

**DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**BUREAU OF CONSUMER CREDIT PROTECTION**

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**Report to the Legislature:  
Streamlining Maine’s Foreclosure Prevention Program**

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## Executive Summary

A study group of legislators, lenders, regulators, lawyers, consumer advocates and housing counselors met during the summer and early fall of 2011 to determine ways in which Maine's foreclosure prevention program (the Program) could be operated in a more streamlined fashion. The group identified a wide range of improvements, some of which have already been implemented, that will improve the Program's effectiveness and accountability, and reduce operational costs--such that those resources can be targeted toward direct assistance of homeowners facing foreclosure.

Specific improvements and suggestions include:

- 1) Reducing postage costs, by decreasing the content and weight of informational packages mailed to consumer in default (change implemented in August);
- 2) Working directly with managers of the state postal system to ensure that weights of packages are determined in a consistent manner at the lowest available cost (change implemented in August);
- 3) Further diminishing mailing costs by utilizing the state mailing system in such a way that the lower of two step-rate charges is assessed to the Bureau of Consumer Credit Protection (change implemented in September);
- 4) Amending the language in the informational package to make it more readable to a larger number of recipients of various educational levels (change to be implemented in January, 2012);
- 5) Further amending the language in the package to ensure that its description of the civil foreclosure process is accurate and concise (change implemented in October); and
- 6) Improving accountability of housing counselors by requiring monthly reporting on a uniform reporting format (change is in the process of implementation).

Equally important as the changes recommended, were those that were carefully considered and then not recommended. These included a proposal to delay mailing information until a later time in the pre-foreclosure process. The idea was not adopted because, among other disadvantages, it would have increased costs to lenders and servicers since it would require a manual calculation, as opposed to the automatic process now in place triggered by the mailing of the Notice of Right to Cure Default.

The proposals recommended in this report will be implemented and included in the two regular Program reports to the Legislature required under existing law (a quarterly general report, and a 6-month budget report). They are expected to improve the Program and ensure its efficient and productive operations.

### **1) Study Group Established by law**

This report is prepared pursuant to Section C-1 of PL 2011, Ch. 427 [see Attachment #1], which called for the Bureau to facilitate meetings of interested parties to evaluate and determine ways in which the State's foreclosure prevention outreach and housing counseling program could be more efficient.

### **2) Membership of the Study Group**

Composition of the group was established in the law, and intended to be bipartisan. It included lenders, servicers, housing counselors, foreclosure experts and consumer advocates. The group included the following members, who participated in person or by phone:

- Representative Wes Richardson, Chair, Insurance and Financial Services Committee
- Representative Sharon Treat, Member, Insurance and Financial Services Committee
- Kathy Keneborus, Maine Bankers Association
- Cate Pineau, Maine Credit Union League
- Colleen McCarthy Reid, Analyst, Insurance and Financial Services Committee
- David Jones, creditors' attorney (Jensen, Baird)
- Len Morley, creditors' attorney (Shapiro & Morley)
- A homeowner who had availed himself of the State's foreclosure prevention resources
- Carla Dickstein, Diane Sherman and Laura Buxbaum, Coastal Enterprises, Inc.
- Richard Morin, Maine Association of Mortgage Professionals
- Jayne Crosby Giles, Penquis Community Action
- Michael Gross and Janice Allen, Bank of America
- Sara Gagne-Holmes, Maine Equal Justice
- Chet Randall, Frank Delassandro and Jill Hunter, Pine Tree Legal Assistance
- Kelsey Gibbs, Preti Flaherty (for New England Consumer Financial Association)
- Joseph Gervais, University Credit Union
- Kim McLaughlin, Housing Counselor
- Joanne Campbell, Camden National Bank
- Mary Ann Lynch and Lauren Blake-Welliver, Maine Judicial Branch
- John Barr, Christian van Dyck and Ann Beane, Bureau of Financial Institutions
- Will Lund and Julie Franchetti, Bureau of Consumer Credit Protection

### **3) Dates of Meetings**

The group met August 16, 2011 and September 13, 2011 for more than three hours on each occasion. Despite disparate views, discussions were marked with civility and respect. Members focused on the goal of improving the Program.

