To: Senator Peter Bowman, Chair
Representative Sharon Treat, Chair
Joint Standing Committee on Insurance and Financial Services

From: William N. Lund, Superintendent
Bureau of Consumer Credit Protection

Re: Periodic Foreclosure Report pursuant to PL 2009, Ch. 402

Date: October 15, 2010

Public Law 2009, Chapter 402 (LD 1418), "An Act to Preserve Home Ownership by Preventing Unnecessary Foreclosures," requires the Bureau of Consumer Credit Protection to report to the Insurance and Financial Services Committee on a regular basis regarding implementation and results of the Bureau's foreclosure prevention program. This report covers events of the most recent quarter, and also provides data and insights from the Bureau's first 15 months of overseeing the foreclosure prevention program.

I. RECENT EVENTS

The past several months brought an unusually high level of activity for the Bureau's foreclosure prevention program. Maine homeowners have been receiving mortgage default notices from their lenders at an unprecedented rate, resulting in more mailings of information from our office than at any previous time. And since our mailings highlight the availability of the agency's toll-free hotline and our no-cost housing counselor referral service, calls to our Bureau's hotline are occurring with greater frequency than at any time since establishment of the hotline in June, 2009.

The variety and complexity of the calls has remained constant – each week we hear from consumers whose payments are current but whose budgets are stretched. We also hear from homeowners who are just one month delinquent, or who are 6 months delinquent, or who have just been served with a foreclosure summons and complaint. Others are in the midst of litigation, while still others tell us their houses are scheduled for auction sales. In addition, we have taken calls from several consumers who have been served with eviction notices, meaning that the foreclosure auctions have occurred and they are no longer the legal owners of the property.

Bureau staff is currently referring about 100 cases each week to our network of housing counselors. We have entered into a total of 12 contracts – totaling $728,404 – with non-profit groups, in an effort to ensure that a maximum number of consumers can receive assistance. Three of those contracts (with Washington Hancock Community Action Program, Coastal Enterprises, Inc. and Penquis) have been signed within the last 6 months, based on high caseloads at those agencies.

Even our agency's high level of activity has been overshadowed, however, by the unexpected nationwide developments involving the discovery that several out-of-state lenders and servicers allegedly submitted false affidavits in support of motions for default judgments or summary judgments in civil foreclosure actions. Had the lenders taken the time and spent the funds to draft accurate affidavits, they would likely have prevailed in those motions. However, it's now clear that when employees of several large lenders signed affidavits swearing they had reviewed original documents (or even that they had read the affidavits they were signing), they were not being truthful. The effectiveness and efficiency of the court system is dependent on judges being able to believe sworn statements filed with the courts, and this revelation has done an unknown level of damage to lenders' credibility. Because the lenders' employees did not review the documents but merely signed the affidavits, they have become known as "robo-signers." Fallout from this controversy has led several national lenders and servicers to announce voluntary, temporary moratoria on new and existing civil foreclosure actions.

If this sad development has a positive side it is that lenders have slowed down the process of pursuing foreclosures, and the delays may provide opportunities for some homeowners to demonstrate that they can qualify for government-sponsored loan modification programs or for lenders' internal loan modification programs.

II. CURRENT STATE OF THE PROGRAM

The Bureau's primary challenge remains meeting the needs of the large numbers of consumers requesting assistance. As you may recall, the program was initially staffed with a single Office Associate II position, with the idea that this individual by herself would be able to perform the daily functions of receiving the names and addresses of consumers who had been sent default notices the previous day, and sending informational packets to those consumers. We quickly realized that one staff person could not handle the large numbers of calls and mailings directed to our office each day. The number of daily mailings increased to several hundred per day (and up to 400 after each weekend), and in addition our hotline was being heavily utilized with calls from consumers whose situations needed to be handled by office staff rather than being referred out to counselors, because of the emergency natures of the calls, the complexity of the cases or both. At that time (December, 2009) the Bureau requested and received permission to allocate to the foreclosure fund the salary and expenses of the Chief Field Investigator's position, and we reassigned the investigator's duties to full-time foreclosure prevention. In addition to assisting consumers weekly via telephone, the investigator – who has earned a certificate from NeighborWorks for Foreclosure Intervention and Default Counseling – currently oversees the Bureau's 100-plus weekly referrals to the housing counselor network with whom the Bureau has entered into individual contracts. Our foreclosure prevention hotline rings at a steady rate all day, and when we return to the office on a Monday, many messages await us from consumers who cannot call during the work week but who understand that if they leave voicemail messages on Saturday or Sunday, we will return their calls on a schedule to meet their needs.

