a consumer credit counseling agency to resolve the delinquency by restructuring the loan through negotiations with the mortgagee. If, within 30 days of the mortgagor’s contacting the agency, these negotiations are unsuccessful, the mortgagor has 10 days to apply for a mortgage assistance bridge loan.

Once an application is made, the state will notify all mortgagees that the application for a bridge loan is under consideration and that a determination will be made within 60 calendar days. No legal action may be taken by a mortgagee as long as all deadlines above are met. Nor, under the Act, will compliance with this requirement in the form of abstention from legal action be permitted to prejudice the mortgagee’s mortgage interest in the mortgaged property. A sample timeline for the HMBLAA process, when triggered by a delinquency as just described, appears below.

Sample Timeline--Triggered by 60 Day Delinquency



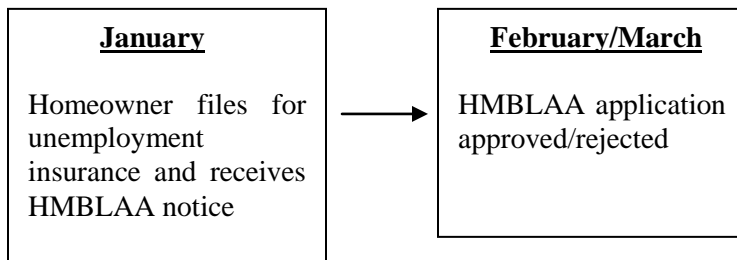
Mortgage bridge loan assistance programs typically are triggered by passage of some specified period of time after delinquency. This is the case, for example, with both HEMAP and EHLA.

The Association believes that the triggering mechanism for bridge loan assistance might be improved in a manner that avoids more delinquencies and attendant costs. The FRBNY Study, for example, notes that HEMAP could be improved by tying assistance to the onset of unemployment, where the mortgagor is able to anticipate that the loss of income will eventually lead to delinquency on the mortgage. The authors of the FRBNY Study state that:

Many workers apply for unemployment insurance benefits within a week or two of losing their job; the unemployment insurance application could simultaneously trigger an application for mortgage assistance. With a more timely determination of loan eligibility, lenders/servicers would see fewer delinquencies and the loan amount would likely be lower because there would be less need for funds to cover arrearages. In addition, borrowers eligible for financial assistance would not have to exhaust their savings or take on other forms of debt in attempting to remain current.

HMBLAA has been designed to provide for such an alternative. In the case where a mortgagor files for unemployment insurance, the New York State Department of Labor will notify the filer that mortgagors may be eligible for bridge loan mortgage assistance if, due to a loss of income, they anticipate that there will not be sufficient income to make timely payments on their mortgages without drawing down assets or taking on additional debt. If the mortgagor applies to the state for mortgage bridge loan assistance, the state will notify the mortgagor of its decision within 60 calendar days of receipt. A sample timeline for the HMBLAA process triggered by filing for unemployment insurance appears below.

Sample Timeline--Triggered by Filing for Unemployment Insurance



It might be thought that the automatic trigger that applies in the case of a 60 day delinquency is unnecessary, since it would appear to be in the interest of the mortgagor to apply for bridge loan assistance soon after filing for unemployment insurance anyway. The Association believes, however, that in some cases the path to mortgage bridge loan assistance through the filing for unemployment insurance might not be taken or even be available absent the automatic trigger. For there will likely be some mortgagors who simply draw down assets or rely upon other resources until the point where they either anticipate default or are 60 days delinquent on their mortgages. Other mortgagors, in their distress, doubtless will overlook or misunderstand the notices they receive that inform them that bridge loan assistance may be available.

MECHANICS OF A BRIDGE LOAN MORTGAGE ASSISTANCE PROGRAM

The mechanics of a HMBLAA bridge loan are illustrated in the following example using the definitions for Total Housing Expense ("THE"), Net Effective Income ("NEI") and Gross Household Income ("GHI"), as they appear in the proposed HMBLAA bill in Appendix A.

- THE is 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 which shall consist of the monthly amount the unit is assessed for the maintenance of common elements.
- NEI is the Gross Household Income less city, state and federal income and Social Security taxes.
- GHI is the sum of the incomes of spouses and children residing in the same household as the applicant, as well as incomes of any other resident of the household declared by the mortgagor as a dependent for purposes of federal taxation. Included among such incomes are any other forms of monetary assistance being received by the aforementioned members of the household.

For illustrative purposes, the example below compresses the time periods over which a bridge loan is made and paid off. It also does not factor-in the repayment of interest on the loan, which begins to accrue at the time repayments on the bridge loan commence. Depending on the circumstances in an actual case, a borrower making minimum monthly payments to the state could take years to pay off the bridge loan. However, the repayment period is often likely to be related to how quickly home equity reaches a point where the mortgage can be refinanced and the proceeds from the refinancing applied to pay off the bridge loan.

It should also be noted that the HMBLAA administrator has the authority under section 5 of the Act to “establish procedures for periodic review of the mortgagor’s financial circumstances for purposes of determining whether continuation, termination, or adjustment of home mortgage bridge loan assistance payments is warranted in light of any eligibility requirements under the Act”. For example, this authority would extend to terminating the bridge loan and making the balance of the loan immediately due in cases where the borrower no longer resides in the residence or where a determination is made that the borrower has sufficient equity in the property and repayment ability to refinance the property at reasonable rates and terms in the private sector.

Assume that before the loss of income and the application for bridge loan assistance, the household's NEI is \$300 and its THE is \$100. As a result of a job loss by one spouse, the NEI now falls to \$100. Both spouses, who are the mortgagors, apply for a bridge loan and are approved. Assume also that before approval, arrearages including court costs and attorney fees incurred by the lender, accumulate in the amount of \$80. It should be emphasized that under HMBLAA, a bridge loan may be approved with no arrearages incurred if the mortgagor anticipates that he or she will not be able to pay the mortgage and receives a bridge loan to cover

monthly mortgage payments before delinquency occurs. The example includes arrearages, however, in order to show how they are accommodated.

If arrearages are incurred before the bridge loan is approved, as in the example, the bridge loan will be made up of two components: a nonrecurring loan and a recurring loan. The nonrecurring loan is equal to the amount that the state will pay the mortgagee or servicer on behalf of the mortgagor to cancel the arrearages and bring the mortgagor current on the mortgage loan. In this example, the nonrecurring loan is equal to \$80. The recurring loan is equal to the monthly difference between THE and 40 percent of the household's NEI. In calculating the recurring loan, it is assumed under HMBLAA that the household will need 60 percent of its NEI to pay all nonmortgage-related household expenses.

In the example, the bridge loan and its repayment are made over 10 time periods as illustrated in the table below. The nonrecurring and recurring loans are broken out separately with the nonrecurring loan payments (column 9) commencing after the recurring loan balance (column 7) is paid off. Alternatively, the program could accommodate a payment scheme where both loan amounts would be combined and paid off at the same time.