#### 4) Outline of Current Program

To establish a base of knowledge within which to evaluate proposals for change, the group heard from David Stolt and Eric Wright, Bureau employees who help to administer the program. The group was told that:

1) Funding for the program derives from a law change that removed the previous exemption from transfer tax assessment on those transactions in which a lender purchases a residence on which it has foreclosed, as well as transactions known as “deeds in lieu of foreclosure,” in which a consumer conveys property to the lienholder in exchange for the lienholder not initiating foreclosure, or stopping a foreclosure that is underway.

2) A portion of the funds are used directly by the Bureau for the program’s operating costs, while a larger percentage are paid to non-profit agencies that employ twelve HUD-certified housing counselors located throughout Maine who agree to accept direct referrals from the Bureau, and who then agree to work with the consumers to evaluate their abilities to pay, and negotiate with lenders and servicers on behalf of homeowners to obtain loan modifications, or “soft landings,” in which consumers vacate properties and transfer the properties to the lienholders at minimum disruption to the homeowners and their families (as well as minimum costs to the lenders).

3) At the direction of the Legislature, the Bureau has established foreclosure prevention as a priority--dedicating staff and resources to the program, and operating a statewide, toll-free foreclosure prevention telephone number, 1-888-NO-4-CLÖZ (1-888-334-2569).

4) When homeowners are in default, before accelerating the debt (declaring the entire balance on the mortgage loan due and owing) and before initiating foreclosure, lenders or servicers must mail a document known as a “Notice of Right to Cure Default” to the homeowners. That notice provides a one-time opportunity for homeowners to “catch up” (make all past-due payments) within 35 days of their receipt of the notice. Under current law, at the same time lenders mail such notices to homeowners, they must provide the names and addresses of those homeowners, in an electronic format, to the Bureau of Consumer Credit Protection.

5) Each work day, the bureau prints addresses on envelopes based on information supplied by lenders, and mails informational packages to between 100 and 300 homeowners in default on their mortgages. Each packet includes a description of the state’s foreclosure prevention program, invites the homeowners to call the Bureau’s toll-free hotline, provides other information about resources available to the consumers, and explains how the judicial foreclosure process functions in Maine.

6) The Bureau’s hotline is answered by a live person (never a recording) between 8:00 a.m. and 5:00 p.m. on work days, and homeowners who call at night or on weekends or holidays are invited to leave their name and number, and their calls are returned early the next workday morning. The trained employee who handles each call works with the

homeowner to complete a two-page “triage” form that includes the relevant information about each case, such as the number of consumers obligated on the mortgage loan; the identity of the lender and/or the foreclosing attorney; how long the consumer has been delinquent; the total balance on the mortgage loan; where the homeowner is procedurally in terms of the stage of the pre-foreclosure or foreclosure judicial process (including whether an auction has been scheduled); information about the reasons for the delinquency (*e.g.*, loss of employment, or unexpected illness); and the consumer’s level of income and debt.

7) The triage forms are given to a designated individual who either makes a decision to handle the case internally (such as when the fact pattern points to illegal lending activity, or when a delay of even a few days or hours could work a detriment to the homeowner), or to refer the case to a housing counselor under contract with the Bureau. For internal issues, the assigning individual intervenes or requests assistance from enforcement personnel within the agency. For counselor referrals, the triage form is electronically scanned, then e-mailed to the appropriate housing counselor. Counselors are selected based on current caseload, area of expertise (cases requiring prompt legal defense, for example, are referred to a legal assistance group), or geographic distribution

8) Once an assignment is made to a counselor, that individual gathers more information from the homeowner, then meets with the homeowner to develop a strategy for the case. The counselor assists the homeowner in applying for federal or lender-specific loan modification programs, helps the consumer create a budget to ensure the best chance of repayment success, and negotiates directly with the lender or servicer on the homeowner’s behalf. In cases in which foreclosure is already underway, the counselor may assist the homeowner to prepare for the separate mediation program operated by the Judicial Branch, and may accompany the homeowner to that session. In cases in which the consumer realistically will be unable to cure the default or afford the mortgage, the counselor can facilitate a short sale or a transfer of the property through a deed in lieu of foreclosure.