Because the consumers calling our hotline are facing the loss of their most valuable possession, they speak with great emotion, and often keep our staff of the phone for 30 minutes or more per call. For many, this is the first time they have spoken to real human beings about their near-default, default or foreclosure, since they have often been unsuccessful getting through the "hotlines" established by their out-of-state lenders (many of whom farm out this process to out-of-county call centers). To prevent staffers from experiencing subject-matter overload, we now allocate a share of our foreclosure prevention calls to each member of our consumer complaint staff, because we have found that integrating these calls into our regular schedule helps keep the program more fully staffed with our relatively small number of employees. The foreclosure prevention program has grown such that it now takes more time and resources than any other aspect of our Bureau's regulatory activities.

In this, our fifth report to the committee, we break a bit from the pattern established by earlier versions. In order to give the committee a sense of the situations, challenges and frustrations facing our complaint response staff every day, we asked our "front line" consumer response staff to make a few notes about the circumstances they encounter in a typical day on the phones and responding to written foreclosure-related complaints. They provided the following observations:

- Consumers tell Bureau staff that the consumers repeatedly provide loan modification paperwork to their lenders and servicers, only to be told that the paperwork was not received or that the consumer failed to include a certain required document. Consumers tell our employees that they have sent information numerous times to their lenders via fax, overnight delivery or certified mail. They show us proof that they mailed the information, but are then told by their lender the paperwork was never received or was somehow lost after receipt. Often, when lenders finally admit to having discovered the information, they say that it is so old that it must be updated or that the consumer must reapply with new information.

- Many consumers tell us that when they first contacted their lender or servicer, they were current on their mortgages but they knew that they would be behind unless they took steps to request loan modifications. However, lenders told these consumers that loan modification programs were available only to those consumers who were at least 3 months behind in payments. Many consumers who followed this implied guidance and permitted themselves to fall into default, found themselves doubly in trouble if their loan modification applications were subsequently denied, since they were then in a hole and did not qualify for refinancing from other sources because their credit scores had plunged.

- The federal Making Homes Affordable (HAMP) program, which received so much positive press when it was rolled out, has no real teeth, and lenders are not sufficiently incentivized to participate. Initial temporary or trial loan modifications were easily granted, but when the time periods expired and consumers who had made all required payments expected to be granted permanent loan modifications, many found that new sets of qualifying criteria were imposed. When permanent loan modifications are denied, consumers often receive demand letters requiring payment of all sums not paid during the reduced-installment period, commonly amounting to more than $10,000. Predictably, consumers feel set up for failure by the process.

- Consumers report frustrations about in inability to communicate with their lenders, and state that they are never able to talk twice to the same lender or servicer representative. Homeowners say that lenders' loan modification call centers are often staffed by individuals who are seemingly not fluent in English, speak with strong accents and are difficult for many consumers, especially elderly homeowners, to understand.

- Consumers tell Bureau staff that often when they finally get the opportunity to talk to a live person at the lender's call center, the person on the other end is unable to locate their file.

- A number of consumers have indicated when they received a letter from the bank's attorney threatening foreclosure or when they received a civil summons and complaint, they called the bank and were told to ignore the letter or the summons because their loan modification paperwork was under consideration. The banks did not make consumers aware that at the same time the banks were processing the consumers' in-house loan modification requests, the lenders' attorneys were also pursuing foreclosure. In other words, the foreclosure process did not stop while the consumers were supposedly being considered for the lenders' in-house loan modification programs.

- Consumers complain about the amount of time the loan modification process takes. Consumers feel that they are being "strung along" through this process, and often they simply give up. Our staff has spoken with consumers who have actively pursued loan modification processes for as long as two years without obtaining a final resolution. During this time the consumers are also often told not to make any payments, so they get into a position where they are so far behind in their payments that they can never catch up.

