

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT
PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

PAUL R. LEPAGE
GOVERNOR

William N. Lund
SUPERINTENDENT

To: Senator Rodney L. Whittemore, Chair
Representative Wesley E. Richardson, Chair
Joint Standing Committee on Insurance and Financial Services

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

Re: Tenth Periodic Report on the Bureau's Foreclosure Diversion Program

Date: May 7, 2012

Executive Summary

The Bureau's foreclosure diversion program was established by the Legislature to ensure that Maine homeowners receive reliable advice and assistance as they face mortgage foreclosure and possible eviction. Since its inception in July 2010, the program has provided information about rights and options to nearly 100,000 consumers in default on their mortgages. In addition, Bureau staffers have spoken one-on-one with thousands of homeowners on the agency's toll-free hotline (1-888-NO-4-CLÖZ, or 1-888-664-2569); referred 1,500 households to the Bureau's network of free, certified housing counselors; directly maintained approximately 500 families in their homes by obtaining loan modifications; and supported a counseling structure that has assisted hundreds of additional Maine homeowners.

The program has two components: 1) operations at the Bureau's offices in Gardiner that house the computer infrastructure to electronically receive an average of 200 new homeowner names each work day and prepare mailings to those homeowners; and the staff to answer hotline calls, record relevant information, and scan and forward intake forms to housing counselors; and 2) the network of HUD-certified, non-profit housing counselors located throughout Maine, from York County to Aroostook County, who are under a contractual obligation to accept referrals from the Bureau and work with the homeowners to develop proposals for loan modifications to present to mortgage lenders and servicers.

Based on the current rate of default and foreclosure, the Bureau anticipates that the need for the current high level of program activity will continue for the next 18 to 24 months. Funds for the program's operations derive from two statutorily-authorized sources. The first is a real estate transfer tax, assessed when a lender purchases its own property at a foreclosure auction or when it accepts a deed-in-lieu of foreclosure from a family that agrees to vacate a house without asserting legal defenses to the foreclosure action. The second source is "funds received from any public or private source," such as funds provided from civil or administrative settlements.

Funds received to date for the foreclosure diversion program have been those derived solely from the specialized transfer tax, and that revenue source is running at only about 33% of budgeted amounts. The decrease is the result of two factors. The first is the near-stoppage of foreclosures that occurred in the summer and fall of 2011, following the discovery around the country and in Maine that certain lenders — primarily large, out-of-state banks — were filing false affidavits with the courts in support of foreclosure actions (the so-called “robo-signing” scandal).

The second factor resulting in a drop in revenue derives from an apparent change in procedure adopted by several of the largest foreclosing banks. If those banks hold foreclosure auctions and are the highest bidders (a common occurrence, since in most instances more is owed on the defaulted mortgage than the value of the residence being auctioned off), rather than purchasing the houses and recording transfers to themselves, which results in payment of transfer tax directed to the foreclosure diversion program, banks are assigning their rights as high bidder to the ultimate investor/owners of the mortgages, such as Fannie Mae and Freddie Mac, a process that does not generate transfer taxes to fund the program.

As a result, the Bureau has not been able to extend any of the 12, one-year housing counselor contracts beyond the end of the current fiscal year (June 30, 2012). If revenues do not increase or if other sources of funding are not found, several housing counselors hired by non-profits in anticipation of a reliable source of revenue through Bureau contracts will be laid off, and, more importantly, the Bureau will not have those counselors for homeowner case referrals.

The Bureau does not have sufficient in-house staff to perform the complex and time-consuming loan modification aspects of the program, since the agency’s underlying consumer protection responsibilities involve licensing, responding to consumer complaints, conducting compliance exams and pursuing enforcement actions with respect to mortgage companies, loan brokers, debt collectors, automobile dealers and providers of consumer credit, loans and other financial services and products.

