

# 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

**MEMORANDUM**

**TO:** Joint Standing Committee on Insurance and Financial Services  
Joint Standing Committee on Appropriations

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

**RE:** Foreclosure Assistance and Referral Program - 20<sup>th</sup> Periodic Report

**DATE:** February 27, 2015

**Reporting Mandate**

The foreclosure assistance and referral program was established in 2009 when the Legislature amended 14 M.R.S. § 6111 and enacted 14 M.R.S. § 6112. The law requires that lenders notify the Bureau of Consumer Credit Protection when sending out "Notices of Default and Right to Cure" to begin the foreclosure process on residential mortgages. The lenders must provide the Bureau the names and addresses of the affected homeowners.

Upon receipt of that data, the Bureau sends informational letters to the homeowners, advising them of their rights and available resources, such as HUD-certified counselors through the Bureau's foreclosure prevention hotline (1-888-NO-4-CLÖZ or 1-888-664-2569), or mediation available during any subsequent court foreclosure process. The Bureau receives calls each day on the foreclosure hotline, counsels consumers and obtains preliminary information, intervenes in emergency cases, and refers other cases to HUD-certified counselors under contract with the Bureau. The counselors provide free assistance to those consumers, ranging from help in applying for loan modifications, to advice regarding short sales and deeds in lieu of foreclosure.

Pursuant to 14 M.R.S. § 6111(3-B), the Bureau is required to submit a quarterly report to the Joint Standing Committee on Insurance and Financial Services (I&FS) on the number of mortgage default notices sent to Maine residents. The report must include information on foreclosures filed by state-chartered banks, using information provided by the state's Bureau of Financial Institutions, as well as information on what types of creditors are initiating foreclosures (e.g., national banks, non-bank mortgage companies, or investment trusts).



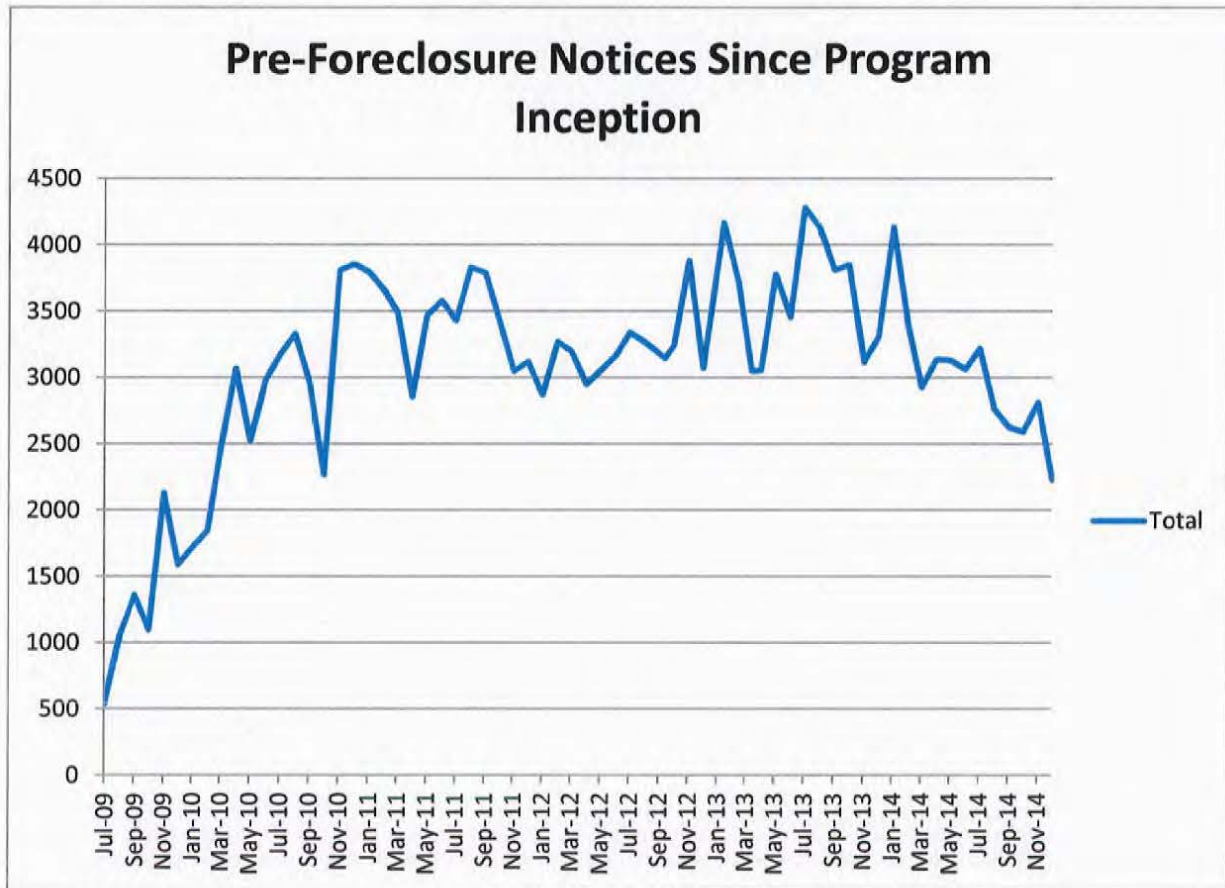
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In addition, 14 M.R.S. § 6112(5) requires reporting every 6 months on the financial aspects of operation of the Bureau's foreclosure hotline and counselor referral program, both to the I&FS Committee and to the Joint Standing Committee on Appropriations and Financial Affairs.