In time period 1, the mortgagors' contribution to the \$100 mortgage loan payment that must be paid to the mortgagee is 40 percent of NEI or \$40 (column 4); the state pays the difference of \$60 (column 5). The \$60 paid by the state is the recurring loan balance (column 6). In time period 2, the household sees an increase in income, due to additional hours at work or part time work, so that its NEI is \$200. The mortgagors' contribution to the mortgage loan in this period is \$80 or 40 percent of NEI (column 4). The state's contribution is the difference between the mortgagors' contribution (column 4) and THE (column 5). As can be seen in the example, as household NEI increases the mortgagors' contribution to monthly mortgage payments increase and the state's contribution decreases.

In time period 3, the household's NEI is \$300, which is back to where it was before the job loss by one spouse. At this point, 40 percent of the household's NEI (column 4) exceeds THE (column 2) by \$20. At the point where THE is less than 40 percent of NEI (column 7), recurring loan payments from the state cease, interest on the recurring and nonrecurring loans commence, and the mortgagors begin repaying the bridge loan. In time period 3, the mortgagors pay the state \$120 (40% of NEI). The state passes \$100 to the mortgagee or servicer for the monthly mortgage payment and keeps \$20 as a partial repayment of the bridge loan. That partial repayment of the recurring loan (column 7) reduces the recurring loan balance from \$80 to \$60 (column 6). This process continues through period 6 when the recurring loan is paid off. In period 7, the mortgagors begin to make repayments of the nonrecurring loan until all remaining bridge loan assistance is repaid.

1	2	3	4	5	6	7	8	9
Time Period	THE	NEI	Mortgagors' Contribution (.4 x NEI)	State Contribution/Recurring Loan (THE - (.4 x NEI) until THE ≤ (.4 x NEI))	Recurring Loan Balance	Repayment of Recurring Loan Balance (THE > .4 x NEI or THE < .40 x NEI)	Non-Recurring Loan Balance	Repayment of Non-Recurring Loan (THE <.4 x NEI and the Recurring Loan is Paid)
1	\$100	\$100	\$40	\$60	\$60	\$0	\$80	\$0
2	\$100	\$200	\$80	\$20	\$80	\$0	\$80	\$0
3	\$100	\$300	\$120	\$0	\$60	\$20	\$80	\$0
4	\$100	\$300	\$120	\$0	\$40	\$20	\$80	\$0
5	\$100	\$300	\$120	\$0	\$20	\$20	\$80	\$0
6	\$100	\$300	\$120	\$0	\$0	\$20	\$80	\$0
7	\$100	\$300	\$120	\$0	\$0	\$0	\$60	\$20
8	\$100	\$300	\$120	\$0	\$0	\$0	\$40	\$20
9	\$100	\$300	\$120	\$0	\$0	\$0	\$20	\$20
10	\$100	\$300	\$120	\$0	\$0	\$0	\$0	\$20

FUNDING FOR THE MORTGAGE BRIDGE LOAN ASSISTANCE PROGRAM

Given very tight state budgets, it might prove difficult to justify funding for a bridge loan mortgage assistance program. However, if HEMAP is any guide, a program such as HMBLAA can be quite efficiently and cost-effectively run, and can accordingly save the state more in the way of costs occasioned by unnecessary foreclosures than it occasions in the way of expenditure. HEMAP was initially “start-up” funded entirely by the state of Pennsylvania through an appropriation of \$25 million in 1984. However, although subsequent state appropriations averaged \$10 million annually from 2005 to 2009, for over 80% of HEMAP’s history the program has relied mainly on proceeds from repayment of existing loans. The cost per application processed is \$320, or about \$4.5 million, to administer the program annually. The average monthly supplemental bridge loan to a borrower is approximately \$500.

A determination whether to adopt HMBLAA should be based on weighing the comparatively modest costs of running the program against the much heftier costs of depressed housing prices, negative effects on housing stock, increased demands on police and firemen associated with abandoned properties, loss of tax base, increased demands on the court system and services to displaced families, and a host of other social ills associated with mass evictions. Costs must also be borne by lenders and investors due to lost or reduced mortgage payments, property maintenance, vandalism, legal fees and reduced resale values.

Given the nature of the current mortgage crisis, it is in the interest of the legislature, homeowners, lenders and others to find workable, cost-effective solutions to preventable foreclosure. Even those citizens who have not been directly affected by foreclosure will benefit from avoiding the associated negative externalities.

A rudimentary regulatory impact analysis on the costs and benefits associated with HMBLAA is provided in Appendix B. This analysis can be refined and have its scope expanded to address additional issues raised by the Governor or the State Legislature. For example, given sufficient data, the analysis may be able to project counties with the greatest numbers of potential mortgage bridge loan assistance recipients.

The Public Policy Center Study⁷ notes that “[a]lthough financial assistance programs have many positive attributes, states that lack unique funding sources are unlikely to create such programs in the current environment of fiscal austerity. The few states that have enacted financial assistance programs have tapped unique funding sources, such as the Maine HOME fund and the Connecticut State Banking Fund.” The HOME fund was created by the Maine legislature to finance affordable housing initiatives. The HOME fund was created in 1983 “by doubling the real estate transfer tax and dividing its revenues between the state’s general fund and the HOME fund.” Connecticut provided \$7.5 million in funding for EMAP from the State Banking Fund and authorized the agency administering the program to capitalize the revolving loan fund by issuing up to \$50 million in bonds.

A. Funding Options

HMBLAA provides that startup funds for the program shall be made available through state appropriations to the extent that such funding is available, with the program thereafter to be funded through the following means:

- (1) Repayments of mortgage bridge loan assistance to the state;
- (2) State appropriations;
- (3) Contributions made available by firms in return for tax credits;
- (4) Charitable contributions made available by any party; and
- (5) Contributions by financial institutions to fulfill their state and federal Community Reinvestment Act obligations.

In addition to funds that may be made available by the state of New York, indirect state funding could be made available through the use of tax credits. In the absence of adequate state funding at this time, a creative, though more restrictive, way to fund the program would be to ensure that contributions made by financial institutions are eligible for credit under the state and federal Community Reinvestment Acts (“CRA”).

B. CRA Grants as a Startup Funding Option

Under both the federal and New York CRA, banks are periodically evaluated to determine how well they meet the credit needs of the communities (“assessment areas”) they serve through lending activities, the provision of other financial services, and qualified investments. If funding is structured properly, banks may receive qualified CRA investment credit by helping to fund the HMBLAA bridge loan assistance program. The federal CRA provides that an investment is “qualified” for CRA credit if it has as its primary purpose “community development”. An investment will be deemed to have community development as its primary purpose if it is

⁷ See supra, note 4.

designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, or providing affordable housing for or community services to low- to moderate-income persons.⁸ Neither CRA contains any formulas, dollar figures or investment ratios that must be achieved by an institution in a specific community in order to earn CRA credit. Instead, financial institutions are evaluated on the basis of a variety of factors. In the case of an investment, regulators consider: (1) the dollar amount of the investment; (2) the innovativeness or complexity of the investment; (3) the investment's responsiveness to credit and community development needs in the bank's assessment area; and (4) the degree to which such an investment is not already routinely provided by private investors.