- As an example of the long time frames involved, the Bureau was recently able to obtain a permanent loan modification for a couple who first contacted our office in January, 2009, six months prior to the start of the Bureau's official "foreclosure prevention" program. The loan modification was accepted in September 2010, more than 18 months later. Each week during the 18-month period, Bureau staff contacted either the lender or the consumers or both. Unfortunately, this time-frame is not unique to this case, and is typical of at least a percentage of the cases we handle.

- Consumers complain that their lender does not tell them that if they make reduced payments under a temporary loan modification, their credit report will contain a reference such as "making reduced payments," thereby harming the consumers' credit scores.

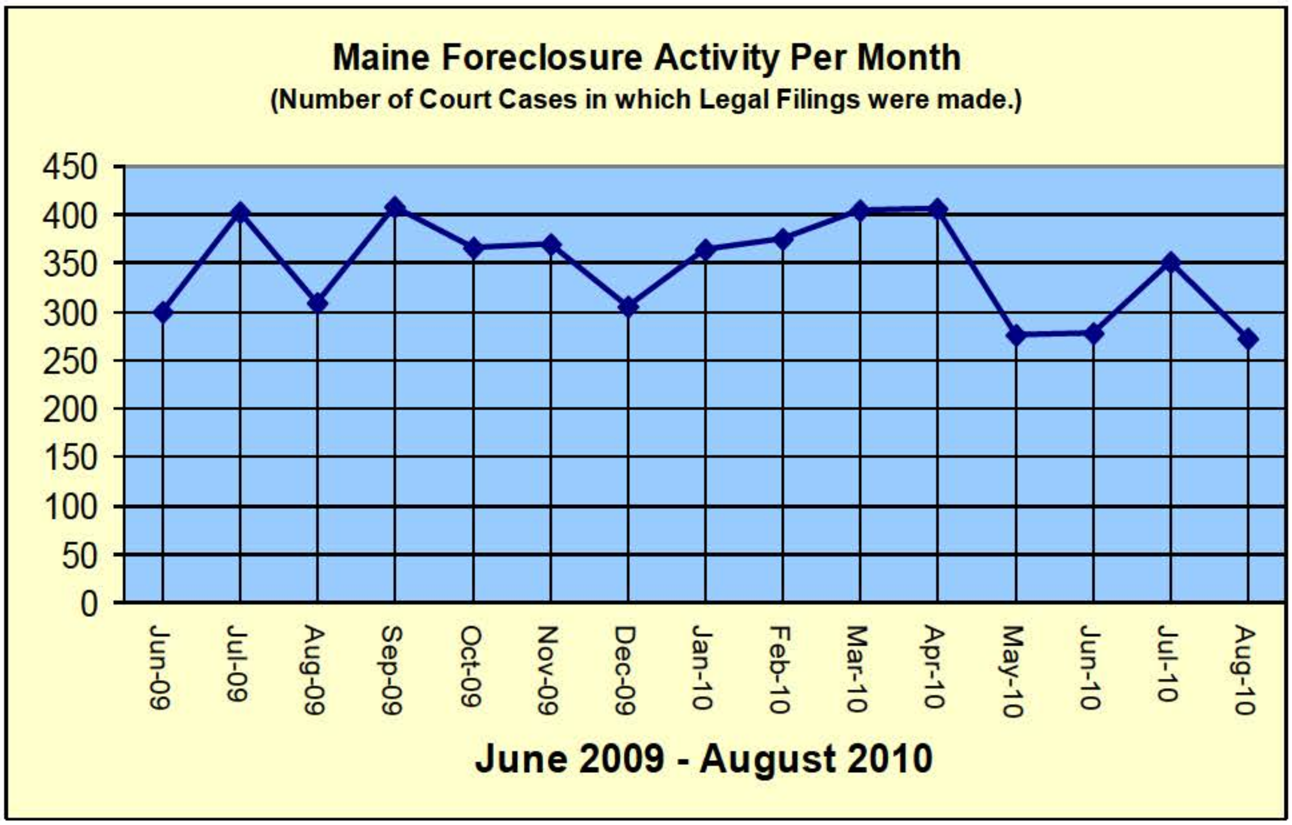
- Consumers who attempt to sell their properties through a short sale process tell us that their banks do not respond promptly to requests to accept reasonable sales price offers, with the result that the prospective buyers walk out on the deals despite the fact that the lenders will likely not recover the same level of funds by pursuing the route of foreclosure and auction sale.

