

Lancaster County Residential Mortgage Foreclosure Diversion Program

Frequently Asked Lender Questions

1. What is the purpose of the Residential Mortgage Foreclosure Diversion Program?

The Program is a carefully crafted case management response to address foreclosure filings in Lancaster County. Although the Program undoubtedly departs from some traditional practices and procedures involved in a foreclosure action, the Program is neither an attack nor infringement on the mortgage industry. Instead, this Program creates consistency in how, when and in what format a homeowner in foreclosure approaches the Court. It creates processes and manages expectations, and further aims to balance the rights of all parties. Homeowners are held to strict requirements regarding counseling with HUD-certified housing agencies and the submission of all necessary paperwork. Likewise, lenders are required to provide certain information and to expeditiously review and discuss workout proposals with the homeowners. The 160-day stay period is designed to allow meaningful discourse among the parties while protecting the lender against unreasonable delay and obfuscation. This Court recognizes that foreclosure delays impose costs on lenders and homeowners, and this Diversion Program seeks to minimize those additional costs by implementing proper management controls.

2. How will the Court facilitate the secure exchange of documents and the deadline-driven case management of the foreclosure actions in the Diversion program?

The Court is working with IndiSoft, a software development company, to design a court-mandated, online portal using the patented software platform, "RXOffice." A version of RXOffice is presently used by the Pennsylvania Housing Finance Agency (PHFA) and the housing counselors in Lancaster County and throughout the Commonwealth. The Court's RXOffice module will allow all stakeholders – homeowners, housing counselors, lenders, servicers, attorneys, the Court – to provide necessary information through fillable forms, to communicate directly with one another through notes/emails, to upload and exchange documents in a secure manner, to provide case tracking information with specific tasks and/or other activities for the stakeholders to complete, to engage in video conferencing for settlement purposes, to provide status updates on the progress of the case, to create an end-to-end audit trail that will document interactions between homeowners/housing counselors and mortgage lenders/services, and to generate daily, weekly, and monthly detailed case information reports for the

Court. This web-based platform is an integrated, real-time information hub that allows all stakeholders to actively participate in case management and resolution. An amended administrative order will be filed when the software goes live, which we anticipate will be soon. Additionally, a link to access to the Court's RXOffice platform will be available on the Court's website.

3. Why does the Certification Cover Sheet (A.O. Exhibit No. 1) require the plaintiff to identify, at the beginning of the case, a representative of the lender with authority to bind the plaintiff?

Naming a point of contact who possesses settlement authority at the commencement of the action will facilitate the communication between the parties and allow for pre-conference negotiation and resolution. A "decision-maker" on the plaintiff/lender side must be identified and must participate in the conciliation process.

National studies and reports suggest that delays in foreclosure mitigation programs are often the result of the lenders' claims of receiving insufficient documentation and the lenders' repeated requests to homeowners to replace documents that the lender lost or misplaced as a result of multiple hand-offs from one lender representative to another. Facilitating the required document exchange through a court-mandated, online portal, setting deadlines for that document exchange, and identifying the person(s) who will be doing the document review are all means that have been employed throughout the country to address these often-unnecessary delays.

If a specific lender representative cannot be named at the time the complaint is filed, then a supervisor can be identified initially; the Administrative Order (Para. 23) allows for the Certification Cover Sheet to be amended up to five days before the conference with the name of another lender/servicer representative who will be present at the conciliation conference.

4. Why is it necessary for the plaintiff to submit an "Amount Due Schedule", and when is it due?

The Administrative Order will be amended to state that the Amount Due Schedule will be due 20 days after a case is opened in RXOffice. Notice of the case opening will be automatically sent to the parties in interest ("the stakeholders"). The information on the Amount Due schedule is helpful for the homeowner and housing counselor in reviewing all options and in preparation of the workout proposal. The Court has consulted with local PHFA-approved housing counselors regarding this request, and they believe it to be reasonable and necessary. It is appreciated that this information can change relatively quickly, but a snapshot of the information at the time the Schedule is completed is helpful.

