STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT
PROTECTION
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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: Eleventh Periodic Report on the Bureau's Foreclosure Diversion Program

Date: August 24, 2012

Executive Summary

This is the eleventh report to the Legislature describing the activities of the Bureau of Consumer Credit Protection's foreclosure diversion program.

The program was established because lawmakers understood that foreclosure is an inefficient and costly process, not only for the homeowners who may be directly displaced, but also for lenders, for the court system, for neighborhoods, for municipalities and for investors. Lenders would rather have a performing loan than a non-performing loan, so Maine and nearly all other states now have mechanisms in place to ensure that consumers can receive assistance evaluating their own financial resources and determining the appropriate course of action.

In the three years since the Bureau was directed to administer the program, it has provided written materials to more than 100,000 Maine homeowners who are in default on their mortgages. The package they receive in the mail describes the resources available to help them make an informed decision regarding their home.

Bureau staff has directly referred 1,800 Maine households to our network of certified housing counselors, while additional homeowners have contacted the counselors directly without going through the state's referral process.

As the result of direct referrals from homeowners who have contacted Bureau staff through the toll-free hotline, 650 Maine families have been able to remain in their homes by obtaining loan modifications, extensions, deferrals and other alternatives to foreclosure. The statewide network of counselors has assisted hundreds of additional homeowners who sought assistance directly from the nonprofit organizations.

Despite evidence that the rapid growth in the number of threatened foreclosures has slowed from the increases seen, for example, during calendar year 2010, the numbers have now leveled off to a steady, high rate. The Bureau is receiving the names and addresses of approximately 3,000 Maine consumers each month who are in default on their mortgages, and that number has remained remarkably steady from September, 2010 through June, 2012. Whatever decrease would otherwise have occurred either because cases were resolved with homeowners or were moved through the court system, has been counteracted because lenders began working to reduce a backlog of delinquencies on which foreclosure was delayed while the so-called “robo-signing” litigation against the major servicers was settled through a multistate resolution with the nation’s Attorneys General.

According to the recently-released National Delinquency Survey from the Mortgage Bankers Association (MBA), which surveyed 134,000 loans currently being serviced in this state, on a percentage basis Maine has a large number of homeowners who are either in foreclosure or who are “seriously” delinquent (more than 90 days late). That total is 8.73%, the highest rate among New England states, and sixth nationwide, behind only Florida (17.49%), New Jersey (12.69%), Nevada (12.39%), Illinois (10.33%) and New York (9.53%).

The MBA also reported that 7.63% of Maine households are at least 30 days delinquent at the present time, and another 5.69% are actively involved in a civil foreclosure action that has been filed against them.

In proposing budgets for the next four years, the Bureau plans to gradually reduce the size of the program, due to the expectation that the number of defaults and foreclosures will begin to decline during that time, and also because revenues to the program from the real estate transfer tax on foreclosed-upon and short-sale properties are being received at a rate of about 50% of those expected when the first budget was developed in late 2009. The program benefited from two payments this year resulting from the multistate Attorney Generals’ offices settlement with nationwide mortgage servicers, and its predicted costs are appropriately funded for the upcoming 18-month period, but the Bureau cannot rely upon future such influxes of revenue and rather must develop a budget based solely on predicted transfer tax revenue.

How does the program work?

Established by lawmakers in 2009, the Bureau’s foreclosure diversion program was created through enactment of Title 14 M.R.S. §6112. The purpose of the law is to provide outreach to consumers in default on their mortgages, and to put those consumers in touch with HUD-certified counselors who have the knowledge and training to assist them to explore alternatives to foreclosure. Each work day the Bureau mails information to more than 200 Maine homeowners, and over the program’s three-year history it has provided information and access to resources to over 100,000 Maine residents.