- Consumers often find themselves participating on the trial (initial or temporary) HAMP program for as long as a year without hearing anything at all from the lenders regarding a permanent loan modification. Then, in rapid succession, they receive a letter denying a permanent modification, a demand for all unpaid amounts, and a default and pre-foreclosure letter.

- Many consumers have brought in paperwork showing our staff that when they were finally granted a permanent loan modification, the proposed payments under the plan were actually higher than the payments they had been making under their original loan payment schedule, since escrows were now required or since lenders were attempting to recoup expenses incurred during the time the request for a modification was under consideration.

III. MAINE FORECLOSURE TRENDS

The Bureau relies on a national report service, RealtyTrac, which tallies, on a monthly basis, the number of pending court cases in which foreclosure filings were made. The chart below reveals the number of Maine households that received foreclosure filings between June, 2009 (when the Bureau's foreclosure prevention program was initiated) and August, 2010 (the most recent month for which figures are available).



As stated in the first section of this report, several national lenders and servicer have announced voluntary moratoria on foreclosures while they determine the extent of the "robo-signing" issue that surfaced during the past month. At some point this slowdown will have an impact on the numbers of foreclosure filings, but we cannot predict at this time the size of the drop in foreclosure activity or how long the reduction will persist.

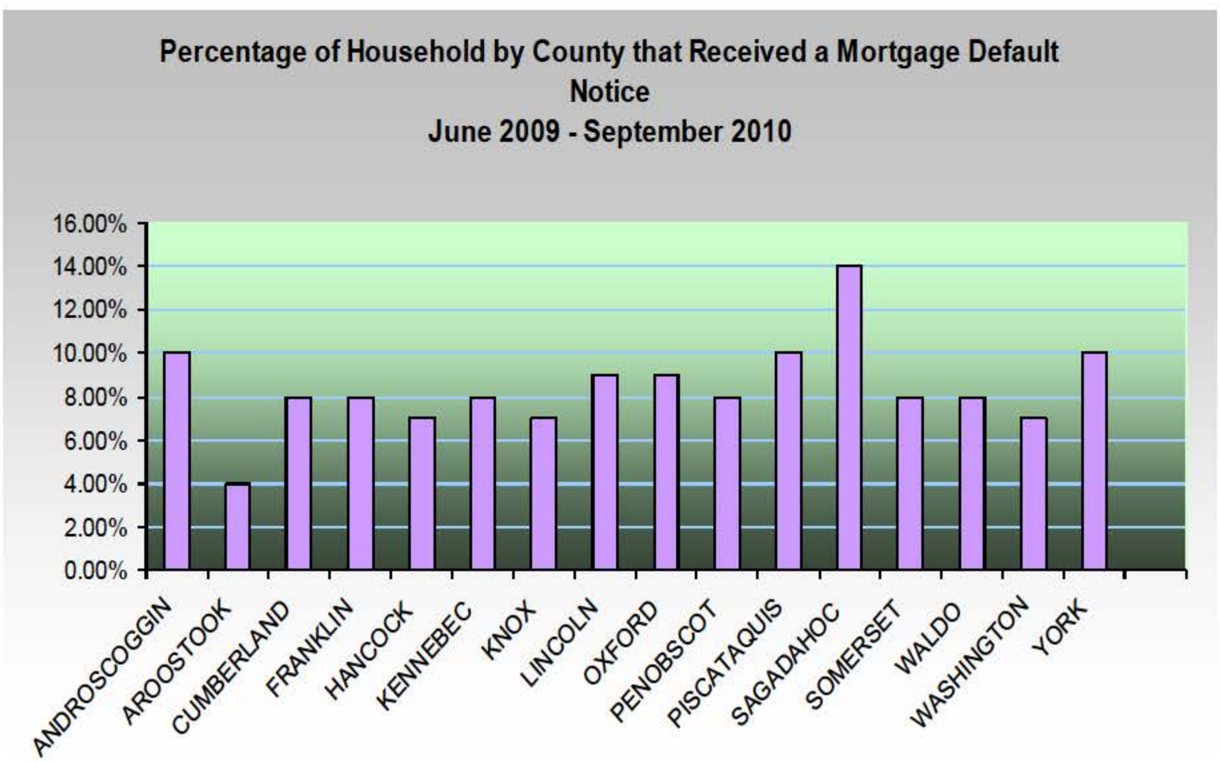
IV. DEFAULTS BY COUNTY

When lenders report on homeowners to whom they have sent default notices, the lenders are asked to indicate the county of residence of the consumers involved. A majority of lenders comply with this reporting requirement, and from data received we have derived totals indicating the numbers of defaulting consumers residing in each Maine county from June 2009 through August, 2010.

Default Notices Sent by County –
June 15, 2009 through September 23, 2010

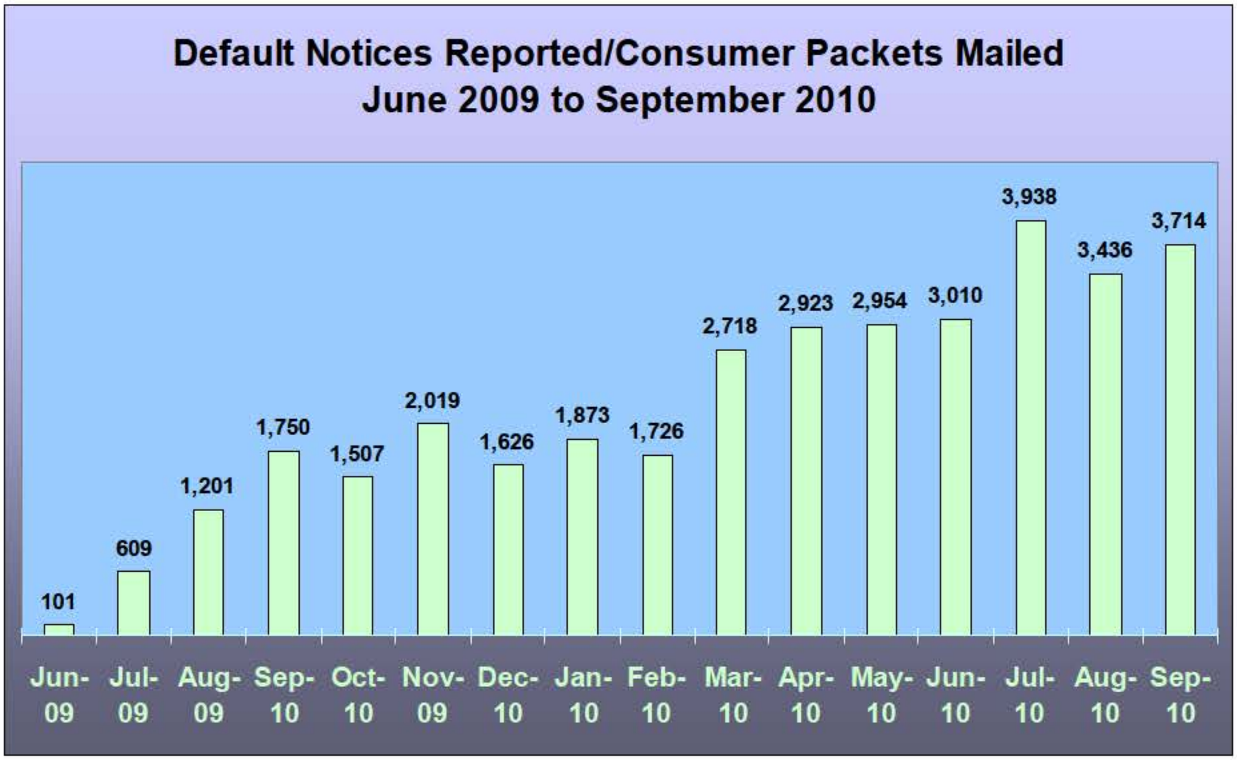
Cumberland: 6,065	Hancock: 1,189
York: 5,823	Lincoln: 1,075
Penobscot: 3,409	Waldo: 1,030
Androscoggin: 2,784	Aroostook: 865
Kennebec: 2,718	Knox: 813
Oxford: 1,588	Franklin: 741
Sagadahoc: 1,357	Washington: 717
Somerset: 1,313	Piscataquis: 469

