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TO: Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff 

DATE: October 24, 2018

RE: **Report on Homeowner Property Tax Assistance Program**

The Legislative Policy Division (LPD) has been requested by City Council President Pro-Tempore Mary Sheffield to report on the legal necessity of having a notary requirement¹ within the newly drafted amended ordinance regarding the application form of the Homeowner Property Tax Assistance Program (HPTAP).²

Before directly addressing the question, it is important to consider the placement of the notary block on this hardship application. Just above the current notary block on the signature page of the HPTAP application is the following language:

Any person who knowingly makes a false statement, omission, or misrepresentation may not be considered for this assistance program and may be prosecuted to the fullest extent of the law. Any/All applications are subject to random home inspection for compliance with the City of Detroit Guidelines.

¹ A notary public is an officer commissioned by the Michigan Secretary of State to serve as an unbiased and impartial witness. The most common function of the notary is to prevent fraud by attesting to the identity of a person signing a document. Notarization on a document certifies that the person whose signature is entered on the document personally appeared before the notary, established his or her identity, and personally signed the document in the presence of the notary.

² A similar question presented was addressed by Coalition to End Unconstitutional Tax Foreclosures (Coalition): Is the notary requirement necessary to prosecute individuals who provide false statements on the HPTAP application or to otherwise deter individuals from making false statements? (See attached) The answer that the Coalition provided will be discussed below.

I, _____, say under penalty of perjury that the statements made in this application are true and that I/we have no money, income or assets other than that mentioned here, and grant the Board of Review permission to review all Federal, State or City of Detroit income tax records and further grant permission to contact all financial institutions and creditors regarding account balance in order to process this application.

Consequently the applicant when signing the application (with/without the notary block) currently states under penalty of perjury that the information provided in the application is true. The application then provides a notary signature block in which a notary certifies that the person signing has presented the requisite information to affirm they are the person signing the document. At issue is whether the language requiring the signature be notarized is legally required?

LPD has looked into the question presented. LPD has not been able to identify any law requiring the signature on the HPTAP application be notarized per se. With regard to the criminal prosecution of individuals who provide false statements on the application, LPD has affirmed that under Public Act 206 of 1893, General Property Tax Act MCL 211.120(5), only the attorney general or the prosecuting attorney of each county have been granted the power to enforce the Act:

(5) The attorney general and the prosecuting attorney of each county of this state have concurrent power to enforce this act.

As set forth in the statute, it is the attorney general and the county prosecutor who can bring criminal prosecution for fraudulent acts under the Act. Because the authority of the Board of Review to provide a tax exemption is provided pursuant to the General Property Tax Act and the Act enumerates who can enforce its provisions, the City of Detroit's Law Department is exempt from taking actions for criminal prosecution.³ The decision of whether to undertake the criminal prosecution of the fraudulent act is left to the discretion of those two enumerated agencies. Any civil prosecution for providing false or misleading statements on the HPTAP application may be handled by the Law Department's authority pursuant to the City Charter Section 7.5-203 *Civil Litigation*.

It is understandable that the Law Department would want to preserve all the evidentiary tools necessary to best effectuate the case in both civil and criminal prosecutions, and may be the rationale for their opposition to removing the notary requirement. As indicated by the Michigan Secretary of State, the most common function of the notary is to prevent fraud by attesting to the identity of a person signing a document. It is the ability of the notary to testify as to who signed the document before them that is of value in the prosecution and prevention of fraud.

However, there can be prosecutions for fraud⁴ and perjury where the underlying document has

³ LPD notes that if the State had authorized other local municipalities with the ability to undertake prosecutions for fraud under the Act the Law Department would be able to take on criminal prosecutions pursuant to the City Charter 7.5-204, *Penal Matters*, " (1) Institute and conduct, on behalf of the people, all cases arising from the provisions of this Charter or city ordinances and, when authorized to do so by law, cases arising under state law."

⁴ In Michigan, the general rule is that to constitute actionable fraud it must appear: (1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it

not been notarized. Cases of perjury can be brought under Public Act 328 of 1931, MCL 750.423(2). A person who signs a document under penalty of perjury is subject to prosecution whether notarized or not.⁵ The statute does not require the signed record or document be notarized. In either instance (Public Act 206 or Public Act 328) it is not whether the prosecution can be undertaken without the notarized document, but what proofs are put forth to show the person being held responsible is the person who executed the document. While this burden of proof can be established by the notary, testifying as to the manner in which they identified the person who signed the document and that the person is the respondent, there are certainly other reasonable ways to meet this burden.

The decision as to whether the notarized signature is required appears to be more of a policy decision rather than a legal one. The issue is whether the burden placed upon the indigent seeking tax relief having to go through the difficulty of finding and/or obtaining a notarized signature to submit their application, is greater than the convenience of being able to establish the proof that a person submitted a fraudulent application by using the notary's testimony to identify the person as the signer. If there are a large number of fraudulent cases being prosecuted then consideration of maintaining the notary requirement may be justified as a policy decision.⁶ If not, maybe the better policy decision would be to do away with the requirement and rely on other means of proof to effectuate the prosecution of fraudulent claims.

LPD reviewed the Coalition's memorandum dated October 10, 2018, signifying that the notarization of the applicant's signature is not necessary to verify an applicant's identity. The Coalition indicates that in order for a notary to act, the notary must first establish the identity of the person before administering the oath in which the person swear or affirms who they are. The notary can establish identity in the manner set forth by law under MCL 55.285(6).⁷ The

recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. Each of these facts must be proved with a reasonable degree of certainty, and all of them must be found to exist; the absence of any one of them is fatal to a recovery. U. S. Fidelity and Guaranty Co. v. Black 412 Mich. 99, 114, 313 N.W.2d 77 (1981).

⁵ MCL 750.423 provides: (1) Any person authorized by a statute of this state to take an oath, or any person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years. (2) Subsection (1) applies to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury. As used in this subsection: (a) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (b) "Signed" means the person did either of the following to authenticate or adopt the record: (i) Executed or adopted a tangible symbol. (ii) Attached to or logically associated with the record an electronic symbol, sound, or process.