The Bureau receives an electronic notice from a lender when that lender mails a “Notice of Right to Cure Default” to a consumer who is behind on his or her mortgage. The Bureau then sends the affected homeowner an informational packet describing the foreclosure process and providing a list of counselors whom the homeowner can contact for assistance. Many consumers each day choose to call the Bureau's toll-free hotline (1-888-NO-4-CLŌZ, or 1-888-664-2569), at which point staffers speak one-on-one with the homeowners, obtain details about their case (especially important if the consumer has waited until late in the foreclosure process to make an initial inquiry), and then either handle the case if it involves an emergency or a law violation, or otherwise make a referral to a non-profit counseling agency under contract with the Bureau.

Two members of the Bureau's professional staff have themselves received HUD training, and are therefore able to speak knowledgeably with often-frantic homeowners about the various federal and lender-offered programs designed to permit them to stay in their homes if their incomes are sufficient. In cases in which time permits, the Bureau staff records relevant information on an intake form, then scans and forwards the form within one work day to the non-profit housing organizations. These counselors are located throughout Maine, from York County to Aroostook County, and are under a contractual obligation to accept referrals from the Bureau and work with the homeowners to develop proposals and apply for loan modifications from mortgage lenders and servicers.

Of the $6.9 million received by the Attorney General's office from the proceeds of the nationwide settlement with the 5 largest mortgage servicers, the AG provided $5.4 million to the state's General Fund, $500,000 to Pine Tree Legal Assistance and $1 million to the Bureau's foreclosure diversion program. An additional $415,000 came to the program directly from CSBS, the Conference of State Bank Supervisors, a group that was active in organizing the obtaining of signed releases from all states' financial regulators as part of the settlement. These funds were realized in mid-June, 2012, permitting one-year renewals of the 12 housing counseling contracts that were set to expire on June 30, 2012.

Program Funding

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.*

For the fiscal year ending June 30, 2012, revenue received from the transfer tax provisions of Title 36 M.R.S. §4641-B was $592,630.63. This amount is slightly more than half the original income projections estimated in 2009. It is apparent that lenders are not purchasing their own properties at foreclosure sales (the event that triggers imposition of the tax) as they were in 2009. Rather than request a review of the tax mechanism, however, the Bureau has determined to move the program forward within the parameters of the reduced resources.

National and State Trends

RealtyTrac, a research and reporting organization, recently reported that nationwide foreclosure filings went up in May of 2012 for the first time in 28 months, and that month's new filings were 16% higher than in May of 2011. As mentioned in the *Executive Summary*, experts believe many lenders held back on foreclosures while awaiting the results of nationwide litigation over "robo-signing" and other industry-wide foreclosure irregularities. The impetus for such litigation was the discovery that lenders and servicers were filing foreclosure actions in court based on inadequate and sometimes untrue documentation, especially on loans that had been transferred multiple times from lender to lender and loan servicer to loan servicer.

