

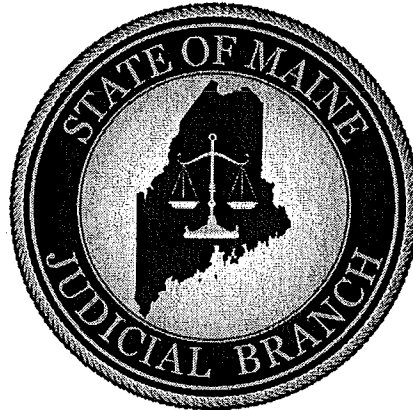
# MAINE STATE LEGISLATURE

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STATE OF MAINE  
JUDICIAL BRANCH



**FORECLOSURE DIVERSION PROGRAM**

Report to the Joint Standing Committee on  
Insurance and Financial Affairs and  
the Joint Standing Committee on Judiciary

127<sup>th</sup> Legislature

February 10, 2015

Prepared by:  
Laura S. Pearlman, Esq.  
Maine Administrative Office of the Courts  
P.O. Box 4820  
Portland, ME 04112-4820  
(207) 822-0706  
fdmp@courts.maine.gov

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THE JOINT STANDING COMMITTEE  
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**Executive Summary**

The Foreclosure Diversion Program (“FDP”), Maine’s foreclosure mediation program was established by the Maine Legislature in 2009 and launched statewide in January, 2010. It affords a valuable opportunity for homeowners and lenders to meet and pursue mutually beneficial alternatives to foreclosure.

More than half of the foreclosure cases participating in FDP mediation from 2010-2014 have concluded in dismissal of the action, thereby saving homes from foreclosure.

In 2014 the FDP had its highest participation rate since the inception of the program. Homeowners requested mediation in 51% of the foreclosure cases filed in Maine. The FDP provided a total of 2,553 mediation sessions in 1,751 cases, averaging 1.5 sessions per case. New foreclosure cases filed in Maine state courts in 2014 totaled 3,124, down from 4,756 in 2013. However, the number of cases filed is expected to increase again in 2015.

The “First Call” pilot project was implemented statewide in 2014. It effectively streamlines the FDP process. The First Call process brings parties together earlier for short mediation sessions at which they assess their options and plan next steps.

The FDP responded to a variety of changes and challenges in 2014. The 126<sup>th</sup> Legislature amended 14 M.R.S. § 6321-A to require mediators to be knowledgeable about regulations governing mortgage loan servicers, including the new federal regulations that became effective in January, 2014. The FDP arranged several educational programs for mediators and the community at large to help them stay abreast of the expanding landscape of mortgage servicing regulation. Rule 93 of the Maine Rules of Civil Procedure, the court rule governing the FDP, was amended to reflect both the statutory changes and the new First Call procedures.

The Maine Judicial Branch submits this report on the performance of the Foreclosure Diversion Program (FDP) in 2014 as required by 14 M.R.S. § 6321-A (7)(B).

## **I. Introduction: Structure of the Program**

In 2009, at the height of the national foreclosure crisis, the 124th Maine Legislature passed emergency legislation to establish a statewide foreclosure mediation program in the Maine state courts. The FDP is governed by 14 M.R.S. § 6321-A and Rule 93 of the Maine Rules of Civil Procedure. Both the statute and the rule were amended in 2014. The amendments require mediators to be familiar with mortgage servicer regulations, and require the mediators to include additional details in their reports to the court. The amendments also reflected statewide implementation of an FDP pilot project that streamlined the foreclosure mediation process (the “First Call” pilot project).

The FDP was praised by Attorney General Janet T. Mills in her report on foreclosure submitted to the 126<sup>th</sup> Legislature on January 30, 2014. After months of study, she concluded that “mediation is effective and needs to remain a robust part of the foreclosure process.” She also strongly recommended that the First Call pilot project be implemented statewide. As of August, 2014, the First Call process is the statewide FDP procedure, as described below.

### *A. Statewide Mediation Services*

A foreclosure case may be filed in any District or Superior Court in Maine. Foreclosure mediation services are provided by the FDP at 11 “processing courts” across the eight judicial regions<sup>1</sup>. To enter mediation, a homeowner must request mediation in writing<sup>2</sup>. After receiving such a request, the clerk schedules the case for “First Call Day” at the courthouse. First Call Day begins with an Informational Session, at which a judge explains the mediation process in court, and then a HUD-certified housing counselor provides details about lenders’ requirements and how to find free assistance.