The Bureau is hopeful that another source of funds will permit it to continue foreclosure prevention operations. Specifically, a nationwide settlement involving the five largest mortgage lenders and servicers resolving a variety of claimed legal violations will result in funds coming to the State of Maine. The largest share will be directed to the Office of the Attorney General, which, together with Attorneys General offices in each state, negotiated the settlement. Maine Attorney General William Schneider has indicated that his office intends to transfer the majority of the monies (more than \$4 million) to the General Fund, but also to direct some funding (at least \$700,000) to the Bureau’s foreclosure diversion program. An additional \$1 million from the nationwide settlement is coming to the Department of Professional and Financial Regulation through the Conference of State Bank Supervisors (CSBS). That sum will be apportioned between the Bureau of Consumer Credit Protection and the Bureau of Financial Institutions, in percentages not finally determined as of the date of this report.

The Bureau anticipates that between \$1.5 million and \$2.5 million will be needed to operate the foreclosure diversion program for the next 18 to 24 months. The program was always intended to be self-reducing as the need for its services diminished; however, for the next 1-1/2 to 2 years, the need for the foreclosure counseling services will remain high, based on current trends of mortgage defaults and foreclosure starts.

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I. Statutory establishment of the foreclosure prevention program

The pre-foreclosure diversion program was established in Title 14 of the Maine Revised Statutes:

Title 14 MRS §6112, “Statewide Outreach”

To the extent resources are available pursuant to subsection 4, the Bureau of Consumer Credit Protection shall engage in the following activities.

Hotline. *The Bureau of Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor’s communication with housing counselors approved by the United States Department of Housing and Urban Development [HUD] for the purposes of discussing options to avoid foreclosure.*

Outreach; housing counseling services. *The Bureau of Consumer Credit Protection ... shall coordinate an outreach program to help families with their housing needs with the intent of expanding the outreach program statewide. The bureau shall use a portion of the funds received pursuant to subsection 4 for contracts with nonprofit organizations that provide housing counseling services and mortgage assistance.*

Funding. *The Bureau of Consumer Credit Protection shall establish a non-lapsing, dedicated account for the deposit of revenues transferred from Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and for any funds received from any public or private source. The Bureau of Consumer Credit Protection shall use the account to cover the costs of carrying out the duties in this section and section 6111, subsections 3-A, 3-B and 4-A, and the funds in the account may not be used for any other purpose.*

II. Steps taken by the Bureau to implement the law

- 1) The Bureau developed proprietary, secure software permitting lenders and servicers to report to the Bureau the names and addresses of consumers who have defaulted on their mortgages and who are facing possible foreclosure.
- 2) The Bureau drafted and compiled an informational packet describing resources available to homeowners in need, including the agency's hotline and the names and contact information of all HUD-certified foreclosure counselors in Maine.
- 3) On average, the names and addresses of 200 Maine consumers are transmitted to the Bureau every work day. The Bureau mails informational packets to each of those consumers. Since 2009, the agency has provided informational outreach packets to 94,835 homeowners.
- 4) Each day, Maine homeowners at risk of foreclosure call the hotline (1-888-NO-4-CLÖZ), which is staffed "live" by knowledgeable Bureau employees who answer questions, work with the consumers to complete initial "triage" forms, and, in appropriate cases, scan and transmit the completed triage forms to HUD-certified foreclosure counselors under contact with the Bureau.
- 5) The Bureau has entered into contracts with 12 housing counseling agencies and non-profit organizations around the state that employ HUD-certified housing counselors. These counselors are available at no cost to Maine homeowners in default on their mortgages.
- 6) In calendar year 2011, the Bureau referred 1,323 Maine homeowners at risk of foreclosure to housing counselors as the result of calls to the foreclosure prevention hotline.
- 7) Also in 2011, 460 Maine households were able to avoid foreclosure by negotiating loan modifications achieved as a result of housing counseling services provided by the Bureau's statewide outreach program.
- 8) In the 90 days from January 1, 2012 through March 31, 2012, the rates of referral and successful loan modifications have remained steady, with 306 referrals and 116 loan modifications.
- 9) Counselors assisting Maine homeowners at risk of foreclosures report that, at the present time, they are waiting for responses to 515 separate proposed resolutions, including:
 - i. applications for loan modifications;
 - ii. short sale proposals; and
 - iii. pending and active mediations.