⁶ LPD notes that at the time of this report LPD was unable to identify any HPTAP prosecutions on behalf of the city by the Michigan Attorney General, the Wayne County Prosecutor, or the Law Department; however, policy considerations are the province of the City Council to both reckon with and to decide.

⁷ MCL 55.285(6) provides: A notary public has satisfactory evidence that an individual is the individual whose signature is on a record if that individual is any of the following: (a) Personally known to the notary public. (b) Identified upon the oath or affirmation of a credible witness personally known by the notary public and who personally knows the individual. (c) Identified on the basis of a current license, identification card, or record issued by a federal or state government that contains the individual's photograph and signature. (d) With regard to a notarial act performed under section 26b, identified and verified through an identity proofing process or service that is part of a remote electronic notarization platform approved under section 26b(1), and the person presents an identity

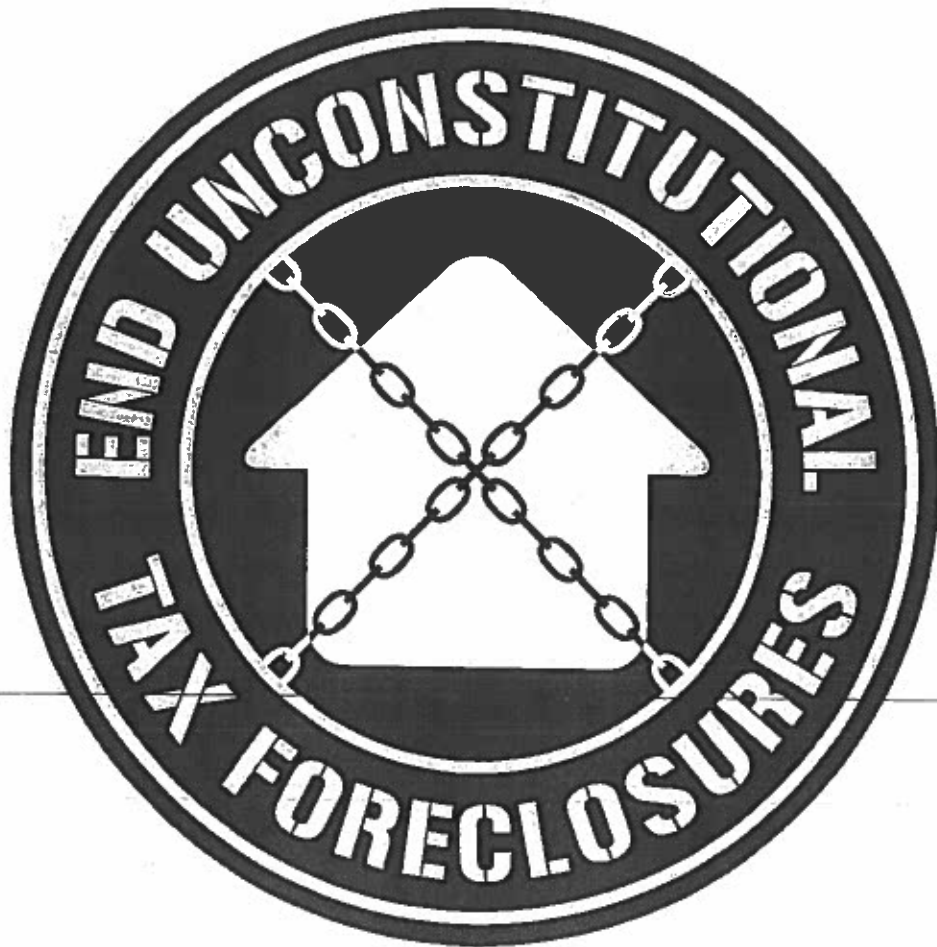
Coalition's position is that the HPTAP identification requirement verifies both identity and residency in requiring the production of a valid, government-issued photo ID with an address in all instances, in addition to the production of tax returns and minor residency proofs. The Coalition also indicates that the notarization is not necessary to prosecute applicants who make false claims because the law has established misdemeanor penalties for such actions. MCL 211.120 provides misdemeanor penalties for anyone who intends to falsely or fraudulently obtain or attempts to obtain an exemption; knowingly swears to or verifies an affidavit with a false or fraudulent statement with the intent to aid and abet or assist in the fraud being perpetrated. The Coalition further believes the notarization is not necessary to signal to applicants the seriousness of the undertaking and that by presenting a signing statement in bold and conspicuous letters with the restatement of the penalties under law and a statement of the intent to prosecute, the message will be sent. The Coalition's memorandum is supported by the ACLU, Michigan Legal Services, and other organizations that support its position. As indicated above, LPD can not dispute the rationale offered by the Coalition in its memo.

If we can be of further assistance, please advise.

Attachment:

document described in subdivision (c) that is verified through a credential analysis process or service that is part of a remote electronic notarization platform approved under section 26b(1).

HPATAP ORDINANCE REPORT



**FOR MARY SHEFFIELD
DETROIT CITY COUNCIL PRO TEM**

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I. – REMOVING THE NOTARIZATION REQUIREMENT

MEMORANDUM

To: Hon. Mary Sheffield
From: Coalition to End Unconstitutional Tax Foreclosures
Re: Notarization of the Homeowner Property Tax Assistance Program (HPTAP) Application
Date: October 10, 2018

QUESTION PRESENTED

Is the notary requirement necessary to prosecute individuals who provide false statements on the HPTAP application or to otherwise deter individuals from making false statements?

SHORT ANSWER

No.

ANALYSIS

Notarization is not necessary to verify an applicant's identity.

Unlike notarization, the HPTAP's ID requirement verifies both identity and residency. For a notarial act, a notary must establish a person's identity before administering an oath. A person's identity can be established by: (i) the notary's personal knowledge of the person, (ii) an oath or affirmation of a credible witness known by the notary, (iii) presentation of a valid, government-issued photo identification *with signature*, or (iv) an identity proofing service that is a part of a remote electronic notarization platform. See MCL 55.285(6). A notary can, in addition to non-documentary proofs, accept non-address bearing government-issued IDs, e.g. passports or alien registration cards ("green cards") to establish identity. Thus, notarization does not require the presentation and examination of government-issued photo ID with an address.