Immediately following these presentations, multiple mediators call the cases one at a time for short, initial mediation sessions in private mediation rooms. Homeowners, lenders, and counsel meet with the neutral mediators to explore alternatives to foreclosure and plan their next steps.<sup>3</sup> In many cases, homeowners who wish to remain in their homes seek loan modifications. To consider this option, lenders require borrowers to submit a “complete financial package” for review by a date certain. The package consists of such financial documents as tax returns, pay stubs, and bank statements. If a package is incomplete, the lender notifies the homeowner of how to fix it; if complete, the lender reviews it for modification options. Any agreements as to next steps, timelines, or resolution are recorded in the report the mediator submits to the court. Follow-up mediation is scheduled if needed. If mediation concludes without resolution, the case returns to

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<sup>1</sup> Processing courts are established in each Judicial Region as follows: Region 1, Springvale; Region 2, Portland and Bridgton; Region 3, Lewiston and Farmington; Region 4, Augusta; Region 5, Bangor; Region 6, West Bath and Rockland; Region 7, Ellsworth; and Region 8, Caribou.

<sup>2</sup> Only foreclosure cases involving owner-occupied *primary* residences of no more than four units are eligible for mediation. 14 M.R.S. § 6321-A(2). Written requests for mediation may take the form of an answer, appearance, or other request. M.R.Civ.P. 93(c)(1).

<sup>3</sup> In the original FDP process, mediation did not occur for about two months after the Informational Session.

the civil docket for further action. A summary of the foreclosure process, including mediation, is shown in Chart 1 (see attached).

### B. FDP Staffing

The governing legislation authorized the funding of FDP positions through a fee imposed on each foreclosure filing. P.L. 2009, ch. 402, § 26. FDP positions currently include the Program Manager, Administrative/Data Assistant, and three full-time foreclosure clerks in the courts. The FDP also funds two part-time clerk positions, using vacant positions within the Judicial Branch, and three law clerk positions to facilitate review of summary judgment motions. The FDP will continue to fund these positions in the short term but will reduce the number of positions as the caseload decreases.

### C. Mediators

Mediators in the FDP are recruited from the fields of mediation, real estate, law, and foreclosure to be independent contractors on the FDP roster. They are called upon, as needed, to mediate foreclosure cases in the courts. Currently 36 active mediators are on the statewide roster and are meeting the need for mediation services. The FDP will consider recruiting new mediators in 2015 if case filings increase. To ensure high quality mediation services, the FDP offers regional meetings and continuing education programs on relevant mediation topics and foreclosure law, and the FDP Manager also observes mediators and provides feedback.

## II. **Performance of the Program**

### A. Foreclosure Filing Activity and Participation in FDP

The number of foreclosure cases filed each year since 2010 is shown in Chart 2. A total of 3,124 new foreclosure cases were filed in 2014. During the first six months of 2014 foreclosure case filings totaled 2,285, in keeping with the filing activity over the previous three years, averaging 380 cases per month. In July new case filings fell below 300 cases per month for the first time since the inception of the program, and have not yet returned to pre-July levels, but are anticipated to increase once again.

Fewer case filings do not mean fewer troubled loans or the end of the mortgage crisis in Maine. For the first half of 2014 the pace of foreclosure filings matched that of the previous three years; if the trend had continued, Maine would have docketed more than 4,500 cases for 2014. Filings decreased abruptly after the decision of the Maine Supreme Judicial Court in *Bank of America, N.A., v. Scott A. Greenleaf, et al.*, 2014 ME 89, July 3, 2014. In *Greenleaf* the Law Court held that an assignment of the mortgage to the “lender’s nominee,” Mortgage Electronic Registration Systems, Inc. (MERS) was insufficient to convey ownership of the mortgage and that, as a result, the plaintiff bank lacked standing to seek foreclosure. This ruling affected many potential and pending cases.