Both the federal financial regulators and the New York State Department of Financial Services have permitted banks wide latitude in meeting their obligations and responsibilities under their CRAs. The federal *Interagency Questions and Answers Regarding Community Reinvestment* specifically recognizes that "foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners," may fall under the "revitalize or stabilize" category of community development. While HMBLAA does not seek to modify mortgages, it does seek to prevent foreclosures and will serve as a means of stabilizing communities. Grants to the HMBLAA program would therefore appear to be qualifying investments under both CRAs. The regulations also recognize that community development programs, such as HMBLAA will be, can operate on a statewide basis. Thus a bank's contribution to HMBLAA would be considered a qualified investment even if there are no HMBLAA participants in that bank's assessment area.

It is beyond the scope of this paper to describe how funding would have to be utilized to make contributions by financial institutions CRA-eligible. However, it is clear that grants and charitable contributions by financial institutions to fund HMBLAA can be made CRA-eligible if they are limited primarily to supporting community development. It should also be noted that although grants may be used to support middle income families under certain conditions, CRA's focus is on benefiting low- and moderate-income individuals and families. Hence, CRA places more restrictions on the use of funds provided for a bridge loan assistance program than might be optimal. However, to the extent that mortgagors come to count as low- or moderate-income individuals subsequent to the events causing financial hardship, the limitations imposed by the CRA on who may receive bridge loan assistance might not be as restrictive as would appear at first glance.

EXTENDING BRIDGE LOANS TO BORROWERS WITH NEGATIVE EQUITY

Potential beneficiaries of a home mortgage bridge loan assistance program with negative equity in their homes pose additional challenges. Bridge loans to such "underwater" mortgagors would be unsecured and result in increased repayment risk to the state. For such applicants, the FRBNY

⁸ To ensure that funding provided by depository institutions and certain of their affiliates is CRA-eligible, the funds would have to be targeted primarily to "community development" activities. Community development includes providing grants for affordable housing for low-or moderate-income individuals. The federal CRA defines moderate-income as "a median family income that is at least 50 and less than 80 percent" in the case of "a census tract delineated by the United States Bureau of the Census in the most recent decennial census" or "an individual income that is at least 50 percent and less than 80 percent of the area median income."

Study recommends that, as a condition for the extension of bridge loan assistance, the lender or servicer be required to write down principal on the mortgage to the current value of the home. The authors of the FRBNY Study explain why some lenders or servicers would be motivated to comply with such condition and write down mortgage principal in connection with the granting of mortgage bridge loan assistance:

When a negative equity borrower is employed, the lender/servicer may be reluctant to write down principal on the premise that the borrower is likely to continue to make the monthly mortgage payments. However, the incentive for the lender/servicer to write down principal increases significantly once a negative equity borrower experiences a job loss. Moreover, the potential to qualify the borrower for a HEMAP loan, which insures the borrower's ability to make the mortgage payments for at least two years, is additional incentive for the lender/servicer to agree to write down the mortgage balance. Writing down the balance on the mortgage will also reduce the size of the HEMAP loan, since the borrower's monthly payments will be reduced.

In 2009, the New York State Legislature amended the state banking law⁹ to provide for shared appreciation mortgage agreements. Under the new law, the lender or mortgage holder may agree to reduce the principal on the mortgage of a borrower at risk of foreclosure. In exchange for this write-down, the lender or holder will share in any appreciation in the value of the property at the time of sale. The amount shared by the lender is capped at the lesser of either the amount of the write-down, or 50% of the property's increase in value.

Because a shared appreciation agreement results in a lower monthly payment, some families that would otherwise turn to HMBLAA might be able to afford to make their monthly payments without assistance. In the case of mortgagors whose current mortgage balance exceeds the value of their property, shared appreciation agreements also offer an incentive to stay in the home and to maintain it. For certain underwater mortgagors, a bridge loan by itself might not be enough to prevent foreclosure. However, a combination of a bridge loan and a principal write-down through a shared appreciation agreement might well incentivize the mortgagor to stay in the home and provide for the financial ability to avoid foreclosure.*

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⁹ See Appendix C

APPENDIX A

Home Mortgage Bridge Loan Assistance Act of 2012

A BILL

To establish a program that prevents avoidable home foreclosures by providing temporary bridge loan assistance in making supplemental home mortgage loan payments on behalf of homeowners experiencing temporary financial difficulty, through no fault of their own, that materially affects their ability to make such payments.

Section 1. Short Title

This Act may be cited as the “Home Mortgage Bridge Loan Assistance Act of 2012.”

Section 2. Findings and Purpose

(a) Findings – The Legislature finds that:

(1) the State and the Nation have experienced the collapse of a sizeable primary and secondary real estate market bubble which few foresaw and many now suffer the wealth-destructive effects of;

(2) the State and the Nation are in consequence now suffering a protracted economic slowdown as consumers trim spending and concentrate upon paying down debt, while financial institutions and other business firms trim investment expenditure pending a return of consumer spending;

(3) the economic slowdown afflicting the State and the Nation has driven large numbers of citizens into temporary involuntary unemployment or underemployment, thereby

lowering incomes, spending, and investment yet further, while rendering debt-payment correspondingly more difficult for many;

(4) one particularly ominous result of depressed home prices and reduced household income is lower consumer spending and investment which increases the likelihood of a sustained downward economic spiral;

(5) there is in consequence a significant danger that many otherwise credit-worthy homeowners' capacity to remain current on mortgage payments will deteriorate yet further in coming months, resulting in widespread default, multiple costly foreclosure proceedings, distress sales of homes, accelerated further downward pressure on market valuation of the State's housing stock, consequent further distress to financial institutions' balance sheets and solvency, growing rates of avoidable homelessness, and significant deterioration of abandoned housing stock and neighborhoods;

(6) foreclosed homes, abandoned housing stock and consequently deteriorating buildings and neighborhoods not only detrimentally affect those who needlessly lose their homes and the neighborhoods in which they reside, but also drain wealth from otherwise healthy lending institutions and non-distressed home mortgage borrowers, thereby harming the health of the broader economy of the State yet further;

(7) while the current severe economic crisis demands immediate action to avoid unnecessary foreclosures, help revitalize and stabilize our communities and reinvigorate mortgage lending, business cycles are part of the economic fabric of the State and the Nation and therefore, a temporary bridge loan mortgage payment assistance program will benefit home mortgage borrowers, lenders and neighborhoods not only in the current downturn, but also in future conventional economic downturns;

(8) empirical evidence reveals that many temporarily troubled mortgage borrowers prove able to retain their homes and pay off their mortgages without modification when offered bridge loan assistance until broader economic conditions improve, thereby staving off growing default, foreclosure, homelessness, and neighborhood deterioration rates, as well as yet further worsening of economic conditions;

(9) temporary bridge loan mortgage assistance programs have accordingly proved highly successful in cost-effectively limiting foreclosure rates and attendant economic and social ills in several US states; hence

(10) a temporary bridge loan mortgage payment assistance program is highly likely to redound in a cost-effective manner to the benefit of home mortgage borrowers, lenders, neighborhoods, and the broader public of this State.