The rate of default varies by county within Maine, and it is not a surprise that some of the hardest-hit areas of the State are those regions that have experienced closings of manufacturing plans – including wood-products producers – or reductions in the presence of military personnel. The chart below illustrates the percentages of households by county that have received a mortgage default notice during the period June 2009 to September 2010.



IV. BUREAU WORK PERFORMED, JUNE 2009 – SEPTEMBER 2010

Since the inception of the foreclosure prevention program in June 2009, the Bureau has mailed more than 40,000 resource packages to Maine homeowners (see monthly mailing totals in the chart below). After receiving the Bureau's informational package or after hearing of the State's assistance program, more than 2,300 consumers have called the foreclosure prevention hotline, 1-888-664-2569 (1-888-NO-4-CLŌZ), to obtain assistance and advice on dealing with mortgage default. We also receive many additional calls each week on our hotline or our regular consumer assistance phone lines from consumers who are far along in the foreclosure process, including those whose houses are already scheduled for auction. We continue to receive many constituent referrals from the Maine Senate and House Majority and Minority offices, from individual legislators, and from the Washington or district offices of each of the four members of the Congressional delegation.



Bureau staff continues to investigate all cases involving consumer allegations of law violations on the part of lenders or servicers. In addition, in cases that are at a critical stage (meaning that the consumers are close to judicial default or summary judgment for non-response in court; or are in the redemption period after judgment has been granted; or are approaching the foreclosure auction date), when a delay of any sort would prejudice the consumer, the Bureau retains the case and intervenes under its authority as administrator of the Consumer Credit Code or as overseer of the State's foreclosure prevention program. Cases that are not emergencies are referred to the network of non-profit providers, from which homeowners can receive help from trained and experienced housing counselors whom we have under contract, who can assist homeowners to prepare loan modification requests and, if necessary, advocate or negotiate on their behalf with mortgage lenders or servicers.

To date, the Bureau's direct work on behalf of homeowners has been productive, as staff has been successful in convincing lenders to postpone or cancel more than 40 foreclosure auctions; rescind several auctions that had already been held; and to modify the terms of 52 mortgage loan contracts to make them affordable by the consumers.

The Bureau continues to use the foreclosure fund established by PL 2009, Ch. 402to increase the number of qualified foreclosure prevention counselors available to assist Maine homeowners. We have also funded training costs for two of the four independent counselors contracted through Maine State Housing (MSHA) to become certified housing counselors through HUD.

The Bureau has hosted quarterly meetings and trainings for the Maine Housing Counselor Network (MHCN). In December, the Bureau will sponsor a meeting in Gardiner of the Maine Attorneys Saving Homes (MASH) organization, at which presenters will include lawyers from Boston's National Consumer Law Center. This two-day session will provide training on HAMP, an update on Maine foreclosure law, a review of the Court system's foreclosure mediation program, and mortgage modification training. Attendees will include members of the Maine Housing Counselor Network, US Department of Housing and Urban Development and nine Maine non-profit housing counseling agencies.

As referenced in Section IV of this report, lenders nationwide are required under the law to provide the Bureau with the names and addresses of consumers who are in default, so staff can mail information to the consumers about the availability of housing counseling. Those lenders continue to utilize the special e-mail account (lender.reporting@maine.gov), established by the Bureau to accommodate the lenders' reporting requirements to the State. Additional electronic reporting occurs through the Bureau's website at www.Credit.Maine.gov.