In contrast, HPTAP requires the production of a valid, government-issued photo ID *with an address* in all instances. To receive such an ID, an applicant must have proved both identity and residency by presenting proofs to the issuing agency. Therefore, the HPTAP's requirement to present an ID with an address alone satisfies the City's dual goals of identity and residency verification. Further, the HPTAP's other documentation requirements—tax returns and minor residency proofs—provide further verification of both an individual's identity and address.

Notarization is not necessary to prosecute applicants who make false claims.

The General Property Tax Act has enforcement mechanisms for false or fraudulent claims. MCL 211.120 provides up to four counts for each false or fraudulent statements in the HPTAP application as well as the accompanying principal residency exemption application and property transfer affidavit. The statute also provides for enforcement against anyone who aided or abetted in making the false or fraudulent statements. Two of the counts are punishable by imprisonment of not more than one year and punishable by a fine of not more than \$5,000.00 or public service of not more than 1,500 hours, or both; two are punishable by a fine of not more than \$1,000.00 or public service of not more than 500 hours, or both.

MCL 211.120(3) establishes a count of perjury for a person who falsely or fraudulently “swears to or verifies” an affidavit under MCL 211.7cc (principal residency exemption, which is necessary for the HPTAP). A simple signing statement—e.g. “I certify, under penalty of perjury, that the statements made in this application are true and correct.”—is sufficient to satisfy the oath requirement for a charge of perjury. *See People v. Thompson*, 193 Mich. App 58 (1992), *overruled on other grounds*.

Notarization is not necessary to signal to applicants the seriousness of the undertaking.

One perceived benefit of notarization is that the oath signals to the applicant that they are undertaking a serious act and they can be prosecuted if they lie. One study examined the practices of 220 notaries in 22 cities in New York and concluded that “91.7 percent failed to administer an oath of any form.” *See Alfred E. Piombino, Notary Public Handbook* 71 (1996) at xxii. Consequently, there are more effective ways of communicating the seriousness of the undertaking. What we recommend is the above-mentioned signing statement presented in bold, all caps, and enlarged font with a restatement of penalties under MCL 211.120, and a statement of intent to prosecute.

CONCLUSION

The requirement to notarize HPTAP applications should be removed because it does nothing to deter the submission of fraudulent applications nor does it strengthen the City’s ability to prosecute bad actors. In a follow up submission, we will provide affidavits from several community organizations who have been leading efforts to enroll Detroit residents in HPTAP, which attest to the unnecessary hardship that notarization places on applicants.

II. – LETTERS OF SUPPORT

i) ACLU



State Headquarters
2500 Woodward Avenue
Detroit, MI 48201
Phone: 313.578-8000
Fax: 313.578-8677
E-mail: info@aclumich.org
www.aclumich.org

Legislative Office
P.O. Box 13022
Lansing, MI 48901-8022
Phone: 517.377-8000
Fax: 517.377-8121
E-mail: info@aclumich.org
www.aclumich.org

West Michigan Regional Office
1314 Wealthy St. SE, Suite 242
Grand Rapids, MI 49506
Phone: 616.301.0600
Fax: 616.301.0640
E-mail: info@aclumich.org
www.aclumich.org

October 14, 2018

Hon. Mary Sheffield
Detroit City Council
2 Woodward Avenue, Suite 1340
Detroit, MI 48226

Re: Barrier posed by HPIAP Application's Notary Requirement

Dear Councilwoman Sheffield:

I have been asked to explain my understanding of how the notary requirement for the poverty tax exemption application poses a barrier for qualified applicants. As you know, the ACLU worked for several years to reform the poverty tax exemption process, including litigating the *MorningSide v. Sabree* lawsuit, which was settled this summer.

After speaking with large numbers of Detroit homeowners who were eligible for the poverty exemption, as well many advocates who serve these homeowners, we at the ACLU concluded that the notary requirement posed a substantial barrier to accessing a program that could have saved thousands homes. A small percentage of eligible homeowners were employed and, even if they were, hardly any of them worked for an employer that had a notary onsite. Unlike many communities, few of the eligible Detroit homeowners lived in near a bank that has notaries on duty. The majority of eligible homeowners lacked transportation to drive to where they could have their documents notarized. Large numbers of eligible homeowners were elderly and/or had a disability and lived in an area where public transportation was unreliable and/or very slow.

Without getting into the confidential details of the settlement negotiations of the *MorningSide* case, the parties were able to address the notary requirement for some, but not all, eligible homeowners. An exception to the notary requirement was made for only three categories of people: (1) the elderly, (2) the physically disabled, and (3) those whose caretaking abilities made it difficult to sign the application materials in front of a notary. Homeowners who fell into those three categories could dispense with the notary requirement by simply signing a declaration "under the penalty of perjury" that the notary requirement posed a hardship.

However, eligible homeowners who do not fall in one of these categories cannot apply without a notarized affidavit no matter how severe their hardship and no matter how much of a barrier the notary requirement causes. In my view, there is no reason why the City cannot dispense with the notary requirement for all applicants.

Presumably, the reason some officials hope to keep notary requirement is because they think signing in front of a notary would impress upon the applicants the need to tell the truth. However, as the final analysis attached to this letter makes clear, so long as the notary is

includes a statement stating that the applicants are signing under "penalty of perjury," the applicant is guilty of a crime for lying. (See Appendix A)

In short, given the barriers the notary requirement still poses for many HPTAP applicants, and given that there is no legal reason to impose this requirement, I strongly support replacing the notary requirement with a requirement that the applicant attest to the truth of the statements in the application under penalty of law.

Please feel free to contact me if you have any questions.