9) Counselors report in writing on a regular basis to the Bureau, providing information about the intake of each case, assistance provided and outcomes achieved.

10) The Bureau, in turn, provides regular reports to the Legislature concerning the program and its funding.

## **5) Assigned Issues**

While not limiting the scope of issues to be addressed, the legislation establishing the study group designated certain items for discussion and decision-making. These included:

1) Whether the timing of the mailings to homeowners should be delayed, from the current mailing date (simultaneous with the mailing of the Notice of Right to Cure

Default from the mortgage lender or servicer), to a later time, such as when the consumer was 60 days in default;

2) Whether the Bureau should develop a standardized format for counselors to use in reporting to the agency and (with appropriate protection for the privacy of the homeowners) to the Legislature and the public, the results of counselors' assistance to homeowners;

3) Whether lenders, rather than the Bureau, could mail out the informational packages to homeowners in default;

4) Whether lenders and servicers should be required to disclose to regulators, counselors and homeowners, the names and contact information for individuals employed by the lenders or servicers who have authority to approve loan modifications, short sales (in which a lender agrees to accept less than the balance of the loan, and to forgive a deficiency balance) or other alternatives to foreclosure;

5) Whether joint obligors (such as a husband and wife, or a homeowner whose parent co-signed for the loan) could be provided with a single mailing rather than each receiving a packet of information from the Bureau;

6) Whether the information presented to homeowners can be made more readable or understandable; and

7) How the Bureau's foreclosure prevention program could be integrated, in appropriate cases, with the separate mediation session or sessions administered by the Judicial Branch as part of the civil foreclosure action in court.

The study group was also directed to address "any other issues, as appropriate." This final item is addressed in a separate section, Section 7, below.

## **6) Evaluation of, and Determinations on, Assigned Issues**

*1) Should the mailing of the informational packets be delayed until homeowners are further in default?*

After careful consideration, the group did not include in its recommendations a proposal to delay the mailings, since its members (including representatives from state and national lenders) determined that 1) it would likely create a great deal more work for lenders and servicers; and 2) the intent of the Legislature in lengthening the "cure" period from 30 to 35 days was to encourage homeowners to seek assistance while they still had an opportunity to catch up by making overdue payments.

Of the two issues above, the overriding one was the realization by lenders and servicers that a change in the timing would mean a great deal more work and expense

than the current process requires. The existing sequence is relatively simple – mail the notice to the homeowners, then notify the Bureau. Those two steps can be taken by the same department of the lender or servicer, and the electronic reporting to the Bureau is accomplished with relative efficiency.

However, a change in that process would require one or more additional steps.

This proposal may have been rooted in the belief that lenders and servicers sent out notices of right to cure default whenever a consumer is one month behind in payments. The thought may have been that since many consumers subsequently catch up in their payments, either of their own accord or after encouragement from their lender, inefficiencies occur and mailings are unnecessarily sent to consumers, many of whom will bring themselves current.

However, lenders and servicers told the group that many lenders do not automatically mail out cure notices to consumers at the first sign of default. Rather, those lenders and servicers may wait until consumers are 60 or even 90 days in default before sending out the formal cure notice. At that point the Bureau is provided with the names and addresses of the consumers, and the informational package sent. Therefore, the group determined that the current process is more workable than other alternatives.

Further, although lenders may make internal balance sheet adjustments or initiate certain additional collection efforts at the 60- and 90-day benchmarks, there is no statutory event that occurs at the 60- or 90-day delinquency period to which lenders or servicers could tie notification to the Bureau. In other words, any change in the current process would require lenders to review each case to determine whether a consumer in default was “still” in default at whatever new time trigger were established. Lenders and servicers, many of which handle millions of loans, would be required to keep track of cases in default--which could be retained in the “current” servicing department, or sent to a division handling collections, or pre-foreclosure or loss mitigation, or to the legal department for referral to Maine-licensed attorneys.