Other consumers are currently receiving foreclosure counseling, including establishing budgets to permit them to make loan modification proposals to their lenders.

- 10) Additionally, a certain percentage of the Maine homeowners who receive Bureau packets are demonstrating personal responsibility by reviewing the information and then contacting counselors directly, independent of the Bureau's hotline referral process. Counselors report that in the first 3

months of 2012, 216 homeowners in default contacted them directly for assistance as the result of the Bureau's packet.

11) Maine's "foreclosure inventory" (homes involved in some phase of a formal civil action in foreclosure) remains the 6th highest in the nation, so foreclosure activity is not expected to decline in the foreseeable future (see additional information in section IV, below).

III. Program revenue and expenses

The statutory mechanism that provides funding for the foreclosure diversion program is found in Title 36 of the Maine Revised Statutes:

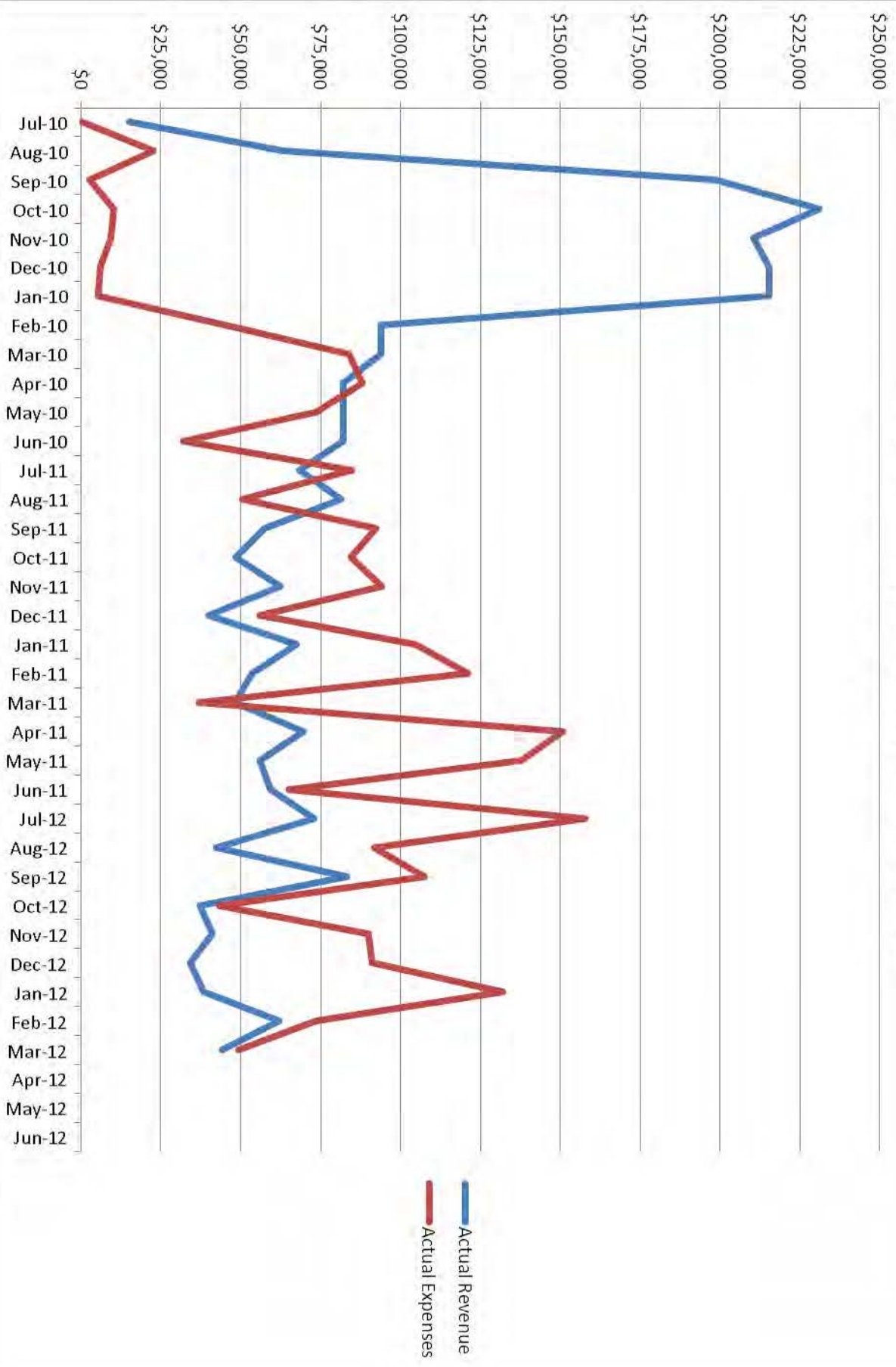
Title 36 MRS §4641-B. Collection (Real Estate Transfer Tax)