Very truly yours,



Michael J. Steinberg, Legal Director
American Civil Liberties Union of Michigan
2966 Woodward Avenue
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msteinberg@aclumich.org

APPENDIX A

THERE IS NO LEGAL JUSTIFICATION FOR THE NOTARY REQUIREMENT BECAUSE APPLICANTS WHO LIE ON THEIR APPLICATIONS MAY BE PROSECUTED WITHOUT THE APPLICATION BEING NOTARIZED

A. Applicants who lie on their applications can be prosecuted for perjury under Michigan law.

Michigan law recognizes two types of perjury: that committed in courts, which is prosecuted under MCL 750.422; and that committed outside of court, which is prosecuted under MCL 750.423. *People v. Ramos*, 430 Mich 544, 575, 424 NW2d 509, 524 (1988) (Boyer, J., dissenting). Prior to 2012, a person was not guilty of committing perjury in an out-of-court statement unless he or she specifically made a verbal oath in front of a notary or other authorized official. As the Michigan Supreme Court stated in reversing a conviction of a man who filed a false welfare application, a person did not commit perjury under MCL 750.423 for simply signing a statement affirming the veracity of the application "under penalty of perjury." See *Ramos*, 430 Mich at 555 (opinion of the Court).

The *Ramos* Court explicitly distinguished the Michigan perjury statute from federal law and several other state laws¹ that explicitly criminalized false statements signed "under penalty of perjury." *Id.* at 555–56. However, the court explicitly acknowledged that the Legislature could fix the problem and "dispense[] with the oath by specifying the mere signing of an application, stating that the signing is under the penalties of perjury, constitutes the offense of perjury." *Id.* at 561.²

In 2012, the Legislature essentially accepted the invitation of the *Ramos* court by amending MCL 750.423 through 2012 PA 360. As the bill's legislative analysis made clear:

Currently, a person authorized under state law to take an oath or required to do so, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury punishable by imprisonment for up to 15 years.

The bill would apply the above provision and penalty to a person who willfully makes a false declaration in a record that is signed by the person given under penalty of perjury.

¹ Including California, Washington, and Wyoming.

² At the time *Ramos* was decided, MCL 750.423 read as follows:

Definitions: A person authorized by any statute of this state to take an oath, or any person of whom an oath shall be required by law, who shall willfully swear falsely in regard to any matter or thing respecting which such oath is authorized or required shall be guilty of perjury if a felony, but shall be imprisoned in the state prison not more than 15 years.

House Legislative Analysis, SB 688 (November 25, 2012) (emphasis added)

The bill was intended as a “complementary amendment” in the Michigan Penal Code to a re-barred bill adopting the Uniform Unsworn Foreign Declaration Act. That bill “establish[ed] a procedure by which a person living or traveling outside of the United States who must sign a sworn statement could make that statement under penalty of perjury without having to take an oath before a U.S. consular officer.” *Id.* (emphasis added)

The amended version of MCL 750.423, which added subsection (2), now reads as follows:

(1) Any person authorized by a statute of this state to take an oath, or any person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years.

(2) Subsection (1) applies to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury. As used in this subsection:

(a) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(b) “Signed” means the person did either of the following to authenticate or adopt the record:

(i) Executed or adopted a tangible symbol;

(ii) Attached to or logically associated with the record an electronic symbol, sound, or process.

MCL 750.423 (2012) (effective April 1, 2013) (emphasis added)

In other words, under the current statute, any person who lies in a document for which she is authorized or required to take an oath (subsection 1), is guilty of perjury if that person either takes an oath (subsection 1) or signs an unsworn “declaration” under “the penalty of perjury” (subsection 2).

Applying MCL 750.423 to the present case, a person commits the crime of perjury to “swear falsely” in connection with any proceedings set forth in the act governing real estate taxes, including the poverty tax exemption section.³ Specifically, MCL 211.118 provides:

Any person who, under any of the proceedings required or permitted by this act, shall willfully swear falsely, shall be guilty of perjury and subject to its penalties.

Further, the poverty tax exemption application process is a proceeding specifically authorized by the act. See MCL 211.7a:

³ MCL 211.7a sets forth the procedure for establishing possession of a primary residence.

Since state law prohibits "swearing" falsely on a poverty exemption application, and since MCL 750.423(2) establishes penalties for those who sign a declaration under penalty of perjury in lieu of an oath, those who sign a declaration are, in fact, guilty of perjury if they willfully lie on a poverty exemption application. There is no longer a requirement that an applicant sign in the presence of a notary after being placed under an oral oath.

B. To the extent the federal government has jurisdiction to prosecute applicants for false HPTAP applications, notarization is not required for such prosecution.

Notarization is not required for prosecution under federal perjury laws. Under 28 USC 1746, whenever federal law requires or permits a matter to be supported by a sworn oath, the matter can also be supported by a signed statement with language indicating the statement is made under penalty of perjury. Under this law, a person who signs a false statement under penalty of perjury is subject to the same perjury charges as if he had made a sworn oath. See, e.g., *Dickinson v. Wainwright*, 626 F.2d 1184, (CA 5, 1980). Thus, notarization is irrelevant to whether or not a person can be prosecuted under federal law for false statements made in an HPTAP application.

There remains a question of whether there is federal jurisdiction to prosecute someone who lied on an HPTAP application. 18 USC 1001 criminalizes false statements knowingly and willfully made "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States." However, under this statute, "jurisdiction" is not limited to its narrow or technical meaning. See, e.g., *Bryson v. United States*, 396 US 64, 8 C 355 (1969). Nor must false statements be made directly to a federal agency to fall within its jurisdiction. See *United States v. Munoz*, 397 F Supp 183 (FD Mich, 1974), *aff'd* without op., *Munoz v. United States*, 529 F.2d 526 (CA 6, 1975) (denying motion to quash where defendant defrauded a Detroit jobs program funded by a national organization that was in turn funded by the Department of Labor).