For these reasons and others, the consensus of the study group was that although it’s possible additional printing and postage costs are incurred by the Bureau in mailing informational packages to consumers who will later catch up on payments of their own accord, those expenses are minor in comparison with the additional costs incurred by each lender or servicer in establishing a manual monitoring program to determine whether a homeowners who was in default at the one-month mark, is still in default after 60 or 90 days.

*2) Should the format and timing of housing counselors’ reports to the Bureau be standardized?*

When the Bureau first began entering into contracts with nonprofit agencies employing HUD-approved housing counselors around Maine, all contracts provided for periodic reporting back to the Bureau on the numbers of homeowner cases received, the

work done on their behalf and the final results of the counselors' efforts. However, with so many other priorities, in many instances the exact format of the report was left to the discretion of the counselor. In addition, while some reporting was required on a monthly basis, other counselors were permitted to submit quarterly reports.

Some of this discretion was by design – the Bureau was mindful of the importance of focusing on service provided to consumers, rather than on report-writing. In addition, many of the larger nonprofit agencies already received funds from federal, state and private sources, and each of those sources required reporting.

However, as the number of executed contracts increased to its current level of eleven, and as the administration and legislative leaders requested reasonable accounting of the program's performance, the need for a reporting form, in a uniform format and with consistent timing, became clear.

To that end, knowing that the issue of a uniform format was a required aspect of this study, the Bureau did not wait for the study group, but rather worked with the counselors and drafted a uniform reporting form. A copy of the form is appended to this report as Attachment #2.

During discussions of the study group, its members agreed with the importance of the use of a uniform report, and encouraged the Bureau to accomplish 100% implementation of the form, and to transition all counselors to monthly reporting as soon as practicable. As of the date of this report, nine of the 11 current contracting counselors are utilizing the uniform report, and eight of the 11 have transitioned to monthly reporting. As contracts are renewed, numbers will increase until all counselors submit uniform monthly reports.

### *3) Could lenders, rather than the Bureau, mail the informational packets to homeowners?*

This topic sparked lively debate within the study group. On its face, the proposal to require lenders (rather than the Bureau) to send informational packets seems to offer an opportunity for Program savings. The lenders know their customers and the extent to which those homeowners are in default.

However, input from consumer advocates and current housing counselors convinced the group not to recommend a change in the current process whereby the Bureau is responsible for mailing informational packets. Those who work closely with homeowners in default portrayed many of their clients as desperate, and unable to know whom to trust. These homeowners have likely received many communications from their lenders or servicers, and consumers may "tune out" information mailed from their own lenders or servicers. They understand that they are in default and may despair their current situation, to the point of avoiding contact with their creditors.

In addition to receiving letters and calls from their creditors, homeowners may have been bombarded with letters and calls from other entities, some legitimate but many



not, offering to “rescue” them from foreclosure (in exchange for an advance fee), to negotiate with their creditors, or to purchase their house and then lease it back to the consumers with an option to purchase.

The end result of this pressure may be that a consumer needs an imprimatur of authenticity or government authority, in order to cause the consumer to read a mailing. The official agency letterhead and state seal may be just the assurance homeowners need to come out of their shells and evaluate their situations.

When consumers call the State’s hotline, Bureau staffers hear first-hand the lack of transactional sophistication and distrust exhibited by some consumers. Some callers believe the Bureau is a lender, providing direct funding for refinancing opportunities. Others ask repeatedly, “How much will your services cost?,” since they have been contacted by private solicitors who sound legitimate but then demand advance fees from the consumers.

To summarize, it is the study group’s consensus that the initial contact relating to the availability of the foreclosure prevention program should come from the State, and not from the lenders to whom the consumers owe mortgage payments.

*4) Should lenders be required to provide the contact information of individuals employed by the lenders who have authority to modify loans?*

A common theme heard from homeowners facing possible foreclosure is that they cannot reach anyone in authority at their lender’s headquarters. This inability to communicate with the lender or servicer makes it difficult to obtain a decision on a loan modification, deferral, short sale or other alternative to foreclosure.