Transfer of tax on deeds of foreclosure or in lieu of foreclosure. [T]he State Tax Assessor shall monthly pay to the Bureau of Consumer Credit Protection the revenues derived from the tax imposed on the transfer of real property by deeds that convey real property back to a lender holding a bona fide mortgage that is genuinely in default, either by deeds from a mortgagor to a mortgagee in lieu of foreclosure or by deeds from a mortgagee to itself at a public sale pursuant to Title 14, section 6323.

As referenced in the Executive Summary, lenders, foreclosure attorneys and the Maine Revenue Services have indicated that lenders have changed the post-auction process in such a way that real estate transfer taxes are avoided. When banks hold foreclosure auctions and are the highest bidders (a common occurrence, since in most instances more is owed on the defaulted mortgage than the value of the residence being auctioned off), rather than purchasing the houses and recording transfers to themselves, the banks are assigning their rights to ultimate investors, such as Fannie Mae and Freddie Mac. This process does not generate transfer taxes used to fund the foreclosure diversion program. Real estate transfer taxes to the Bureau's program are generated only when the lender purchases and receives title to the foreclosed home. As of now, that process is being challenged by homeowners' attorneys who assert that lenders who assign to another party the right to foreclose on a mortgage are circumventing legislative intent by avoiding the valid assessment of the transfer tax to fund the foreclosure diversion program.

The net effect of fewer foreclosure auction sales at which the foreclosing bank is the high bidder and records a deed to itself has been a precipitous drop in revenue available to the foreclosure diversion program. Using actual revenue figures from the first several months of the program in 2009, the Bureau constructed a budget in which revenue was forecast to average about \$90,000 per month. However, as a combined result of the robo-signing slowdown and the modification of lenders' post-auction procedures, the program has been receiving about one-third of that amount, \$30,000 to \$35,000 per month. The chart on the following page graphs actual revenues and actual expenditures for the program from its inception.

Foreclosure Diversion Program: Actual Revenue v. Actual Expenses



IV. Continuing need: Maine's residential foreclosure rate continues to rise

RealtyTrac, a private foreclosure reporting service, tallies on a monthly basis the number of open civil foreclosure cases in which new legal filings are made. The chart below shows the number of court cases in which foreclosure filings were docketed beginning in calendar year 2008 and continuing through calendar year 2011. Readers will note that the 4th quarter of 2011 (see red print at lower right of chart) featured an increase of more than 30% in foreclosure filings compared to any other quarter for which records have been kept.