The federal courts have found jurisdiction to prosecute perjury for statements made to a state or nongovernmental organization when these entities are funded by the federal government. See, e.g., *Munoz*, 397 F Supp 183, *United States v. Lange*, 528 F.2d 1280, 1287 n 11 (CA 5, 1976). We are not certain whether the City receives HUD funding or other federal funding for HPTAP. To the extent it does receive federal funding, there is a strong argument that perjury on the HPTAP application could be prosecuted under federal law.

ii) Quicken Loans Community Fund

Quicken Loans
Community Fund

1050 Woodward,
Detroit, MI 48226
www.QuickenLoans.org

To the Honorable Mary Sheffield, Detroit City Council President Pro Tem,

The Quicken Loans Community Fund recognizes the City of Detroit's Homeowners Property Tax Assistance Program (HPTAP) as a critical tool in the collective work to keep Detroit homeowners in their homes, and out of tax foreclosure. We applaud recent efforts to make the HPTAP accessible to more Detroit residents.

While improvements to the HPTAP are welcome, our experience suggests that the need for applications to be notarized remains a difficult hurdle for many eligible applicants and the inclusion of the notarization requirement warrants further consideration.

Since December of 2017, the Quicken Loans Community Fund has sponsored 80 workshops across Detroit where homeowners can get help completing their HPTAP applications. Those 80 workshops have helped more than 1,200 Detroit residents.

At each workshop, we ensure a notary is on hand to notarize completed HPTAP applications. However, residents at these workshops are frequently missing a document or two that make their HPTAP application incomplete, and unable to be notarized.

This creates an added step. Residents must either return to a workshop the following month, find notary services at a bank, or go downtown to have their application notarized. All of these options can create additional cost, hardship, and reduce the likelihood that an otherwise eligible resident is granted a much-needed HPTAP exemption.

Since June 2018, 653 Detroit residents have attended Quicken Loans Community Fund-sponsored HPTAP workshops. 381 residents submitted completed and notarized applications, while 232 applications were missing documents that prevented notarization.

While every effort is made to bring these residents back to a workshop for notary services, it is difficult for residents, especially those experiencing poverty, to make the investment of time and resources that is needed to get back to a third-party location. But for the notarization requirement many of these homeowners would be able to go home with an otherwise-complete HPTAP application, locate their missing documents, and immediately mail in their HPTAP application.

We hope that this information is useful to this honorable body as you consider next steps regarding the HPTAP requirements.

Thank you,

Laura Grannemann, Vice President of Quicken Loans Community Fund

Alex Alsop, Director of Housing Stability, Quicken Loans Community Fund

iii) United Community Housing Coalition & Michigan Legal Services



October 17, 2018

Council President Pro Tempore Mary Sheffield

We are writing to add our voice in support of the proposed changes to remove the notarization requirement in the Homeowner Poverty Tax Exemption Program (HPTAP) on behalf of UCHC (United Community Housing Coalition) and Michigan Legal Services (MLS).

As you know, UCHC sees thousands of low-income homeowners each year, and we complete hundreds of HPTAP applications each year for our clients, many of whom seek our help because they cannot complete these applications on their own. Completing the HPTAP applications is a challenge for our office in terms of staff and other resources. We have had to go from 2-3 notaries on staff to, now, 3-10.

We find that many of our clients would have qualified for HPTAP in previous years but did not receive them. We feel that notarization is one factor that reduces the likelihood that a qualified homeowner will succeed in having their exemption granted. Many low-income residents do not have a known resource for free notarization. The most troubling situations where notarization serves as an obstacle are in the cases of homebound, elderly individuals, and those with lack of transportation.

We wish to make special note of the need to remove the notarization requirement for HPTAP renewal or short-form applications. They currently require two notarizations. There are very rare under current use, but we hope and expect for their use to expand. However, because they are most commonly in use for seniors, who are most likely to have mobility issues, we find the notarization to be particularly difficult.

We note that the state law does not require notarization in this application, and that there are many other municipalities that require signatures, but not notarization. Notarization is not required for Principle Residence Exemptions (PREs), property reassessment requests, or other related issues.

We hope that the city will consider that the challenges posed by notarization and remove this requirement from the HPTAP applications in the future.

Sincerely,

Ted Phillips

Mary Sheffield

Mary Sheffield

United Community Housing Coalition & Michigan Legal Services
275 South State Street, Suite 104, Detroit, MI 48224
313.224.1100 ext. 2000 Fax: 313.224.1101
www.uchc.org www.mls.org

iv) Detroit Action Commonwealth



... organizing to build power, advance justice, promote opportunity

October 12, 2018

Dear Council President Pro Tem Sheffield:

We are members of Detroit Action Commonwealth, an organization of more than 5,000 Detroiters, most of them low-income.

We understand and support the City's responsibility to make sure that people who apply for a poverty property-tax exemption are truly eligible for it. But the City also has a responsibility to make sure that people who are eligible for the exemption are not denied one. This has been the far greater problem in Detroit.

Many low-income Detroiters have not gotten the property tax exemption they're eligible for, in part because the HPTAP application process is needlessly difficult. Thousands of them have lost their homes to tax foreclosure as a result. When that happens, it not only hurts them, it hurts the entire neighborhood, and the entire city.

The application's notarization requirement adds an unnecessary step to an already burdensome process. Many Michigan cities do not require it. Many low-income homeowners are elderly, disabled, or lack transportation. They have a hard enough time compiling the necessary documents and completing the application before the deadline, which often requires them to travel to various offices for assistance. Notarization further complicates this process and acts as a barrier that restricts access to the exemption.

We ask that the City of Detroit remove the notarization requirement from the HPTAP application.