Despite the drop in cases filed, mediation activity remained high during 2014. The FDP provided slightly more mediation sessions in 2014 than in 2013. However, the FDP may experience a temporary decrease in mediate on activity due to the “lull” in case filings. Many

foreclosure cases currently in progress continue to require mediation services, and the FDP must remain prepared for an anticipated influx of foreclosure cases requiring mediation in 2015.

In 2014, mediation was requested in 1,606 cases, or 51% of the foreclosure cases filed. With more than half of the homeowners served seeking to mediate foreclosure actions, the FDP reports its highest participation rate to date.

### B. *Volume of Mediation and Status of Mediated Cases*

The FDP provided 2,553 mediation sessions in 1,751 cases in 2014.<sup>4</sup> After first mediation sessions, cases move into one of four categories: (1) dismissed, (2) foreclosure judgment entered, (3) remaining in the FDP, or (4) returned to the civil docket for litigation. The data for 2014 and cumulative FDP data on cases mediated from 2010 through 2014 are presented in Chart 3 (see attached).<sup>5</sup>

#### 1) Cases Dismissed

When a case is dismissed, the case is closed without a foreclosure. Dismissal saves time and resources for parties and for the court. Dismissal suggests that the loan is performing again and the home has been retained, or the debt has been paid by sale of the property. Over time, as more and more cases reach conclusion, the number of dismissed cases increases. As shown in Chart 3, over the life of the program, more than half of the cases participating in the FDP have been dismissed. Of the 1,746 cases mediated in 2014, 504 cases (29%) have been dismissed so far. This shows the value of mediation in resolving foreclosure disputes.

To the extent that FDP has an ability to track them, the underlying reasons for dismissals are presented in Chart 4 (see attached). Because cases are dismissed at various points in the process, many motions to dismiss are granted without a report to the FDP as to the reason.

#### 2) Foreclosure Judgments Entered

A judgment means that the case ended with a foreclosure of the property. Like dismissals, the number of judgments increases over time as cases reach conclusion. Mediated cases have consistently concluded with more dismissals than judgments. Foreclosure judgment was entered in 30% of cases mediated since 2010. So far, judgment was entered in 136 cases (8%) of the cases mediated in 2014.

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<sup>4</sup> Homeowners reported having received legal advice regarding their foreclosure cases in 519 instances. They reported receiving assistance (either from an attorney, a housing counselor, or another professional) in completing forms in 895 cases.

<sup>5</sup> Since July, 2011, the FDP has tracked cases through a custom online database, the Alternative Dispute Resolution Information System (ADRIS), which enhanced FDP data collection and analysis.

### 3) Cases Remaining in the FDP

Of the 1,751 cases mediated in 2014, 391 cases (22%) remain in the FDP. In general, mediators aim to complete mediation within three mediation sessions, and, even if the parties agree to extend the time, to conclude mediation within nine months. This is not always possible, and mediators must exercise both good judgment and common sense to respond to the needs of the parties and the case. A complicated case may require additional mediation, either because the parties need to address numerous or complex issues, or because there is a change of circumstance.

Sometimes cases are partially resolved but stay in the FDP during a trial payment plan (generally three months) that may lead to permanent loan modification agreements. This is an important protection. It assures the parties' continued communication until a modification becomes permanent, and it prevents any possibility that a loan servicer might impermissibly move a case toward both a foreclosure judgment and a loan modification at the same time ("dual tracking").

### 4) Cases Returned to the Civil Docket

In a case returned to the civil docket, further litigation takes place after mediation, possibly leading to trial. To date, 720 cases (41%) mediated in 2014 were returned to the civil docket following mediation. The ultimate conclusion of these cases cannot be predicted; parties who complete mediation frequently continue to work together, and their efforts may yet result in dismissal.

## III. Meeting Challenges

### A. Providing Up-To-Date Information to Mediators

Mediators are required to know about the various mortgage assistance programs and principal loss mitigation and mortgage loan servicing guidelines and regulations pursuant to 14 M.R.S. 6321-A 7.A (3) and (5). As the foreclosure crisis has unfolded, mortgage assistance programs and servicing regulations and guidelines have continued to expand and evolve. The Consumer Financial Protection Bureau (CFPB) issued new federal regulations governing mortgage servicers, effective January 10, 2014. The volume and rate of change in regulations and in programs available to homeowners in foreclosure make it challenging for mediators to keep up with current developments, and to understand how the changing rules affect other areas of law, such as divorce or bankruptcy.