5. What are the consequences for homeowners who do not produce the completed financial worksheet and workout proposal to the lender no later than 30 days prior to the scheduled conciliation conference?

If the homeowner cannot produce all the required documentation, the case will be dismissed from the Diversion Program and the stay will be lifted. See A.O. Exhibit 11 (noting consequences for noncompliance/failure to produce by the homeowner). Housing counseling agencies were consulted and represented to the Court that the timeline for the homeowner to produce the Program-required documents was reasonable. However, we included the “consequences” noted above should a homeowner fail to adhere to the deadline without good cause so as not to unreasonably delay the lender’s foreclosure proceedings.

6. The plaintiff is required to provide a written response to the defendant’s workout proposal at least 14 days prior to the scheduled conciliation conference. Why is this timing so tight? And what form of response is required?

This requirement is simply to ensure that the completed package has been received by the lender prior to the conciliation conference. The Administrative Order will be amended to state that the Plaintiff must send through RXOffice an acknowledgment of receipt of the completed package to all stakeholders. Both the Government Accountability Offices and housing counselors cite lost documents/mitigation applications as a major factor in lengthening the review stage. It is notable that our Program’s response period is more generous than the five-day requirement under the Consumer Finance Protection Bureau’s regulations. (See Section 1024.41(c)(3)(i) requiring servicers send an acknowledgement letter within five business days of receiving a complete application.)

The plaintiff lender will have no less than 30 days prior to the scheduled conciliation conference to review the financial worksheet and the workout proposal submitted by the homeowner. This 30-day review period is similar to the CFPB’s 30-day period for evaluation of a complete workout proposal. (See Section 1024.41(c)(1).)

7. If a trial loan modification agreement is reached prior to or at the scheduled conciliation conference, must the foreclosure complaint be withdrawn before a permanent workout solution has been finalized?

If an executed workout plan involves a trial period loan modification, the Program Coordinator will issue an “interim provisional settlement,” where the homeowner agrees to make probationary payments to the plaintiff for a fixed period of months according to certain terms identified in the settlement. If the homeowner

subsequently defaults under the workout plan, the Court will enter an order withdrawing the interim settlement, dismissing the case from the Diversion Program, and lifting the stay of proceedings.

Administrative Order No. 27-2021 will be amended to allow the action to remain open in the case where a trial period loan modification for a fixed period of months is executed by the parties.

- 8. Why do borrowers have the right to request up to 20 days prior to the conciliation conference the following information: evidence that the plaintiff is the holder in due course of the note and mortgage; a complete loan history; a breakdown of FF&C that shows the payment dates, purpose of payment and recipient of all charges; a breakdown of escrow charges that shows the payment dates, purpose of payment and recipient of all charges; the fair market value of the mortgage loan; and a current appraisal, if available?**

The Administrative Order allows homeowners, who will be working under the guidance and direction of a certified housing counselor, to request this information should it be necessary. It is not required, although it is documentation that the homeowner has a right to request and receive from the lender. The Diversion Program is not the proper venue for litigation regarding this information and is not meant to be. The definition of FMV is not the current saleable value of the loan, but rather the overall mortgage balance owed by the homeowner.

- 9. Why must a representative of the lender/servicer with full settlement authority be named five days prior to the scheduled conciliation conference and be required to attend the conciliation conference?**

After researching the foreclosure diversion programs in the Commonwealth, and many others around the country, it was observed that most require the presence and/or availability of a representative of the lender/servicer with full settlement authority at the conciliation or mediation. For example, New Jersey's state-legislated foreclosure mediation program requires lenders to have a representative attend the mediation session, either in person or by telephone, who has authority to reach a mutually acceptable resolution. Similarly, Berks, Bucks, Cumberland, Lackawanna, Lawrence and Northampton County Courts all require a plaintiff's representative with full settlement authority to attend the conference in person or be available by telephone.