The packet mailed to homeowners who are in default on their mortgages includes an introductory letter from the Bureau explaining the Legislature's establishment of the foreclosure prevention program; a list of currently-approved HUD agencies and counselors; a description of the court-supervised mediation services; legal resources and options; a description of the foreclosure process; and a sample hardship letter that consumers can use to write to their mortgage lender or servicer.

In 2009 the Bureau complied with the Legislature's directive in PL 2009, Ch. 402 by drafting a single-page legal document for consumers to use to respond to a foreclosure action filed against them. The form also serves as a request for court-sponsored mediation. Lenders must provide this one-page document to consumers when the lenders serve the consumers with foreclosure papers. In recent discussions with lenders' attorneys and consumer advocates, an issue has arisen whether additional instruction to consumers should be included with this document. (At the present time, the only attorney's name on the documents served on a consumer to start a foreclosure suit, is the name of the attorney representing the lender or owner of the mortgage. This results in many calls from consumers to the lenders' attorneys, leading to difficult conversations since the lenders' lawyers are party-opponents.) Bureau staff plans to work with Pine Tree Legal Assistance and with lenders' lawyers to determine whether a clear set of written directions can be developed to assist consumer-defendants.

To supplement Bureau resources and the non-profit counselors, our agency also contracted with Maine State Housing to make available four trained housing counselors to assist with the unexpectedly-large number of consumer cases. These counselors are trained to provide individual assistance, as well as referral information, to consumers. We also continue to refer cases to counselors available through MSHA. We have budgeted resources from the foreclosure fund to ensure that MSHA will be able to continue contracting with its independent housing counselors into 2011.

This summer the Bureau worked with MSHA and Pine Tree Legal Assistance to host four foreclosure prevention workshops. The workshops were held on June 12th in Augusta, June 26th in Portland, July 22nd in Sanford and August 21st in Bangor. Bureau staff made presentations at these clinics, which provided free housing counseling, foreclosure prevention information and one-on-one meetings with attorneys to provide individual legal assistance. Bureau staff met and assisted many consumers at the workshops. In one case, the Bureau's investigator met with a husband and wife at the Bangor session. The couple explained that their home was scheduled to be auctioned off in 10 days. The Bureau intervened, the auction was postponed and the couple subsequently obtained a loan modification.

V. UNLICENSED LOAN MODIFICATION COMPANIES

Foreclosure rescue companies and unlicensed debt management service providers continue to prey on distressed consumers, promising to save their homes from foreclosure. Since June of 2009 the Bureau has received complaints from 225 Maine homeowners who have enrolled with unlicensed debt management service providers.

Our agency has taken several enforcement actions against these unlicensed companies. On February 12, 2010 the bureau and the Attorney Generals Office took legal action against an unlicensed debt management company, 123 Fix My Loan, LLC, a company that promised several Maine consumers that they would modify and restructure their mortgage loans into more affordable payments. The consumers were charged significant fees and received little or no assistance from the company. As a result of our joint investigation, a total of $23,000 was refunded to those consumers.

The Bureau also took action against another unlicensed debt management company that called itself US Law Advocacy Group. As a result of this action, the Bureau was able to return $8,000 to several Maine homeowners.

Since the foreclosure prevention program started in June 2009, the bureau has recovered $273,948.44 for Maine consumers from unlicensed debt management service providers. Our staff remains committed to pursuing and prosecuting these companies, since they mislead consumers during a particularly susceptible time in their lives, offering false hopes of loan modifications and taking funds from consumers that would be better put toward down payments on loan modification plans offered by the homeowners' own lenders.

CONCLUSION

The Bureau is proud of its role in assisting Maine consumers to avoid foreclosure, negotiating loan modifications and administering the network of non-profit housing counselors. Staff will continue to provide outreach and education, sponsor training opportunities, and enter into contracts with additional outside counseling agencies. Our enforcement personnel will vigorously enforce the laws against predatory lending and servicing, and our complaint resolution staff will continue working with lenders and servicers, encouraging them to offer reasonable loan modifications. Finally, our agency will coordinate our efforts and resources with providers of other foreclosure prevention measures, including the court-sponsored mediation program.

The Bureau wishes to thank the Committee for its ongoing interest in, and support of, this program.