Responding to these challenges, the FDP sponsored three educational presentations in March, April, and June. Because new rules and program updates affect the entire community of foreclosure practitioners, the FDP invited lenders, attorneys, housing counselors, and their staffs, as well as the mediators, to these events. A volunteer Pine Tree Legal Assistance attorney who is also a national trainer gave presentations on the new CFPB rules in March, and on updates to national loan modification programs in April. In June the FDP arranged for a senior CFPB staff attorney to speak in Portland about the new CFPB rules, with video broadcast to Augusta, Bangor, and New Hampshire. Well over 100 bankers, housing counselors, attorneys, state employees, and mediators attended this presentation.

The FDP provided other opportunities in 2014 specifically for mediators. A Maine State Housing Authority spokesperson explained a new loan modification plan, and an Assistant Attorney General spoke to mediators about the requirements of the 2012 National Mortgage Settlement. In addition, the FDP twice convened an experienced panel of foreclosure attorneys and a banker to discuss current issues in foreclosure mediation, including second liens on mortgages, bankruptcy, servicer transfers, and conversion of loan modifications from temporary to permanent. The FDP also provided workshops on the Net Present Value spreadsheet, the Mediator's Report, and the Report of Noncompliance.

*B. Avoiding Undue Delays*

Delay in submission and review of homeowners' financial documents has hindered the process of resolving cases since the beginning of the foreclosure crisis. The lengthy "document chase" hampers not only the process of mediation, but also other court action. The FDP has addressed this challenge by improving its process, by creating detailed forms to guide parties in mediation and by requiring accountability for agreements recorded in the Mediator's Report. The FDP's new statewide First Call process brings parties together early in the case to establish their mutual expectations. To make plans clear, the FDP developed a detailed worksheet to identify required documents and to record agreed deadlines for their submission and review. This Document Submission Worksheet helps to avoid confusion about what information is needed from whom and by when.

**IV. Conclusion**

The FDP is thriving. It provides a much needed and often utilized opportunity for parties in foreclosure to meet and resolve their disputes. More than half of the homeowners served with foreclosure complaints in 2014 requested mediation. More than half of the 6,624 cases mediated in the FDP since its launch in 2010 have concluded in dismissal.

The FDP has adjusted and improved its process, offering mediation in a more timely and more efficient process through a pilot project that has now become statewide procedure. Moreover, the FDP has improved accountability in mediation through detailed mediator's reports and a document submission worksheet. The FDP will continue to provide the highest quality mediation services to help lenders and homeowners in Maine resolve their disputes early in the foreclosure process. The FDP provides a valuable opportunity for parties to save time, resources, and in many cases, homes.