Therefore, it was quite reasonably proposed that this information about key contact persons within each company be made available to regulators, counselors and even the homeowners themselves, in order to expedite the process of obtaining lender or servicer approval for a proposed modification plan.

During the study process, Maine Bankers Association pointed out that current law already requires that each Notice of Right to Cure Default include “[t]he name address, telephone number and other contact information for persons having the ability to modify a mortgage loan ... to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee ....”; 14 MRS § 6111(1-A)(E). However, from information derived from lenders, it was determined that requiring additional disclosure of such persons calls for a simple solution to what is a very complex chain-of-command decision by the lender.

The offices and branches of large lenders are spread out over many states and countries, and they hire huge servicers to perform administrative functions (such as collecting payments, and monitoring the status of taxes and insurance) relating to hundreds of thousands or even millions of loans. Within lenders’ and servicers’ corporate

structures are found collection departments, work-out departments, loss mitigation departments, legal departments and foreclosure departments. Other than the requirement currently existing with respect to the Notice of Right to Cure Default, the idea that a single person (or even a small group of people) within each company could be identified as having authority to agree to a wide range of case dispositions, is often not realistic.

Further, it must be remembered that in many cases, these lenders and servicers do not actually own the loans, and therefore do not have instant authority to agree to alternate case dispositions. Rather, the loans are owned by investors, or in many cases the loans have been bundled and securitized.

Lending is a profit-based enterprise, and especially in the case of highly-regulated financial institutions, foreclosure alternatives must be financially prudent and must meet regulatory “safety and soundness” standards. A primary factor evaluated by a lender asked to approve an alternate to foreclosure, is whether the cost of accepting such an alternative exceeds the cost of proceeding through the civil foreclosure and auction sale process.

To evaluate a proposal, a lender must develop information on the future ability of the consumer to pay the debt; the balance on the loan; the legal costs incurred should the home be foreclosed upon; the potential sale price should the home be auctioned off; the ability of the consumer to pay a deficiency balance if the auction price does not meet the loan balance plus expenses incurred in the foreclosure; and the chance that, if the lender agrees to a loan modification, the consumer will subsequently default, necessitating re-initiation of the foreclosure process.

Finally, to the extent that there are individuals with the requisite authority, their identities are already known to several important participants in the process. Regulators at the Bureau who license lenders and register loan servicers know who to communicate with at the lenders’ offices, and also how to escalate a case to high company officials if the company is not demonstrating an appropriate response in a case. Housing counselors also generally know how to communicate effectively with a company’s decision-makers.

For cases that proceed to foreclosure, Maine law already contains a strong measure to address this concern, in the form of a requirement in the mediation process. At mediation, the lender or servicer must produce an individual, in-person or on the phone, who has authority to modify a loan in appropriate cases. Failure to produce such a person can lead (and has led) to sanctions being levied against lenders or servicers.

For the above reasons, other than the existing requirement to disclose this information to the consumer at the time of the Notice of Right to Cure Default pursuant to 14 MRS § 6111(1-A)(E), and the requirement that the mortgagee provide a person with modification authority at the Judicial Branch’s mediation session, the study group believed it would be impracticable and unrealistic to mandate additional circumstances under which the mortgagee must disclose that contact-person information to interested parties, including the consumer.

5) *Should husbands and wives, or principal obligors and co-signors, both receive informational packets?*

An analysis of consumers who receive informational packages reveals that two packages are often mailed to apparently-related individuals at the same address, frequently with one addressed to “Mary Jones” and the other to “John Jones.” This gives rise to the question, can one of the packages be eliminated, saving money?

Breaking this issue down into its component parts, it’s important to remember that the Bureau uses the list of names and addresses of defaulting homeowners provided by lenders and servicers. In other words, both individuals in the household have been mailed the legal notice of right to cure default.

Why? Because they are both entitled to the notice, since under contract law each is jointly and severally liable for the entire debt. In the case of a husband and wife living at the same address, the complexity of the issue can best be put in the form of a question: which person should *not* get the informational package?