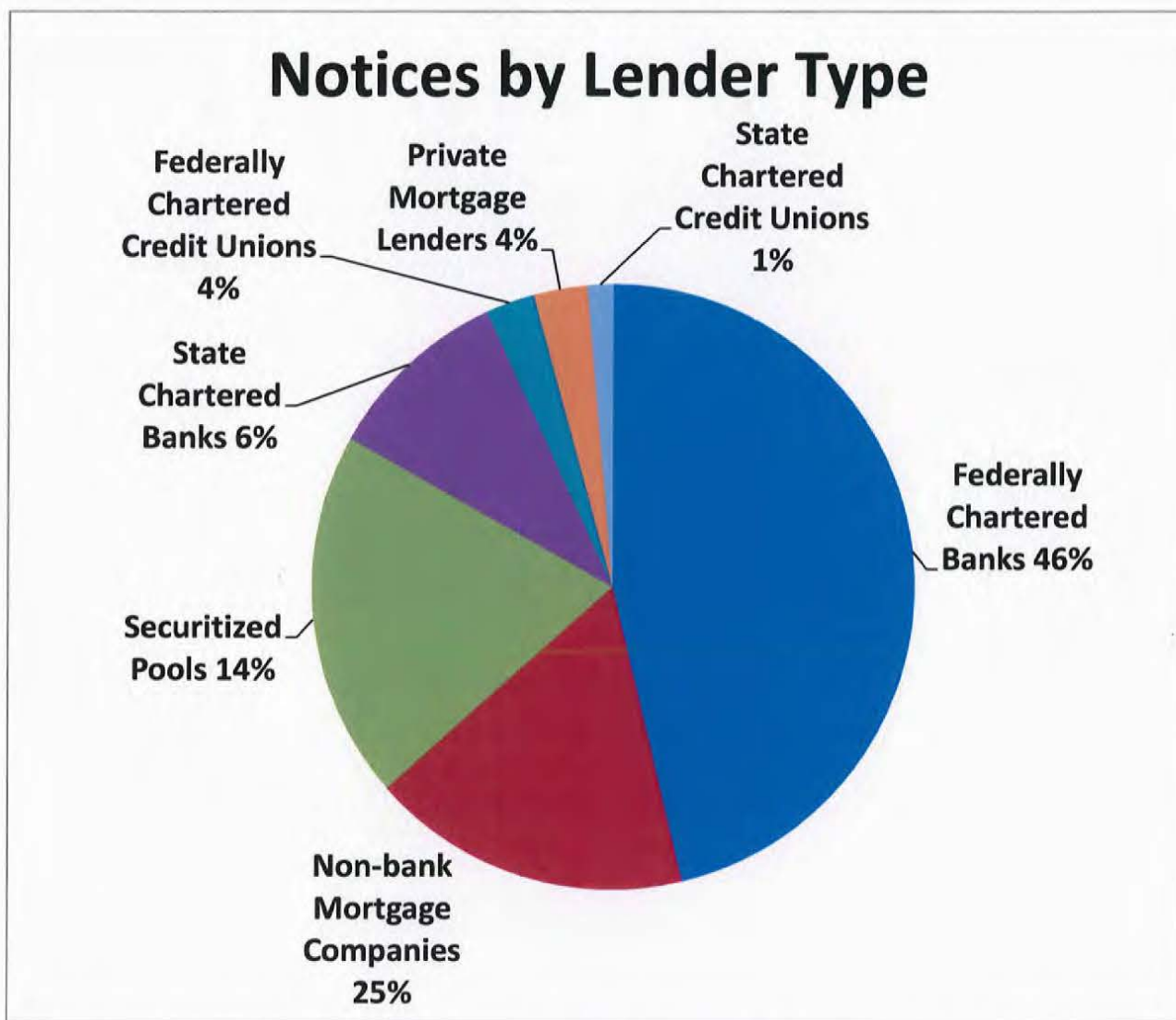
This combined report has been prepared to comply with both provisions of Title 14.