(b) Purpose – It is accordingly the purpose of the Act to establish a program that will afford bridge loan assistance to home mortgage debtors facing temporary difficulties in remaining current on mortgage loan payments through no fault of their own, so as to head off the many avoidable private and public ills catalogued above.

Section 3. Home Mortgage Bridge Loan Assistance

(a) General Authority –

(1) The Secretary/Agency shall establish a program to afford temporary supplemental mortgage payments of approved mortgagors, this program to be called the “Home Mortgage Bridge Loan Assistance Program,” pursuant to the general criteria laid out in subsections (b) through (f) below. This program shall also be subject to the specific requirements prescribed in the remaining sections of this Act. The assistance provided under the Act shall be called “home mortgage bridge loan assistance.”

(2) The Secretary/Agency shall promulgate more detailed rules and forms under the specific provisions of this Act as necessary, and shall publish and enforce those rules, in conformity with the Administrative Procedure Act of this State.

(3) The aggregate amount of home mortgage bridge loan assistance provided to any mortgagor shall not exceed \$60,000 (or an amount adjusted for inflation, as determined by regulation) or extend beyond twenty-four (24) months (or thirty-six (36) months during periods of high unemployment, as determined from time-to-time by the Secretary/Agency), and shall ultimately be recovered from beneficiaries after their employment resumes, as provided for under this Act.

(4) The Secretary/Agency is authorized to provide home mortgage bridge loan assistance under this Act only at such time as funds have been appropriated or made available for the Home Mortgage Bridge Loan Assistance Program, as provided for below, in Section 6 of this Act.

(b) Eligible Mortgages/Mortgagors – With the partial exception of cases covered by sections 3(c) and 4(e) of this Act, home mortgage bridge loan assistance shall be made available to a mortgagor only when all of the following conditions are met:

(1) The mortgagor is a domiciliary of this State.

(2) The property securing the mortgage is (i) located in this State; (ii) a one-to-four-family owner-occupied residence or a single-family residence in a condominium, housing cooperative or manufactured home; and (iii) the primary residence of the mortgagor.

(3) The mortgagor does not own other residential property that is subject to a mortgage lien.

(4) The mortgagor, prior to the occurrence of involuntary unemployment or underemployment or other financial hardship determined by regulation pursuant to Section 3(f)(1)(iii) of this Act (“Event”) had a total pre-Event income that was less than 120 percent of the median family income for the metropolitan statistical area or statewide nonmetropolitan area

where the property is located, as most recently determined and published by the Department of Housing and Urban Development.

(5) A mortgagee has provided written notice to the mortgagor of its intention to foreclose upon the mortgage, or payment on the mortgage has been contractually delinquent for sixty (60) or more days.

(6) The aforementioned mortgagee is not prohibited by law other than this Act from foreclosing upon the mortgage.

(7) The mortgagor is faced with temporary financial hardship owing to circumstances beyond his or her control, as defined in subsection (f) of this section, which prevents his or her correcting a mortgage payment delinquency, related to subsection (b)(5), within a reasonable period of time and bringing the mortgage current.

(8) The mortgagor has not been more than 60 days delinquent on a residential mortgage within the five-year interval preceding the delinquency or the filing for unemployment insurance under section 4(e) of this Act in connection with which assistance is requested of the Secretary/Agency, unless the mortgagor demonstrates that the prior delinquency also resulted from circumstances beyond his or her control as defined in subsection (f)(1) of this section.

(9) There is a reasonable likelihood that the mortgagor will be able to resume full mortgage payments not later than 24 months (or not later than 36 months, in periods of “high” unemployment, as determined from time-to-time by the Secretary/Agency) after the commencement of home mortgage bridge loan assistance payments by the Secretary/Agency to the mortgagee, and that the mortgagor will pay the mortgage in full either by its maturity date or by a later date agreed to with the mortgagee.

(10) The mortgagor has applied to the Secretary/Agency for home mortgage bridge loan assistance upon an application form developed by the Secretary/Agency in keeping with the requirements of the State’s Administrative Procedure Act, which form shall include:

(i) a financial statement disclosing all assets and liabilities of the mortgagor whether singly or jointly held, and all household income irrespective of source;

(ii) a statement of financial hardship, supported by such documentation as the Secretary/Agency shall prescribe, detailing how either condition stated in subsection (b)(7) or section 4(e)(4), as applicable, is satisfied;

(iii) a statement of prior mortgage credit history, supported by such documentation as the Secretary/Agency shall prescribe, indicating that the mortgagor has enjoyed a favorable mortgage credit history over the previous five (5) years;

(iv) a statement of prior education, employment, income, and credit history, supported by such documentation as the Secretary/Agency shall prescribe, tending to show a reasonable likelihood that the mortgagor will be able to resume full mortgage payments within

twenty-four months (24) (or not later than thirty-six (36) months, in periods of high unemployment, as determined from time-to-time by the Secretary/Agency) after commencement of home mortgage bridge loan assistance payments under the Act, and pay the mortgage in full either by its maturity date or by a later date agreed by the mortgagor and the mortgagee; and

(v) any other information deemed necessary by the Secretary/Agency to determine eligibility for home mortgage bridge loan assistance under this Act.

(11) The mortgagor has fulfilled the obligations stated in the notice supplied him or her in keeping with sections 4(b)(2)(iii)-(iv) of this Act, below.

(12) The Secretary/Agency has determined that the foregoing criteria, and any procedural requirements that have been promulgated, have been satisfied.

(c) Waiver of Requirements – The Secretary/Agency is authorized to waive noncompliance with the criteria in subsection (b) of this section to the extent that such waiver is consistent with the State’s Administrative Procedure Act, is not inconsistent with the purpose of this Act and is supported by equitable principles.

(d) Reapplication – Should the Secretary/Agency determine that any of the criteria elaborated in subsection (b) of this section are not met, the mortgagor may reapply for home mortgage bridge loan assistance not before six (6) months from the date of such determination, unless there is a material change of circumstances. Nothing in this subsection shall prohibit a mortgagee from commencing legal action to enforce the mortgage prior to reapplication by the mortgagor.

(e) Misrepresentation in Application Form – An applicant who misrepresents any information provided in connection with an application for home mortgage bridge loan assistance may be denied such assistance, or be required immediately to return any such assistance proffered on the basis of such misrepresentation; and the mortgagee may, any time thereafter, take any legal action to enforce the mortgage free of any further restriction imposed by this Act.