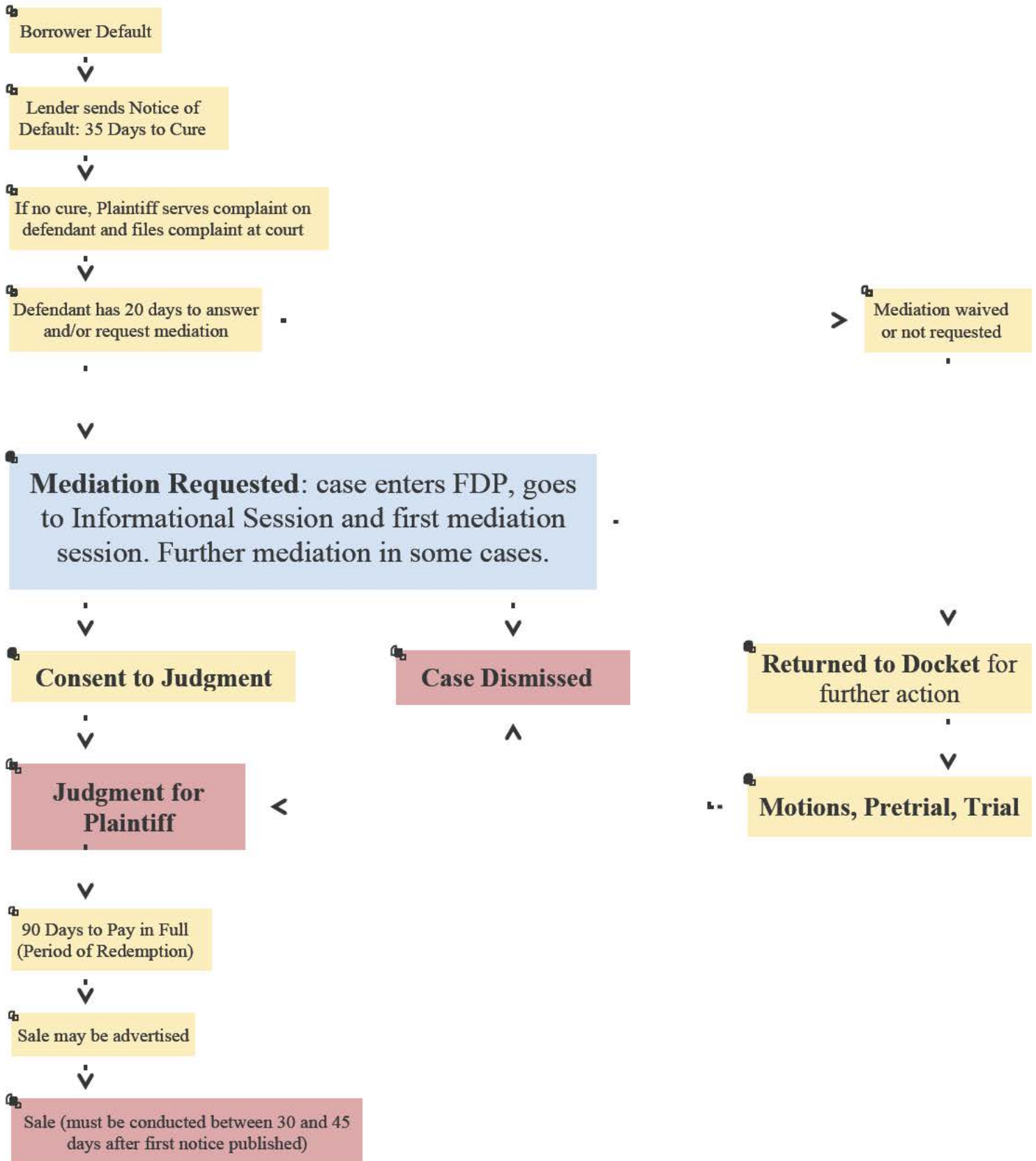
Respectfully Submitted,

Laura S. Pearlman  
Manager, Foreclosure Diversion Program  
Maine Administrative Office of the Courts

Date: February 10, 2015



## Chart 1 - Maine Foreclosure Process



**Chart 2 - Foreclosure Filing Activity 2010-2014**

Year	Number of Foreclosure Cases Filed
2010	5,437
2011	4,702
2012	4,339
2013	4,756
2014	3,124

**Chart 3 - Status of Mediated Cases**

Foreclosure Diversion Program Cases	Mediation in 2014	%	Mediation in 2010-2014	%
Total Mediation Sessions Held	2,553	-	11,348	-
Total Cases Mediated	1,751	-	6,624	-
Average mediation sessions per case	1.5	-	1.7	-
Cases dismissed	504	29%	3,349	51%
Foreclosure judgment entered	136	8%	1,974	30%
Cases remaining in FDP	391	22%	401	6%
Cases returned to civil docket and pending	720	41%	900	14%
<b>TOTAL</b>	<b>1,751</b>	<b>100%</b>	<b>6,624</b>	<b>100%</b>

**Chart 4 - Types of Dismissals**

Types of Agreement Reached in Dismissed Cases	Cases Mediated in 2014		Total Cases Mediated 2010-2014	
	Cases	Percentage	Cases	Percentage
Loan Modification	137	27%	711	21%
Reinstatement	17	3%	60	2%
Repayment/Forbearance Plan	4	1%	36	1%
Deed in Lieu of Foreclosure	14	3%	54	2%
Short Sale	10	2%	77	2%
Other	11	2%	112	3%
Unknown*	311	62%	2,299	69%
<b>TOTAL</b>	<b>504</b>	<b>100%</b>	<b>3,349</b>	<b>100%</b>

\* In many cases, the FDP does not receive information about the arrangements that result in dismissals.