### Notices Sent

The Bureau mailed 7,641 informational letters to homeowners who received notices of default and right to cure from their lenders in the fourth quarter of 2014. This compares with 10,380 notices mailed in the same quarter of 2013, a 26% reduction. The following chart shows mailings since the inception of the program in 2009.



The following chart illustrates the types of lenders filing notices of default, and the percentages of the total filings for each lender type.



As has been the case throughout the history of the program, federally-chartered banks and large, out of state mortgage companies sent the majority of notices of default. State-chartered banks and credit unions accounted for 7% of notices the Bureau received.

While a quick analysis of the numbers could lead to the conclusion that the downturn in the number of notices indicates a genuine decline in the number of homeowners in default on their mortgages, a more holistic view is that the decline instead reflects an industry reaction to recent Maine Law Court decisions regarding mortgage foreclosure. A review of the number of foreclosure cases filed in court in 2014, shown on the following chart, provides a clearer illustration of the impact of the state court decisions.

Region/Court	1st Qtr Jan- Mar 2014	2nd Qtr Apr- Jun 2014	3rd Qtr Jul-Sep 2014	4th Qtr Oct-Dec 2014	CY 2014 TOTAL
<b>STATEWIDE TOTAL</b>	<b>1136</b>	<b>1145</b>	<b>460</b>	<b>377</b>	<b>3118</b>
Alfred Superior Court	40	31	19	21	111
York District Court	23	34	9	6	72
Biddeford District Court	51	56	21	10	138
Springvale District Court	82	74	18	16	190
<b>Region 1 Subtotal</b>	<b>196</b>	<b>195</b>	<b>67</b>	<b>53</b>	<b>511</b>
Portland Superior Court	67	131	50	24	272
Bridgton District Court	56	63	16	11	146
Portland District Court	50	0	0	0	50
<b>Region 2 Subtotal</b>	<b>173</b>	<b>194</b>	<b>66</b>	<b>35</b>	<b>468</b>
South Paris Superior Court	12	20	10	18	60
Auburn Superior Court	55	41	14	19	129
Farmington Superior Court	4	11	6	2	23
Lewiston District Court	77	77	24	18	196
Farmington District Court	20	16	6	5	47
Rumford District Court	14	35	10	5	64
Livermore Falls District Court	0	0	0	0	0
South Paris District Court	26	18	13	6	63
<b>Region 3 Subtotal</b>	<b>208</b>	<b>218</b>	<b>83</b>	<b>73</b>	<b>582</b>
Skowhegan Superior Court	5	2	4	10	21
Augusta Superior Court	16	8	13	10	47
Skowhegan District Court	46	39	14	10	109
Waterville District Court	40	33	12	7	92
Augusta District Court	65	54	17	11	147
<b>Region 4 Subtotal</b>	<b>172</b>	<b>136</b>	<b>60</b>	<b>48</b>	<b>416</b>
Dover Foxcroft Superior Court	5	2	2	1	10
Bangor Superior Court	41	24	11	17	93
Millinocket District Court	0	0	0	0	0
Dover Foxcroft District Court	23	19	8	8	58
Lincoln District Court	8	19	6	8	41
Newport District Court	26	28	14	7	75
Bangor District Court	64	59	18	16	157
<b>Region 5 Subtotal</b>	<b>167</b>	<b>151</b>	<b>59</b>	<b>57</b>	<b>434</b>
Wiscasset Superior Court	6	9	6	5	26
Bath Superior Court	8	7	5	4	24
Rockland Superior Court	5	8	2	8	23
Belfast Superior Court	9	7	6	3	25
Belfast District Court	28	23	11	7	69
Wiscasset District Court	19	16	7	10	52
West Bath District Court	34	45	13	7	99
Rockland District Court	25	27	16	8	76
<b>Region 6 Subtotal</b>	<b>134</b>	<b>142</b>	<b>66</b>	<b>52</b>	<b>394</b>