(f) Temporary Financial Hardship Beyond Control of Mortgagor – The Secretary/Agency shall determine whether that financial hardship which impedes timely mortgage payment may be temporary and beyond the control of the mortgagor by reference to verified impediments.

(1) Qualifying Financial Hardship Beyond the Mortgagor’s Control – Circumstances beyond the mortgagor’s control, not including termination from paid employment for cause, which result in financial hardship to the mortgagor include:

- (i) involuntary loss of employment by the mortgagor;
- (ii) involuntary reduction of salary, wage, or other earnings on the part of the mortgagor; or

(iii) any other financial hardship determined by regulation to be beyond the mortgagor's control.

(2) Determination as to Whether Financial Hardship May be Temporary – Factors that the Secretary/Agency shall consider when evaluating whether the mortgagor has a reasonable prospect of resuming full mortgage payments within 24 or 36 months, from the commencement of home mortgage bridge loan assistance payments, and of being able to pay the mortgage in full by maturity or by a later date agreed to by the mortgagee include:

(i) prior work history, experience, training, opportunities for retraining and similar factors which may affect future employment opportunities;

(ii) debt reduction or other income changes sufficient to enable the mortgagor to resume full mortgage payments;

(iii) noncash benefits that may reduce household expenses, such as food stamps or free medical services for military or low-income families;

(iv) likely changes in future income or expenses caused by changes in the age, composition or employment of members of the household;

(v) potential for repayment of short-term or installment debt; delinquencies in other debts which seriously jeopardize continued ownership of the home, which cannot be cured by a mortgage assistance loan;

(vi) a favorable work and credit history;

(vii) a history of timely mortgage payments when employed;

(viii) evidence that the mortgagor is actively seeking work; and

(ix) any other consideration determined by the Secretary/Agency to be relevant to evaluating whether the mortgagor's financial hardship is temporary.

Section 4. Notice, Timing, and Stay-of-Proceeding Requirements; Unemployment Insurance Trigger

(a) General Requirements –

(1) No mortgagee or agent thereof, or any mortgage servicer, may accelerate any eligible mortgage obligation as defined in section 3(b) of this Act, or commence any legal action – including mortgage foreclosure – to recover on such obligation, or take possession of any security of the mortgagor for such mortgage obligation, until: (i) the mortgagor is notified as prescribed in subsection (b) of this section, pursuant to such form and in such manner as the Secretary/Agency shall prescribe by rule; and (ii) the Secretary/Agency has made a determination not to extend home mortgage bridge loan assistance, or until the applicable time

periods prescribed immediately below in subsections (b) and (c) of this section have expired, which ever is earlier.

(b) Timing and Notice Requirements Conditioning Mortgagee's Exercise of Legal Rights –

(1) Timing – No mortgagee or agent thereof, or any mortgage servicer, may accelerate any eligible mortgage obligation as defined in section 3(b) of this Act, or commence any legal action – including mortgage foreclosure – to recover on such obligation, or take possession of any security of the mortgagor for such mortgage obligation, until the mortgagor is at least sixty (60) days contractually delinquent in making his or her mortgage payments, or is in violation of some other contractual provision of such mortgage.

(2) Notice – Any mortgagee or agent thereof, or any mortgage servicer, before accelerating any eligible mortgage obligation as defined in section 3(b) of this Act, or commencing any legal action – including mortgage foreclosure – to recover on such obligation, or taking possession of any security of the mortgagor for such mortgage obligation, shall, in addition to complying with the General Requirements prescribed in subsections (a) and (b)(1) of this section, comply with the following notice requirements:

(i) Notice shall be given by a uniform notice form, application form and by any other documentation concerning home mortgage bridge loan assistance, to be prepared by the Secretary/Agency in keeping with the requirements of the State Administrative Procedure Act.

(ii) The notice, which may be provided by (i) U.S. mail, or (ii) in any other manner agreed to by the mortgagor in writing, shall advise the mortgagor of his or her delinquency or other default under the mortgage.

(iii) The notice shall advise the mortgagor that he or she has thirty calendar (30) days from the date of the notice to meet face-to-face with a Secretary/Agency-designated consumer credit counseling agency, with a view to resolving the delinquency or default by restructuring the loan payment schedule or in some other manner through negotiations with the mortgagee or its servicer or other agent who has sent the notice.

(iv) The notice shall advise the mortgagor that, should he or she be unable to resolve the delinquency or default within thirty (30) calendar days of the first contact made with the consumer counseling agency, and wish to be considered for home mortgage bridge loan assistance under this Act, he or she must apply for such assistance no later than ten (10) calendar days from the end of said thirty (30) day period, to the Secretary/Agency or its duly authorized agent at either an address, including an email address, or a telephone number, both to be provided in the notice itself, to be considered.

(c) Timing, Notice, and Associated Requirements after Mortgagor's Receipt of Default Notice –

(1) The consumer credit counseling agency shall promptly notify any and all mortgagees secured by the mortgagor's real property of the date that first contact was made with the consumer counseling agency by the mortgagor and that the mortgagor is acting pursuant to the procedures stipulated in section 4 of this Act. The notification shall be addressed to the mortgagees' addresses of record upon the mortgage-filing with the state recorder of deeds.

(2) No mortgagee notified under subsection (c)(1) immediately above shall commence or continue any legal proceeding against the mortgagor's real property for at least ten (10) calendar days from the end of the 30 day period that commences from the first contact the mortgagor makes with a credit counseling agency as stated in such notice.

(3) Should the mortgagor apply for home mortgage bridge loan assistance as described in subsection 3(b)(10) above, the Secretary/Agency shall make a determination of eligibility or non-eligibility within sixty (60) calendar days of receipt of the application. Upon receipt of the application, the Secretary/Agency also shall promptly inform any and all mortgagees secured by the mortgagor's real property that an application has been received under this Act, and shall inform the same of both the date of receipt and the prohibition stated in subsection (c)(4) immediately below. Notification shall be addressed to the mortgagees' addresses of record upon the mortgage-filing with the state recorder of deeds.

(4) During the period over which a mortgagor's application made to the Secretary/Agency under this Act is pending, no mortgagee shall commence or continue any foreclosure or related legal action upon its mortgage with the mortgagor.

(5) If (i) the mortgagor fails to meet with a designated consumer credit counseling agency within the designated time period prescribed by subsection (b)(2)(iii) of this section; (ii) the mortgagor does not apply for home mortgage bridge loan assistance within the time period prescribed above by subsection (b)(2)(iv) of this section; (iii) the mortgagor's application under subsection 3(b)(10) is denied; or (iv) the Secretary/Agency fails to comply with either of sections 5(a) and 5(b) below, then the mortgagee may take any legal actions that are available to enforce the mortgage, free of the requirements of this Act.

(d) Subsections (a) through (c) of section 4 do not apply in any case where a mortgagee determines, in good faith, that the amount necessary to bring the mortgage current is greater than \$60,000 or an amount adjusted for inflation as determined by regulation.