Yours truly,

Jacquita Watts
Jasmine Pinchbeck
Fabrizio Parks
Taveris Young
Kierstyn Zunder
James Kelly
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Theresa Davis
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Daniel Harris
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DETROIT ACTION



organizing to build power, advance justice, promote opportunity

Jim M. Beale
Robert M. Kennedy
Irene Hoodan

Carl Berger
Roderick Williams
William Jones
Michael Jones
Arthur Anderson
Joseph Henderson
Chantelle Giddis
Richard Smith

Robert M. Anderson
Theresa Williams
James
William Anderson
Roderick Williams

Wanda Wanda
Cynthia Griffith
Helen Miller
Prince Moore
David DAVIS
Amy Lawrence
Renita Moore

John Coleman

Mr. Robert L. Carrick
Ellen Brown
Jacqueline Brown
Dorothy M. Brown
Melinda Brown
William Smith

Theresa DAVIS
1733 - Judy Bowie
Dorothy
Cynthia Griffith
Adrian
Mary Jones

Detroit Action Commonwealth 4800 Grand River Ave Detroit MI 48206 www.detroitaction.org

v) Neighbors Building Brightmoor



October 11, 2013

Dear Council Member Pro Tem Sheffield,

Thanks for your attention to this matter and for your service on Council. I appreciate what you're doing for Detroit. My service to Detroit has had a much narrower scope. I have focused on foreclosure prevention (and on inspiring others to do the same).

During the three years Neighbors Building Brightmoor has been doing door-to-door foreclosure prevention outreach, organizing workshops, and helping neighbors with their applications for property tax exemptions, I have been most touched by the heavy blanket of despair and distrust that weighs down so many

Their stories are all personal and different, but they share a common thread. They remind me of the Charlie Brown cartoon where Charlie Brown is ready to kick the football and Lucy pretends to hold it, but mucks it every single time—and he lands flat on his back. So many neighbors have been offered hope (in various guises) and had it yanked out from underneath them right when they needed it most. They are tired and trying not to be defeated, but are understandably wary.

How do we relate to the hurdle of getting an HPTAP application notarized in Brightmoor? We don't start with how few people own cars to get to a notary. If they even know where one is. Many of my neighbors—particularly the ones most in need of the exemption—do not have bank accounts, so it's not a "simple" matter of going to the bank.

Of course we provide notaries when we organize workshops, but let's look at some numbers. Last November we knocked on over 500 doors in Brightmoor—doors of people we knew qualified for what was then called the Poverty Tax Exemption and were about to lose their homes. Of those 500, only about 30 got the benefit of the notary we provided at the workshop. So what about the other 470? I do not know the story of every one of those neighbors, but I do know the story of one.

My neighbor across the street is the perfect example of someone the exemption was designed to help. He'd recently had a severe injury and was only able to walk. I gave him the application, told him about the workshop, assured him he would qualify, and checked in with him to make sure our paths crossed. He did show up at the workshop, and I was so relieved that I got to see him again and cultured him. Later that year, when he and I were clearing snow in front of our homes, I asked if he'd received his exemption yet. I imagine my dismay when he replied that he hadn't send it either because he didn't know how

to get something notarized, it broke my heart. In my efforts to keep my nose out of his financial business, I did not follow up until the deadline had passed. And I failed him. He'd given up on the exemption when he couldn't figure out how to meet one of its requirements.

I try not to get caught up in "what if" thought spirals, but sometimes I can't help myself. I imagine that if my neighbor could not bring himself to ask me about notarization, that there are many many more who don't happen to live on the same street as the "property tax lady" who also give up for the same reason.

I am grateful that you are willing to consider helping fix this problem. My efforts can only help a few people at a time; your efforts can help so very many more.

With deep appreciation,



Lonella Pizzuti
Neighbors Building Brightmoor board member
14918 Lamphere
Detroit, MI 48223
707-702-6362

PS I drove my neighbor to a notary and he got the exemption for 2013.

vi) *Central Detroit Christian*



CENTRAL DETROIT CHRISTIAN
COMMUNITY DEVELOPMENT

October 11, 2018

Councilwoman Mary Sheffield
Detroit City Council
CAYMC
1 Woodward Avenue
Suite 1300
Detroit, MI 48226

RE: Notarization Burden

Dear Councilwoman Sheffield:

I am writing you as a housing counselor for Central Detroit Christian CDC who is actively involved in helping families with their Property Tax Exemption applications. The requirement of the application of needing a notary is cumbersome for the applicant. Banks typically have notary services available, but ~~many if not most of our clients are not bankable and therefore cannot use the bank's notary. Other~~ notary services require some type of fee and that is a burden as well.

We solicit your help and request that you release the requirement of a notary on the Property Tax Exemption form.

Thank you in advance,

Dottie Foster
Lead Housing Counselor

III. – ADJUNCTIVE ELIGIBILITY

MEMORANDUM

To: Hon. Mary Sheffield
From: Coalition to End Unconstitutional Tax Foreclosures
Re: Allowing Adjunctive Eligibility for HPTAP
Date: October 14, 2018

Currently, anyone applying for the Homeowners Property Tax Assistance Program (HPTAP) who was not required to file a tax return must demonstrate income by providing supporting documentation. Since the City's settlement with the ACLU, non-tax filing applicants can demonstrate income by submitting W2s, Social Security Statements, or any other reasonable proofs. Besides accepting these proofs, the Board of Review should also allow applicants to demonstrate their income eligibility by submitting documentation showing current enrollment in any government program that has the same or lower income requirements (for example, Medicaid or WIC)—a process known as *adjunctive eligibility*. Adjunctive eligibility is a common, well-accepted practice that benefits the Board of Review by relieving administrative burden, and benefits applicants by allowing for a more streamlined application process.