County	2008 Q1	2008 Q2	2008 Q3	2008 Q4	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1	2010 Q2	2010 Q3	2010 Q4	2011 Q1	2011 Q2	2011 Q3	2011 Q4
Androscoggin	14	28	43	52	35	35	55	59	93	56	60	47	52	48	87	158
Aroostook	2	9	7	16	17	9	20	11	3	2	1	4	1	3	6	18
Cumberland	73	101	113	138	72	132	124	125	147	86	117	138	185	84	167	328
Franklin	2	3	7	5	2	5	5	11	13	4	4	3	12	13	8	22
Hancock	7	7	7	13	10	15	11	7	10	4	7	2	4	7	3	54
Kennebec	105	123	101	151	125	134	206	201	214	123	172	166	127	172	178	107
Knox	1	2	6	5	1	3	9	5	3	1	2	2	4	4	1	50
Lincoln	3	4	2	8	6	6	8	4	6	3	6	5	5	10	3	24
Oxford	10	16	18	21	20	14	36	17	26	20	15	24	18	11	14	103
Penobscot	126	172	182	210	203	220	318	164	214	205	174	150	208	165	256	181
Piscataquis	5	6	4	6	4	3	4	3	3	2	6	1	3	1	2	26
Sagadahoc	7	12	14	13	8	9	19	26	14	14	13	22	28	20	21	40
Somerset	11	16	28	23	19	21	16	26	31	18	18	17	11	18	16	73
Waldo	1	6	5	21	5	8	7	6	6	4	0	3	2	2	3	35
Washington	1	3	10	7	6	5	6	1	6	4	8	2	3	3	1	26
York	219	317	244	216	243	210	209	337	332	371	287	317	236	382	355	342
Maine Total	587	825	791	905	776	829	1053	1003	1121	917	890	903	899	943	1121	1587

V. How different funding levels would be utilized by the foreclosure diversion program

Faced with shortfalls in anticipated revenues in late 2011, the Bureau took several steps to decrease expenditures. A senior consumer credit examiner assigned to the program retired in December 2011, and the position has not yet been filled. The duties and caseload of the position have been temporarily absorbed by other staff members. In addition, as contracts for non-profit HUD certified counselors expired in early 2012, they were extended not for their usual one-year period, but only for several months each, through June 30, 2012.

The Bureau hopes to receive a level of funding for the program from the multi-state mortgage servicing settlement negotiated by Attorneys General around the country. Some funds will be allocated by the Maine Attorney General's Office, while a smaller amount will be routed through CSBS, the Conference of State bank Supervisors.

The Bureau has developed contingency plans based on different funding amounts that may be realized. Totals on the smaller end of the spectrum will permit the program to operate for only a short time before it terminates. Recovery in the mid-range will allow renewal of existing contracts, while the highest recoveries will permit additional contracts to issue for those counselors whose work fills the greatest needs.

The following options track the proposed uses of various levels of funding.

A) If total funding equals \$500,000:

- Recently-vacated consumer credit examiner position will remain unfilled
- No renewal of current contracts with housing counselors beyond June 2012
- After June 2012, program will be funded only for hotline and mailing (informational outreach) operations

B) If total funding equals \$1 million:

- Recently-vacated consumer credit examiner position will be filled
- Existing housing counselor contracts will be extended through December 2012
- After December 2012, program will be funded only for hotline and mailing (informational outreach) operations

C) If total funding equals \$1.5 million:

- Recently-vacated consumer credit examiner position will be filled
- Existing number of housing counselor contracts will be extended through December 2012
- For 2013, the number of contracts may be limited to 5 or 6, reduced from current 12
- Program would be funded with reduced contracts through June 2014

D) If total funding equals \$2 million:

- Recently-vacated consumer credit examiner position will be filled
- Existing housing counselor contracts will be extended through December 2012
- The 12 current housing counselor contracts will be renewed for 2013
- Program would be funded through June 2014

E) If total funding equals \$2.5 million:

- Recently-vacated consumer credit examiner position will be filled
- Existing housing counselor contracts will be extended through December 2013
- Addition of up to 6 contracts with those non-profits whose services best advance the program
- Program would be funded through December 2014