Region/Court	1st Qtr Jan- Mar 2014	2nd Qtr Apr- Jun 2014	3rd Qtr Jul-Sep 2014	4th Qtr Oct-Dec 2014	CY 2014 TOTAL
Machias Superior Court	7	4	8	6	25
Ellsworth Superior Court	4	12	4	4	24
Bar Harbor District Court	0	0	0	0	0
Machias District Court	7	10	6	3	26
Calais District Court	3	8	4	3	18
Ellsworth District Court	26	29	10	15	80
<b>Region 7 Subtotal</b>	<b>47</b>	<b>63</b>	<b>32</b>	<b>31</b>	<b>173</b>
Houlton Superior Court	4	6	3	5	18
Caribou Superior Court	16	24	19	13	72
Caribou District Court	8	8	2	1	19
Houlton District Court	5	8	0	2	15
Madawaska District Court	0	0	0	0	0
Fort Kent District Court	2	0	1	1	4
Presque Isle District Court	4	0	2	6	12
<b>Region 8 Subtotal</b>	<b>39</b>	<b>46</b>	<b>27</b>	<b>28</b>	<b>140</b>

As illustrated by the numbers in the chart, a total of 2,281 foreclosure cases were filed in Maine courts during the first half of 2014, while only 837 such cases were filed during the second half.

The steep downturn in notices of default sent to homeowners and foreclosure filings in court during the last six months of 2014 are primarily the result of a decision by the Law Court in Bank of America v. Greenleaf, 2014 ME 189 (2014), decided on July 3, 2014. In that case, the Law Court called into question the validity of assignment of mortgages and notes by MERS, an entity that was created to simplify recordkeeping and the transfer of notes and mortgages in the current electronic marketplace. The Court held that since the mortgages originally granted to MERS indicated MERS was the assignee of the actual mortgage holder only for the purpose of recording the mortgage, MERS could not validly execute an assignment of a mortgage because it did not possess that authority. Many of the mortgages in existence today have assignments from MERS somewhere in their chains of title. The effect is that the current holder of a mortgage and note with an assignment from MERS in the chain of title cannot foreclose the mortgage unless the foreclosing party obtains an assignment from the mortgage holder for which MERS purported to act.

A second holding of Greenleaf was that the notices of default and right to cure under 14 M.R.S. § 6111 being sent by many lenders did not meet the statutory requirement of specifying an amount certain that the homeowner had to pay within 35 days to reinstate his or her mortgage. Lenders and servicers had been specifying an amount owing as of the date of the notice, but then adding a sentence instructing the homeowner to contact the lender or its attorney to get an exact figure based on the addition of further interest and expenses as of the date the homeowner intended to reinstate. The Court held that such a notice lacked the specificity

required by 14 M.R.S. § 6111, stating instead that the lender must determine the amount owed at the time it sends the notice and must accept that amount to cure the default.