Adjunctive Eligibility is Common Practice

The Board of Review would not be unique in allowing adjunctive eligibility for HPTAP. Adjunctive eligibility was originally adopted to increase enrollment in children's health insurance programs, but since then the practice has expanded to many government programs.¹ For example, in order to streamline the application process and reduce administrative errors and costs, Congress established adjunctive eligibility for the Women, Infants, and Children (WIC) program in 1989, which allows applicants to demonstrate eligibility by showing participation in Medicaid, Food Stamps, or TANF.² In addition, 42 CFR § 435.120 dictates that enrollment in Supplemental Security Income (SSI) automatically establishes a person's eligibility for Medicaid in most states.³ Michigan's courts also use adjunctive eligibility. Specifically, demonstrating receipt of public assistance entitles a defendant to a rebuttable presumption of indigency for the purposes of appointed counsel in a criminal case under MCL 780.991 and MCR 6.005(B), and for a waiver of court cost and fees under MCL 600.8371 and MCR 2.002(C)-(D). Finally, many utility affordability programs—such as the Low Income Home Energy Assistance Program or Pennsylvania's Customer Assistance Program through the Public Utility Commission—also use adjunctive eligibility in their application process.⁴

¹ Colton, R. (n.d.). *A Water Affordability Program for the Detroit Water and Sewerage Department (DWSD)* (Rep.). Retrieved from http://www.fsconline.com/downloads/Papers/2005_01_Detroit_Water.pdf, p. 8

² *Ibid*; Carlson, S., Neuberger, Z., & Rosenbaum, D. (2017, July 19). *WIC Participation and Costs Are Stable* (Rep.). Retrieved <https://www.cbpp.org/research/food-assistance/wic-participation-and-costs-are-stable>; for a detailed description of how adjunctive eligibility works in Michigan's WIC program, see Appendix A.

³ Colton, R. (n.d.). *A Water Affordability Program for the Detroit Water and Sewerage Department (DWSD)* (Rep.). Retrieved from http://www.fsconline.com/downloads/Papers/2005_01_Detroit_Water.pdf, p. 8

⁴ *Ibid*; Benefits.gov. (n.d.). Low Income Home Energy Assistance Program. Retrieved from <https://www.benefits.gov/benefit/623>

Adjunctive Eligibility is Beneficial for Applicants and the Board of Review

Clearly, adjunctive eligibility is beneficial for the applicant. Instead of collecting and producing multiple proofs of income, adjunctive eligibility would allow applicants to submit only one piece of documentation, for example, a copy of proof of enrollment in Medicaid. Putting the applicant aside, adjunctive eligibility has significant administrative benefits for the Board of Review. As mentioned above, other government agencies established adjunctive eligibility specifically to reduce errors and relieve administrative burdens through decreased paperwork and lower resource expenditure on income determination and fraud detection. This last point is particularly important for the Board of Review. By offloading income determination and oversight to the better resourced state or federal government, the Board can focus its resources on determining eligibility and detecting fraud for the more unique and challenging aspects of the application, such as confirming home ownership and principle residency.

Conclusion

Given that adjunctive eligibility is a well-established and common governmental practice, and that it creates significant benefits for both applicants and the Board of Review, the City of Detroit should pass legislation that establishes adjunctive eligibility for HPTAP.

APPENDIX A – ADJUNCTIVE ELIGIBILITY FOR MI-WIC

MI-WIC POLICY

Eligibility/Certification

2.0 Eligibility/Certification

Effective Date: 2/15/18

2.06 Adjunct Income Eligibility

PURPOSE: To allow adjunct income eligibility for WIC Program applicants determined to be adjunctively income eligible

A. POLICY

1. WIC applicants are adjunctively income eligible if they receive one of the following

- a. Services from the following Medicaid Programs:
 - i. Medicaid
 - ii. Healthy Kids
 - iii. MICHild
 - iv. Maternity Outpatient Medical Services (MOMS)
 - v. Healthy Michigan Plan (HMP)
 - vi. Emergency Services Only (ESO) (i.e. Healthy Kids-ESO, MICHild-ESO)

Note: Medicaid Deductible (formerly known as "Spendedown") Beneficiaries are not adjunctively income eligible for WIC. Their income must be used to determine eligibility. (See Policy 2.04.)

- b. Food Assistance Program (FAP) benefits (i.e., Supplemental Nutrition Assistance Program (SNAP)/Food Stamps, Food Distribution Program on Indian Reservation (FDPIR), The Emergency Food Assistance Program (TEFAP).
- c. Family Independence Program (FIP)/Temporary Assistance to Needy Families (TANF) benefits.

2. Applicants are adjunctively income eligible if they are an infant of a woman who received Medicaid during her pregnancy.

3. Applicants are adjunctively income eligible if they are a member of a family that have one of the following:

- a. A pregnant woman or infant receiving Medicaid
- b. Food Assistance Program (FAP) benefits
- c. Family Independence Program (FIP) benefits

4. To determine adjunctive eligibility enrollment, one of the following forms of documentation is required:

- a. Medicaid

MI-WIC POLICY

Eligibility/Certification

- i. A current acceptance letter to Medicaid, Healthy Kids, MIChild, MIOHS, HMP or LSC Program.
 - ii. A current Mihealth account number (Medicaid ID) verified by:
 - a. MI-WIC
 - b. CHAMPS (Community Health Automated Medicaid Processing System)
 - c. Other State of Michigan websites/verification systems (See Guidance.)
- b. Food Assistance Program (FAP)
- i. Current Food Assistance Program approval letter with expiration date
 - ii. Confirmed deposit to Michigan Bridge Card FAP account for the current month
 - iii. Other State of Michigan websites/verification systems (See Guidance.)
- c. Family Independence Program (FIP)/Temporary Assistance to Needy Families (TANF)
- i. Current FIP benefits approval letter with expiration date
 - ii. Confirmed deposit to Michigan Bridge Card cash benefit account for the current month
 - iii. Other State of Michigan websites/verification systems (See Guidance.)
- d. Children's Special Health Care Services (CSHCS) form MSA-0738 showing income calculation does not exceed 185% of poverty level
- e. Current acceptance letter to a state or federally funded program where income has been determined not to exceed 185% of poverty level for the family (i.e., free or reduced-price school meals)

-
5. Upon approval of adjunct income eligibility, applicants must verbally declare their income (for reporting purposes only)

B. Guidance

1. The following State of Michigan websites can aid in verification of adjunct income eligibility:
 - a. MiBridges: <https://www.mibridges.michigan.gov> (Medicaid, FAP and FIP)
 - b. CHAMPS: mihealth.michigan.gov

MI-WIC POLICY

Eligibility/Certification

- c. Healthcare-link.gov (Medicaid)
- d. Mihealth <https://healthlinkbenefits.mihealth.org> (Medicaid)
- e. Electronic Benefit Transfer (EBT) phone system: 888.678.8914 (LAP and EBT)