(e) Other Eligible Mortgages/Mortgagors: Timing, Notice and Associated Requirements after Mortgagor Files for Unemployment Insurance-

(1) Any mortgagor who files for unemployment insurance with the New York State Department of Labor shall receive notification from the Department that he or she may be eligible for home mortgage bridge loan assistance under this Act.

(2) The notice shall be given by a uniform notice prescribed by the Secretary/Agency pursuant to the requirements of the State Administrative Procedure Act.

(3) The notice shall describe the purpose of the Home Mortgage Bridge Loan Assistance Program, include an application for home mortgage bridge loan assistance and notify the filer that he or she may consult with a Secretary/Agency-designated consumer credit counseling agency with a view to applying for home mortgage bridge loan assistance.

(4) Notwithstanding the conditions for home mortgage bridge loan assistance eligibility prescribed by section 3(b) of this Act relating to mortgagors who have been notified of the mortgagee's intention to foreclose or who are contractually delinquent for 60 days or more, a mortgagor who is not contractually in default for 60 days or more on his or her mortgage loan and who is faced with temporary financial hardship beyond his or her control, by reference to verified impediments described in section 3(f) of this Act, may apply for home mortgage bridge loan assistance on a form prescribed by the Secretary/Agency which includes the information in section 3(b)(10) of this Act if the temporary financial hardship, as determined by the Secretary/Agency after reviewing the mortgagor's financial condition under section 3(b)(10), may reasonably cause the mortgagor to become at least 60 days delinquent on his or her mortgage absent the liquidation of any part of the mortgagor's assets.

(5) The Secretary/Agency shall make a determination of eligibility within sixty (60) calendar days of receipt of the application.

(6) Should the mortgagor's application for home mortgage bridge loan assistance be denied, the mortgagor may reapply for such assistance not before six (6) months from the date of such determination, unless there is a material change of circumstances.

Section 5. Temporary Payment of Home Mortgage Bridge Loan Assistance

(a) Initial Payment of Arrearages – Should the Secretary/Agency determine that a mortgagor is eligible for home mortgage bridge loan assistance pursuant to sections 3(b) or 4(e), the Secretary/Agency shall pay any mortgagee secured by the mortgagor's real estate such amounts as are necessary to bring the mortgage current, without regard to any acceleration of the debt under the mortgage. In the alternative, the Secretary/Agency shall pay to the mortgagee any alternate mortgage payments agreed by the mortgagee and mortgagor. In addition, the Secretary/Agency shall pay reasonable costs incurred by the mortgagee prior to the Secretary's/Agency's grant of home mortgage bridge loan assistance to the mortgagor.

(b) Mortgage Payments Subsequent to Initial Payment of Arrearages – After the Secretary/Agency has paid any and all arrearages pursuant to subsection (a) immediately above, the Secretary/Agency shall make monthly mortgage assistance payments to the mortgagee on behalf of the mortgagor, and shall collect monthly payments from the mortgagor in amounts determined pursuant to the following formula: The mortgagor's monthly payments to the Secretary/Agency to cover the mortgagor's share of Total Housing Expense shall be in an amount that does not exceed forty (40) percent of the mortgagor's Net Effective Income, as these terms are defined in subsection (c) immediately below. The mortgagor's payments to the Secretary/Agency shall be made at least seven (7) days prior to the due date of each mortgage payment to the mortgagee, and upon receipt thereof the Secretary/Agent or its duly authorized agent shall send the full mortgage payment directly to the mortgagee.

(c) Section Definitions – For purposes of this Section,

(1) “Total Housing Expense” means 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, which latter shall consist of the monthly amount the unit is assessed for the maintenance of common elements.

(2) “Net Effective Income” means Gross Household Income less city, state, and federal income and Social Security taxes.

(3) “Gross Household Income” means the sum of the incomes of the applicant, his or her spouse and children residing in the same household as the applicant, as well as the incomes of any other residents of the household declared by the mortgagor as dependents for purposes of federal taxation. Included among such incomes are any other forms of monetary assistance being received by the aforementioned members of the household.

(4) References to “pay,” “paying,” “payment” or cognate terms on the part of the Secretary/Agency are references to payment made either directly by the Secretary/Agency, or indirectly by the same via any agent retained by the Secretary/Agency for this purpose.

(d) Mortgage Bridge Loan Assistance Payments as Loans –

(1) The amount by which the sum of any home mortgage bridge loan assistance payments made by the Secretary/Agency to mortgagees exceeds the sum of payments made by the mortgagor to the Secretary/Agency under subsection (b) of this section, plus any amounts paid by the Secretary/Agency to the mortgagee under subsection (a) of this section, shall constitute a loan extended by the Secretary/Agency to the mortgagor. Such loan shall be evidenced by such documents as the Secretary/Agency shall determine. It shall also be secured, and subject to repayment with interest, as described in subsections (d)(2) and (d)(3) immediately below.

(2) Repayment of home mortgage bridge loan assistance shall be secured by a mortgage lien on the mortgaged property and by such other obligations as the Secretary/Agency may require. The priority of any such lien obtained by the Secretary/Agency under the Act shall be determined in the same manner as the lien of a general secured creditor of the mortgagor. Neither this lien nor any other security interest taken by the Secretary/Agency shall be deemed to take priority over any other secured lien or secured interest in effect against the mortgagor’s property on the date that home mortgage bridge loan assistance payments commence. The Secretary/Agency may allow subordination of the home mortgage bridge loan assistance lien if necessary to enable the mortgagor to obtain a home improvement loan necessary to preserve the value of the property.

(3) Repayment Formula – Upon approval of an application for home mortgage bridge loan assistance, the Secretary/Agency shall enter into an agreement with the mortgagor for repayment of all such assistance provided by the Secretary/Agency, with interest, as follows:

(i) If forty (40) percent of the mortgagor's Net Effective Income equals an amount that is greater than Total Housing Expense, that amount shall be paid to the Secretary/Agency, unless otherwise determined by the Secretary/Agency after examination of the mortgagor's financial circumstances and ability to contribute to repayment of the assistance.

(ii) If forty (40) percent of the mortgagor's Net Effective Income equals an amount that is less than Total Housing Expense, repayment of home mortgage bridge loan assistance shall be deferred until forty (40) percent of the mortgagor's Net Effective Income equals an amount that is greater than Total Housing Expense.

(iii) The Secretary/Agency shall establish procedures for periodic review of a mortgagor's Total Housing Expense and Net Effective Income with a view to determining payment amounts that are due to the Secretary/Agency under this section.

(iv) If repayment of home mortgage bridge loan assistance has not been made by the date that any mortgage has been paid, the mortgagor shall make home mortgage bridge loan assistance repayments in an amount not less than the mortgage payments until the assistance is repaid.