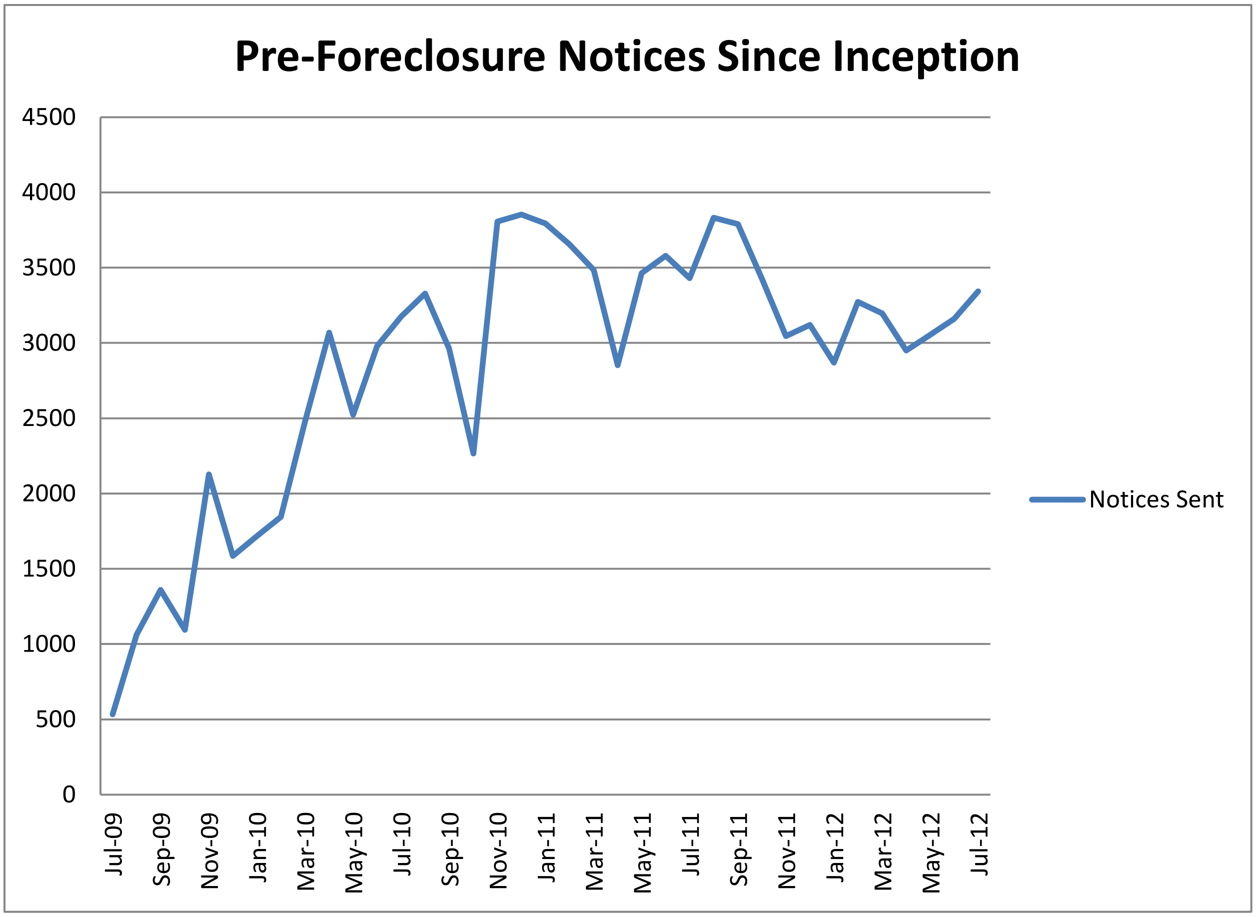
That litigation was resolved in June, and lenders believe they now have guidelines to follow to avoid future challenges. For that reason, they are processing the backlog of delinquent loans that languished while the litigation was ongoing.

On August 22, 2012 the Mortgage Bankers Association released its *National Delinquency Survey* for the second quarter of calendar year 2012. The survey indicates foreclosure starts nationally are unchanged since the same quarter in 2011, and the overall national mortgage delinquency rate increased compared to the first quarter of this year.

These statistics, together with the recent resolution of the national mortgage litigation and the resulting establishment of new industry foreclosure standards, means it's more important than ever that Maine consumers in default on their mortgages have access to competent counselors to assist them in their efforts to obtain reasonable loan modifications. The Attorney Generals' settlement with the nation's five largest mortgage servicers (Citi, Bank of America, Wells Fargo, Ally/GMAC and JP Morgan/Chase) provides incentives to the companies to resolve cases expeditiously, giving homeowners who have knowledgeable assistance an opportunity to maximize the benefits of the modification process.

The graph below shows the numbers of Maine consumers who have been newly in default on their mortgages each month since the inception of the program, as evidenced by their names and addresses being provided to the Bureau.