References

Michigan Department of Health and Human Services (MDHHS). 2017. Michigan Medicaid Manual [ONLINE]. Available at: http://www.michigan.gov/mdhhs/0,4570,7-150_4282_4283_4284_4285_4286_4287_4288_4289_4290_4291_4292_4293_4294_4295_4296_4297_4298_4299_4300_4301_4302_4303_4304_4305_4306_4307_4308_4309_4310_4311_4312_4313_4314_4315_4316_4317_4318_4319_4320_4321_4322_4323_4324_4325_4326_4327_4328_4329_4330_4331_4332_4333_4334_4335_4336_4337_4338_4339_4340_4341_4342_4343_4344_4345_4346_4347_4348_4349_4350_4351_4352_4353_4354_4355_4356_4357_4358_4359_4360_4361_4362_4363_4364_4365_4366_4367_4368_4369_4370_4371_4372_4373_4374_4375_4376_4377_4378_4379_4380_4381_4382_4383_4384_4385_4386_4387_4388_4389_4390_4391_4392_4393_4394_4395_4396_4397_4398_4399_4400_4401_4402_4403_4404_4405_4406_4407_4408_4409_4410_4411_4412_4413_4414_4415_4416_4417_4418_4419_4420_4421_4422_4423_4424_4425_4426_4427_4428_4429_4430_4431_4432_4433_4434_4435_4436_4437_4438_4439_4440_4441_4442_4443_4444_4445_4446_4447_4448_4449_4450_4451_4452_4453_4454_4455_4456_4457_4458_4459_4460_4461_4462_4463_4464_4465_4466_4467_4468_4469_4470_4471_4472_4473_4474_4475_4476_4477_4478_4479_4480_4481_4482_4483_4484_4485_4486_4487_4488_4489_4490_4491_4492_4493_4494_4495_4496_4497_4498_4499_4500_4501_4502_4503_4504_4505_4506_4507_4508_4509_4510_4511_4512_4513_4514_4515_4516_4517_4518_4519_4520_4521_4522_4523_4524_4525_4526_4527_4528_4529_4530_4531_4532_4533_4534_4535_4536_4537_4538_4539_4540_4541_4542_4543_4544_4545_4546_4547_4548_4549_4550_4551_4552_4553_4554_4555_4556_4557_4558_4559_4560_4561_4562_4563_4564_4565_4566_4567_4568_4569_4570_4571_4572_4573_4574_4575_4576_4577_4578_4579_4580_4581_4582_4583_4584_4585_4586_4587_4588_4589_4590_4591_4592_4593_4594_4595_4596_4597_4598_4599_4600_4601_4602_4603_4604_4605_4606_4607_4608_4609_4610_4611_4612_4613_4614_4615_4616_4617_4618_4619_4620_4621_4622_4623_4624_4625_4626_4627_4628_4629_4630_4631_4632_4633_4634_4635_4636_4637_4638_4639_4640_4641_4642_4643_4644_4645_4646_4647_4648_4649_4650_4651_4652_4653_4654_4655_4656_4657_4658_4659_4660_4661_4662_4663_4664_4665_4666_4667_4668_4669_4670_4671_4672_4673_4674_4675_4676_4677_4678_4679_4680_4681_4682_4683_4684_4685_4686_4687_4688_4689_4690_4691_4692_4693_4694_4695_4696_4697_4698_4699_4700_4701_4702_4703_4704_4705_4706_4707_4708_4709_4710_4711_4712_4713_4714_4715_4716_4717_4718_4719_4720_4721_4722_4723_4724_4725_4726_4727_4728_4729_4730_4731_4732_4733_4734_4735_4736_4737_4738_4739_4740_4741_4742_4743_4744_4745_4746_4747_4748_4749_4750_4751_4752_4753_4754_4755_4756_4757_4758_4759_4760_4761_4762_4763_4764_4765_4766_4767_4768_4769_4770_4771_4772_4773_4774_4775_4776_4777_4778_4779_4780_4781_4782_4783_4784_4785_4786_4787_4788_4789_4790_4791_4792_4793_4794_4795_4796_4797_4798_4799_4800_4801_4802_4803_4804_4805_4806_4807_4808_4809_4810_4811_4812_4813_4814_4815_4816_4817_4818_4819_4820_4821_4822_4823_4824_4825_4826_4827_4828_4829_4830_4831_4832_4833_4834_4835_4836_4837_4838_4839_4840_4841_4842_4843_4844_4845_4846_4847_4848_4849_4850_4851_4852_4853_4854_4855_4856_4857_4858_4859_4860_4861_4862_4863_4864_4865_4866_4867_4868_4869_4870_4871_4872_4873_4874_4875_4876_4877_4878_4879_4880_4881_4882_4883_4884_4885_4886_4887_4888_4889_4890_4891_4892_4893_4894_4895_4896_4897_4898_4899_4900_4901_4902_4903_4904_4905_4906_4907_4908_4909_4910_4911_4912_4913_4914_4915_4916_4917_4918_4919_4920_4921_4922_4923_4924_4925_4926_4927_4928_4929_4930_4931_4932_4933_4934_4935_4936_4937_4938_4939_4940_4941_4942_4943_4944_4945_4946_4947_4948_4949_4950_4951_4952_4953_4954_4955_4956_4957_4958_4959_4960_4961_4962_4963_4964_4965_4966_4967_4968_4969_4970_4971_4972_4973_4974_4975_4976_4977_4978_4979_4980_4981_4982_4983_4984_4985_4986_4987_4988_4989_4990_4991_4992_4993_4994_4995_4996_4997_4998_4999_5000 [Accessed 30 January 2017].

Federal Regulations * 7 CFR Part 246.7 (du 246.7)

USDA WIC Policy Memorandum 199906: Impact of the Children's Health Insurance Program (CHIP) on WIC Adjusted Income Eligibility: 5/30/1999

USDA WIC Policy Memorandum 201303: Income Eligibility Guidance: 4/26/2013