The final holding in Greenleaf involved the admissibility of business records at trial, specifically to prove an arrearage or amounts owed by a homeowner. In the current age of banking and mortgages, it is not uncommon for a mortgage loan to have passed through a number of lenders and/or servicers during the life of the loan. Each lender and servicer has its own system of keeping records, and is responsible for all recordkeeping on the loan while owned or serviced by it. The problem arises when the last lender or servicer in the chain of title of the mortgage attempts to foreclose. How can that servicer verify the validity or accuracy of the records of a prior servicer? The standard procedure has been for the foreclosing lender or servicer to produce a “litigation specialist,” an employee of the lender or servicer who has been trained in all the processes used by the entity to transfer account information from a prior lender or servicer and update the information as payments are received and expenses are paid. The court held that while such a witness might be able to qualify to enter business records of his or her employer into evidence, such a witness could not verify the business practices of prior lenders or servicers. Without verification of those records, the court held there was no way to determine whether the information obtained by the foreclosing lender or servicer when it first obtained the loan accurately reflected the state of the account, and therefore there was insufficient evidence to determine whether there was actually a default on the loan and what amount was actually owed.

In light of the uncertainty raised by the Greenleaf decision, many Maine-licensed attorneys advised their clients not to file new foreclosure actions, and to in fact dismiss some already-pending actions without prejudice, until the full implications of *Greenleaf* could be sorted out. The *Greenleaf* decision means, at a minimum, that attorneys representing foreclosing lenders and servicers will have to devise new means to get business records introduced into evidence or obtain verification of default and amounts owed in a different manner, or that the Legislature will be asked to address evidentiary standards.

### **Bureau of Financial Institution Reporting**

In its “2015 Annual Report to the Legislature” dated January 15, 2015, the Bureau of Financial Institutions reported that the 31 banks and credit unions which it supervises and regulates had initiated 34 foreclosures in the 3<sup>rd</sup> quarter of 2014, that the total delinquency rate was reduced from the same quarter in 2013, and that the foreclosure inventory (loans in the process of foreclosure) was at the lowest level since 2008. This information is consistent with data obtained from the “National Foreclosure Report, November 2014” produced by Corelogic, a global property information and analytics company. Corelogic reported that Maine had a foreclosure inventory of 2.3%, down 3.7% from 2013. The report further stated that Maine’s “seriously delinquent” rate had fallen from 6.4% in 2013 to 5.5% at the end of November, 2014. The Corelogic report includes information on all lenders, not solely Maine chartered institutions.

### **Counselor Activity in 2014**

Counselors under contract with the Bureau of Consumer Credit Protection initiated counseling with more than 1,600 households in 2104.

Positive results achieved by the Bureau's counselors are as follows:

- 83 Brought their mortgages current
- 15 Obtained refinances or reverse mortgages
- 442 Received a loan modification
- 1 Received a second mortgage
- 50 Arranged forbearance agreements or repayment plans
- 3 Entered into "partial claims" with FHA
- 55 Gave their lender a deed in lieu of foreclosure
- 32 Sold their property to satisfy their mortgage debt
- 21 Sold their property to their lender in a "short sale"

Counselors were able to help 594 families remain in their homes by restructuring their loans, and assisted another 108 families make scheduled exits from their homes through the process of a deed in lieu of foreclosure, a short sale or an outright sale of the property being foreclosed upon.

### **Financial Performance**

The statewide outreach program is funded primarily by transfer taxes paid by foreclosing lenders when they purchase their own properties at foreclosure auctions. The Bureau received \$639,265.27 in revenue from this source in fiscal year 2014. The Bureau budgeted \$600,000 in revenue from transfer taxes for the current fiscal year. Through December 31, 2014, halfway through the current fiscal year, the Bureau received transfer tax revenue of \$427,252.48, or 71.2% of budgeted income for the fiscal year.

The budgeted expenditures for fiscal year 2015 are \$900,793. As of December 31, 2014 the Bureau had expended \$298,449.10, or 33% of the budgeted amount for the year. However, payments to the counselors for work done in December are not yet reflected in the expenditures.

The budgeted revenue for the program is \$600,000, while the budgeted expenses are \$900,793. The budget gap is met this year by use of funds remaining from the state's portion of the proceeds of two settlements with large national lenders and servicers, which were received by the Bureau specifically for operation of this program. At the beginning of fiscal year 2015, the Statewide Outreach Program had cash on hand of \$896,219.73. As of February 6, 2015, the balance in the account is \$899,013.67. This amount plus expected revenues should provide funding for the program through 2017, at which point the reduced number of foreclosures will permit an overall reduction in the Bureau's program.