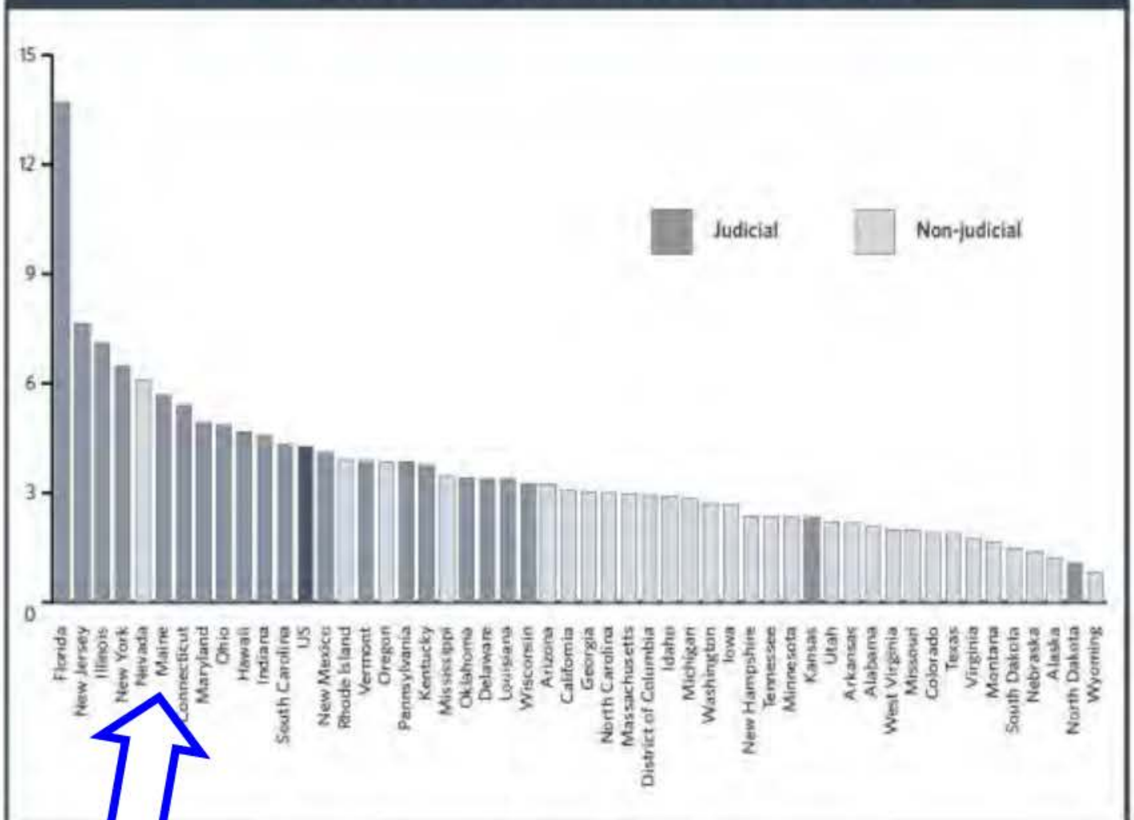
The graph makes clear that overall pre-foreclosure activity remains high. In Maine, the Bureau's staff knows that to be the case. During the three-month period April 1, 2012 through June 30, 2012, Bureau employees prepared intake or "triage" forms on more than 250 Maine families, and made direct referrals