A lender/servicer representative must be named at least five days prior to the scheduled conciliation conference because the Court requires five days' notice if a representative desires to appear at the conference via advanced communication technology or at a minimum be available by telephonic means. If, in fact, the lender/servicer does not know until the day of the conference who

will be handling the case, then the representative will be required to appear in-person.

Our Diversion Program recognizes, that in order to have a productive and efficient negotiation with the homeowner, the lender/servicer must conduct comprehensive due diligence surrounding the troubled loan. The representative should have as full an understanding of the loan and the homeowner as possible under the circumstances. This level of familiarity with a case requires thorough review of the relevant loan documents and an investigation into the financial condition of the homeowner prior to the scheduled conciliation conference.

It is important to note that a completed package with the required documentation will be uploaded to RXOffice and will be viewable by the lender/servicer prior to the scheduled conciliation conference to allow for early progress toward a workout solution.

10. Can a workout agreement be executed at the conciliation conference if investor approval is required?

More than one lender attorney has suggested that any settlement would have to be reviewed and approved by the loan's investors, *i.e.*, FNMA (Fannie Mae), FHLMC (Freddie Mac), FHA (Federal Housing Administration), VA (Department of Veterans Affairs) and USDA (U.S. Department of Agriculture), *when applicable*.

When you look at other programs around the Commonwealth and around the country, the parties negotiate and memorialize any agreements at the mediation/conciliation. There is no delay caused by the approval of a loan's investors. Notwithstanding that, conciliation conferences can be adjourned for good cause.

11. Should an additional 45 to 60 days be added to the conciliation process, as suggested by lenders' counsel, to allow for the investor approval?

The Administrative Order clearly states that for "good cause" shown, the conciliation process may be extended beyond 160 days.

In general, participating in a foreclosure diversion program will delay the foreclosure process. Therefore, our 160-day conciliation process was designed to allow for productive and efficient communication between the parties, while respecting the lender's need to resolve the matter in a timely manner.

Pennsylvania has several county programs that allow for stays of between just 60 and 90 days for the entire mediation/conciliation process to be completed, while Montgomery County schedules its conciliation conference 35 to 42 days after the foreclosure complaint is filed. Across the country, many programs allow considerably less than our 160 days to complete the foreclosure diversion

process. For example, Nevada's state-wide foreclosure diversion program allows 135 days following receipt of filing fee and petition to complete the mediation program, the Connecticut Foreclosure Mediation Program requires the entire process to be completed within 60 days, and the District of Columbia program limit is 90 days from opt-in to completed process.

12. Can “negotiations” take place at the conciliation conference?

At least one lender attorney states that there is no place for negotiations at the conciliation conference, rather “the lender/servicer will review the completed worksheet for eligibility in all programs pre-conference and provide a response as to what programs/loss mitigation the borrower is eligible.”

Our Program **expects** “negotiation” by the parties prior to and during the conciliation conference. Notably, Fannie Mae regulations specifically refer to suspending foreclosure proceedings for “workout *negotiations*.” (See The Servicing Guide, E03.4-01 “Suspending Foreclosure Proceedings for Workout Negotiations” (07/14/2021)). Literally, every diversion program around the Commonwealth and the country is based on bringing the parties together to have meaningful workout discussions. A “workout” has been defined as a “negotiated solution” to a distressed loan, where the lender accepts something less or at least different than the deal for which it bargained in the original loan documents. W. Wade Berryhill, Joel B. Eisen, & Michael J. Herbert, *Structuring Commercial Real Estate Workouts: Alternatives to Bankruptcy and Foreclosure*, § 1.02 (2d ed. 2010). To that end, our Program encourages lenders and homeowners to negotiate.

13. Regarding the requirement to identify Foreclosure Diversion Program Liaisons, what if the lender/servicer uses multiple law firms to file its cases in Lancaster County?

If a lender/servicer uses multiple law firms, then an attorney from each of the law firms should be identified, as well as a representative of the lender/servicer.

14. After a residential mortgage foreclosure complaint is paper filed with the Prothonotary, may a party use E-Filing for subsequent filing requirements?

Yes.