(v) Interest shall accrue upon all home mortgage bridge loan assistance payments made by the Secretary/Agency on behalf of the mortgagor at a rate per annum that is equal to the state's cost of funding or at some other rate per annum which takes into consideration other relevant funding costs, as determined by the Secretary/Agency. Interest shall accrue from the time the mortgagor commences repayment under this section, and shall accrue only during the period over which the mortgagor is required to make such repayment. When any mortgage for which home mortgage bridge loan assistance payments are made is paid, interest shall then accrue on all such assistance due and owing at the same rate and on the same basis as the mortgage for which the assistance payments were made.

(vi) All moneys received from mortgagors for repayment of home mortgage bridge loan assistance shall be deposited in the "Home Mortgage Bridge Loan Assistance Account" described in section 6 of the Act.

(e) Duration of Home Mortgage Bridge Loan Assistance Payments – Payments made under this Act shall be provided for a period not to exceed thirty-six (36) months, consecutively or non-consecutively in an aggregate amount which does not exceed \$60,000 (or an amount prescribed by section 3(a)(3)). The Secretary/Agency shall establish procedures for periodic review of the mortgagor's financial circumstances for purposes of determining whether continuation, termination, or adjustment of home mortgage bridge loan assistance payments is warranted in light any eligibility requirements under the Act.

(f) Delinquency in Payments Owed to Secretary/Agency – Should a mortgagor fail to pay to the Secretary/Agency any amounts owed under this section within fifteen (15) days of the due date, the Secretary/Agency shall review the mortgagor's financial circumstances in order to determine whether the delinquency is a result of a change in the mortgagor's financial

circumstances. If such a determination is made, the Secretary/Agency may modify the mortgagor's required payments. If failure to pay is not determined to be due to a material deterioration in the mortgagor's financial circumstances, the Secretary/Agency shall terminate assistance and notify the mortgagee that assistance has been terminated. The mortgagee may thereafter take any legal action necessary to enforce its mortgage without further restriction under the Act.

(g) Delinquency in Meeting Obligations to Mortgagees – Should any mortgagee scheduled to receive payments from the Secretary/Agency pursuant to the Act not receive any such payment within thirty (30) days of its scheduled due date, or should the mortgagor fail to observe and perform all terms, covenants, and conditions of the mortgage, the mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without further restriction under the Act.

Section 6. Program Funding

(a) Startup Funding – The sum of ___ dollars, or as much as may be necessary, is hereby appropriated from the ___ to the Home Mortgage Bridge Loan Assistance Fund established by subsection (b) immediately below to provide startup funding for the Home Mortgage Bridge Loan Assistance Program.

(b) Home Mortgage Bridge Loan Assistance Fund – A Home Mortgage Bridge Loan Assistance Fund is hereby established as a separate account within the Agency for the sole purpose of implementing the provisions of the Act. Such account shall be called the Home Mortgage Bridge Loan Assistance Account and may, to the extent funding is available, be initially capitalized with the startup funds provided for in subsection (a) immediately above. Thereafter, the Home Mortgage Bridge Loan Assistance Account is to be funded with:

(1) all moneys paid to the Secretary/Agency by mortgagors in repayment of home mortgage bridge loan assistance payments made on their behalves by the Secretary/Agency;

(2) any such appropriations as the state legislature shall make for purposes of funding the Home Mortgage Bridge Loan Assistance Program;

(3) any such grant or other provision of funds by a financial institution for the purpose of receiving Community Reinvestment Act credit;

(4) any such contributions made by business firms or other entities to the Home Mortgage Bridge Loan Assistance Fund in return for tax credits as described in subsection (c) of this section; and

(5) any such contributions made by any other person to provide funding for the Home Mortgage Bridge Loan Assistance Program.

(c) Tax Credit for Contributions by Business Firms and Others – The Internal Revenue Service / State Department of Revenue shall grant a tax credit against any tax due under ___ to

any business firm or entity that contributes moneys to the Home Mortgage Bridge Loan Assistance Fund, up to an amount not to exceed __, which amount shall be calculated pursuant to the following formula: __ . Contributions and any tax credit granted pursuant thereto not used in the period during which the contribution has been made may be carried over for the next succeeding calendar or fiscal year until the full contribution has been used or the full credit allowed.

(d) Fund Subaccounts – The Agency/Secretary may establish subaccounts within the Home Mortgage Bridge Loan Assistance Account for the purpose of segregating funds based on source of funding or for any other purpose consistent with enhancing the efficient operation of the Home Mortgage Bridge Loan Assistance Program. The Secretary/Agency shall establish a subaccount called the “Community Reinvestment Act Funded Account” which shall contain funds provided by financial institutions seeking to meet their responsibilities under the Community Reinvestment Act of 1977, as amended. Home mortgage bridge loan assistance extended with funds from the Community Reinvestment Act Funded Account shall be used to satisfy the requirements of the Community Reinvestment Act, and all loan repayments associated with such assistance shall be returned to the Community Reinvestment Act Funded Account. The Agency/Secretary may establish further subaccounts within the Community Reinvestment Act Funded Account for the purpose of funding loans to borrowers who meet, in addition to requirements imposed under this Act, other criteria enumerated in the Community Reinvestment Act.

APPENDIX B

REGULATORY IMPACT ANALYSIS: ESTIMATES OF THE ANNUAL VALUE OF LOANS IN A BRIDGE LOAN PROGRAM IN NEW YORK STATE

An estimate of the dollar amount of loans to be made by New York State under the proposed bridge loan assistance program is based on information on the number and characteristics of the unemployed in New York State and the nation and on household income information from the 2009 *American Housing Survey*. Specifically, we estimate the flow of workers into unemployment during a year and then determine what fraction of those workers would be eligible for participation in the program. We use the same data to estimate the average loan amount for each participating household. We use 2009 data which reflects a year in which the housing market was weak and unemployment was relatively high, and thus the demand for bridge loan assistance would also likely have been high.

We use the 2009 *American Housing Survey* to identify the fraction of households who own homes in New York and whose mortgage(s) were affordable, but where the household would face financial difficulty making their mortgage payments if a household member became unemployed. We defined “affordability” in terms of the household’s debt-to-income (DTI) ratio which is defined to be the ratio of the annual mortgage payments, property taxes and homeowners insurance divided by the household income. We assumed that the mortgage was affordable if this ratio was less 31 percent or lower. We then recalculated each household’s DTI assuming that the primary earner became unemployed and was receiving unemployment insurance payments. We assumed that the household would face financial difficulty making their mortgage payments if in this event the DTI was 45 percent or higher.

The estimation of the annual value of loans is as follows:

- Initial claims for unemployment insurance in New York State in 2009 were filed by **1.5 million workers**. We use the share of these workers between the ages of 25 and 64, 60%, to capture those who would most likely be eligible for and interested in a bridge loan. This reduces the potential pool of applicants to **900,000**.