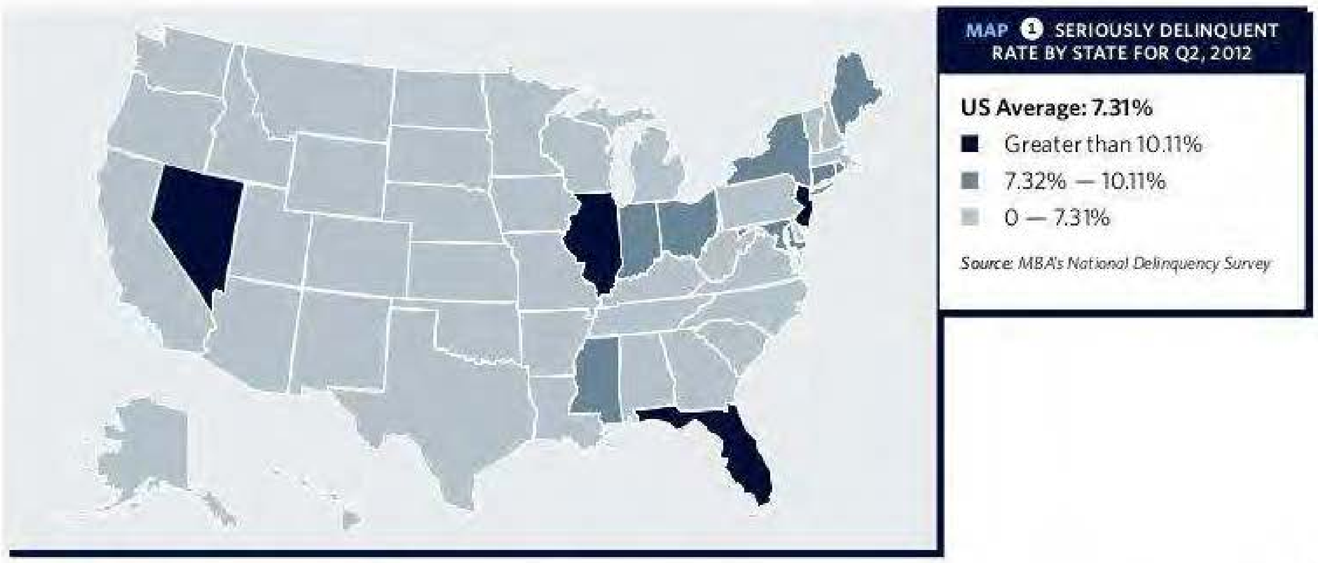
of those households to HUD-certified housing counselors under contract with the Bureau.

The graph on the following page derives from the recently-released *National Delinquency Survey Q2 2012*, prepared by a national lenders group, the Mortgage Bankers Association. The data reflected is current through June 30, 2012, and reflects that, based on its survey of 134,000 Maine mortgage loans, our state has the sixth highest percentage of 1-to-4 family homes in foreclosure of any state.

CHART 4 PERCENTAGE OF LOANS IN FORECLOSURE BY STATE



The two nationwide maps below show that Maine is currently experiencing some of the highest "serious delinquency" (more than 90 days late) rates in the country, and also has a very high comparative "foreclosure inventory" – defined as the percentage of homes currently involved in the civil foreclosure process.



Program Results, and Hope for the Future

In the first six months of 2012, counselors under contract with the Bureau assisted 322 Maine homeowners to obtain new loans, loan modifications or forbearance agreements which allowed them to avoid foreclosure. These numbers are consistent results from the same period a year ago. In addition, counselors under contract assisted 64 other homeowners to arrange regular sales of their homes, or "short sales" (in which the lender agrees to accept an amount less than the debt), in cases in which lack of assets or income made it unrealistic for the consumers to try to stay in their homes.

For the twelve-month period July 1, 2011 to June 30, 2012, 612 Maine families were able to avoid foreclosure because counselors were able to help them obtain loan modifications, forbearance agreements, partial claims or refinancings. In those cases when it's impracticable for the consumers to stay in their homes, counselors were able to assist consumers to find and utilize alternate housing, legal advice, credit counseling and social service programs.

Bureau staff has noticed an increased efficiency in the work of the counselors and in the results obtained. When the federal HAMP and HARP programs were new, both lenders and homeowner advocates had to educate themselves and become familiar with the processes. Many lenders were not adequately staffed to process the many requests for loan modifications they received, meaning that consumers were frustrated with delays, lost documents and outdated applications.

Now, however, as the result of the national settlements and investor demands, lenders and servicers have increased and educated their staffs to handle demand, while homeowners and counselors are now better educated with respect to the information and verifications the lenders and investors need to reach a decision. In our experience and observations, many consumers, with the assistance of trained counselors, are obtaining better and faster results.

Despite this reason for optimism, all data, both nationally from the Mortgage Bankers Association and here in Maine based on the approximately 200 Notices of Right to Cure Default that are being mailed out every work day, it's clear that demands on the Bureau's referral program will remain high for the upcoming year and beyond. The Bureau's challenge will be to continue to strive for efficiency and results-driven operations, while working within the funds allocated through the unpredictable transfer tax mechanism.

The Bureau wishes to express its appreciation to the Legislature for the constructive oversight and support of this program since its inception three years ago, and for the many constituent referrals you have entrusted to our staff and counselors under contract.