- We then take account of the fact that about half of these workers were reported as quitting their jobs as opposed to having been laid off, and that roughly one-half of workers who become unemployed either find a job or leave the labor force within 5 weeks. These features reduce the applicant pool to **225,000**.¹⁰
- We apply the homeownership rate in New York, 52%, to that figure to compute the estimate of the number of involuntarily unemployed homeowners who could potentially apply for a bridge loan. This homeownership criterion reduces the applicant pool to **117,000**.
- The final part of the calculation is to estimate the number of these unemployed homeowners who would meet the Debt-to-Income (DTI) test. Using data from the 2009 *American Housing Survey* and following the approach described above, roughly 4.3% of this pool would qualify as a “target” household for a loan. Applying this ratio to the potential applicant pool yields a target population of roughly **5000 homeowners eligible for a bridge loan**.¹¹
- We also used the 2009 American Housing Survey to determine the average annual loan that would be needed to get our target households back to a DTI of 31 percent. This calculation gave an average loan size of \$34,000.¹² Assuming all potential applicants were granted bridge loans, the annual total program loan size in 2009 would have been on the order of **\$170 million**.

¹⁰ This calculation is based on national estimates of quit rates and unemployment duration. The calculation assumes independence in these two dimensions; i.e., unemployed workers who quit their jobs are just as likely to find a job or leave the labor force within five weeks of their job loss as are unemployed workers who are laid off. However, intuitively, it would appear that there may be a greater likelihood for employees who quit to have a new job lined up than employees who are laid off. As such, this calculation of the size of the applicant pool is conservative in that workers who are laid off should be less likely to find a new job or leave the labor force in the same proportion as employees who quit. We are working with the New York State Department of Labor to try to refine this calculation.

¹¹ For comparison, roughly 14,000 unemployed borrowers in Pennsylvania applied for a (HEMAP) bridge loan in 2009, and about 3300 were approved.

¹² This calculation assumes no arrears need to be paid. A similar calculation based on data for Pennsylvania yields an average loan size of roughly \$28,000. While the calculated estimate for Pennsylvania is similar in magnitude to the New York State estimate, the figure is much higher than the actual average loan size of roughly \$12,000 reported for borrowers in the Pennsylvania program.

APPENDIX C

N.Y. Banking Law § 6-f. Alternative mortgage instruments made by banks, trust companies, savings banks, savings and loan associations and credit unions

1. Notwithstanding any inconsistent provision of this chapter or any other law of this state, the banking board is authorized to adopt such rules or regulations as shall permit banks, trust companies, foreign banking corporations licensed to maintain a branch or agency in this state, savings banks, savings and loan associations, credit unions and persons and entities engaging in the business described in section five hundred ninety of [fig 1] this chapter to make residential mortgage loans and cooperative apartment unit loans which provide for (a) periodic readjustments of the rate of interest charged for the loan or successive terms of the loan or (b) terms of loan which are shorter than the term of the mortgage or (c) repayment of the principal amount of the loan by regular payments which are not equal in amount throughout the term of the mortgage or (d) the lender thereof to receive a share in the future appreciation of the property serving as security for the loan under the circumstances set forth in the following sentence or (e) any combination of paragraphs (a), (b) [fig 2] , (c) [fig 3] and (d) of this subdivision, subject to the provisions of subdivision two of this section. Where the lender or holder of a residential mortgage loan or cooperative apartment unit loan enters into a written agreement with the borrower under which the lender or holder conditionally reduces an amount of principal of such loan in order to assist a borrower at risk of foreclosure to avoid such foreclosure, the lender or holder may enter into a written agreement (a "shared appreciation agreement") with the borrower under which the lender shall be entitled to share in the appreciation of the market value of the real property or cooperative shares and proprietary lease securing such loan between the effective date of such reduction in principal amount until the date when the property is sold, provided that the amount the lender is entitled to receive under such shared appreciation agreement shall be the lesser of (i) the amount of such reduction in principal, plus interest on such amount from the date of such reduction to the date of payment at the same rate of interest as applies to the remaining principal amount of the residential mortgage loan, and (ii) fifty percent of the amount of such appreciation. Such amounts shall be payable when the mortgagor sells the residential real property or cooperative shares and proprietary lease that secure the loan. Such shared appreciation agreement shall expressly and conspicuously bear a legend at the top of the agreement in at least fourteen-point type which shall include the following: "In this agreement, you are giving away some of any future increase in value of your home. Please read carefully."

For purposes of this subdivision, the appreciation of the property shall be measured as the difference, if positive, between the gross sales proceeds (net of any reasonable real estate commission) of the sale of the property and the value of the property at the time of the closing of the shared appreciation mortgage, as determined by an appraisal by an independent New York state licensed real estate appraiser. Recovery of such reduction in the principal amount shall not be deemed to be interest for any purpose of the laws of this state.

Any shared appreciation agreement shall be accompanied by a notice, which shall be on a separate page from the shared appreciation agreement and shall contain the following heading in bold, fourteen-point type: "Important disclosures about the contract in which you agree to giveaway a part of any future increase in value of your home. Please read carefully." The notice shall include the following disclosures:

(1) a statement that the lender will be entitled to share in any appreciation of the market value of the mortgaged property that occurs between the time of the loan modification and the time the property is sold, up to the amount of principal forborne plus interest on such amount at the applicable rate of interest on the mortgage but in no event more than fifty percent of the amount of such appreciation, and providing at least three examples of how such shared appreciation may affect the borrower at the time the borrower sells the mortgaged property, such examples to include (A) no appreciation in the value of the mortgaged property, (B) appreciation of twenty percent and (C) appreciation of fifty percent;

(2) a statement advising the borrower to seek independent counseling from a lawyer, a HUD-certified mortgage counselor or a tax advisor regarding (A) the trade-off between a current reduction in the size of the mortgage, versus the promise to give up part of the future appreciation of the home, and (B) the tax consequences of the principal forgiveness and shared appreciation agreement, and providing a list of the names and contact information of five HUD-certified mortgage counselors in the county where the mortgaged property is located or, if there are fewer than five such counselors in that county, the list may include counselors in one or more neighboring counties;

(3) a statement on the potential effect of the shared appreciation agreement on any future refinancing of the mortgage and the potential effect of any prepayment or refinancing of the mortgage on the appreciation sharing agreement; and

(4) such other disclosures as the banking board may require.

2. Any rules or regulations which are adopted by the banking board pursuant to subdivision one of this section:

(a) shall provide for disclosures and notices to the borrower with respect to the terms and conditions of the loan and the mortgage, and the banking board may require the adoption of uniform disclosure and notice forms for this purpose;

(b) shall provide for the conditions governing renewals of the term of the loan;

(c) shall not permit any uninsured loan secured by residential real property to be made in an amount exceeding ninety percent of the appraised value of the property; and

(d) shall not allow, with respect to any specific alternative mortgage instrument which permits a periodic readjustment of the rate charged on the loan, for a greater change in rate than that permitted under federal law or regulations to federally-chartered banking organizations located in this state for loans made pursuant to an equivalent alternative mortgage instrument.