The study group discussed whether it was possible to combine two or more names onto a single address label. In response, employees at the Bureau pointed out that such a combining could actually increase costs, since it would take what is now largely an automatic process, and transform it into a manual process. It also presumes that both parties still reside at the same address, when in fact it is not infrequent that the parties have split. If the spouse who no longer resides at the home has requested a forwarding of mail, that consumer will receive the informational package, regardless of their present residential location.

Bureau staff has also spoken with consumers who admit that they have kept the delinquent status of their mortgage a secret from their spouse (or a parent, in cases in which the parent has co-signed the note). The mailing of multiple notices increases the possibility that the family member who is “in the dark” will receive a mailing.

Finally, the Bureau receives mailed informational packages back at its offices nearly every day that have been returned due to the obsolete status of the address utilized. Sometimes, for example, addresses have been modified as the result of “E-911” changes, but lenders were not effectively notified. Returned mail is quite concerning, since it means important information such as legal notices being sent to the consumer by his or her lender or servicer are not being received by the consumer. Bureau staff uses a variety of resources to direct the packages to the correct recipients. In doing so, the Bureau may go beyond the steps taken by the lender or servicer, which has met its legal burden by mailing notices to each consumer’s last known address. Because of privacy laws, lenders are limited in the extent to which they can mail notices to addresses that have not been specifically verified as accurate by their customers.

For these reasons, the study group does not recommend major changes in addressing packages to consumers purportedly living at the same address.

*6) Can the consumer information in the homeowner packets be made more readable?*

Outreach materials should be readable by the least sophisticated consumer, given the importance of the information being imparted. Study group member Sara Gagné-Holmes indicated that the Bureau's cover memo in current use fails to meet recognized standards of readability. That memo is appended to this report, as Attachment #3.

Ms. Gagné-Holmes volunteered to provide the group with a proposed modification to the current cover memo, a draft that would incorporate bullet-points, highlighted and titled sections, and other features known to improve the readability of documents. The proposed re-write is found at the end of this report, as Attachment #4.

The Bureau is reviewing this draft with an eye toward determining whether some or all of the language should be incorporated into a new cover memo. The Bureau has identified two countervailing factors in its evaluation of the proposed re-write. First, the proposed re-write is lengthier than the one-page current version, and concerted efforts have been made to limit the weight of the foreclosure prevention packet in order to save costs. Second, in developing the tone and content of its current version of the memo, the Bureau tried to reflect its status as a government agency. On occasion, efforts to improve readability rely on many of the same formatting cues (*e.g.*, headlines; bold type; multiple divided sections) that consumers have often seen from private companies. It's important for consumers to perceive that the memo and packet have been sent to them from a government source.

It's likely, however, that many of the suggested changes can be incorporated into the current memo--improving its readability while not making it longer, and retaining the official state agency tone. Bureau staff plans to make changes to the memo in early 2012.

*7) How can the foreclosure prevention program be better integrated with the Judicial Branch's mediation program?*

Although it serves homeowners at various stages of the default, pre-foreclosure and foreclosure process, the Bureau's foreclosure prevention outreach and housing counseling program is primarily intended to "catch the problem early" (during the so-called "cure" period) and connect homeowners with counselors to avoid the filing of a civil foreclosure complaint in court. For those cases that cannot be resolved at the stages of initial default, lenders and servicers may initiate the foreclosure process, and the consumer has the right to access a separate forum known as a "mediation" session.

If homeowners respond in writing to the court once they are served with the foreclosure summons and complaint, they are deemed to have requested mediation. Consumers scheduled for mediation must attend an informational session at which they

learn what proof of income or other documents will be needed at the subsequent, formal mediation.

At the mediation session itself, trained individuals input relevant information to determine whether the case meets guidelines for a government-sponsored program such as HAMP. Under law, the lender or servicer must participate in the process, providing an individual in person or by telephone who has authority to agree to a proposed modification or other plan. If a trial modification is agreed to, the mediator may call for one or more additional informational sessions to determine whether sufficient progress has been made to enable the foreclosure to be dismissed by agreement of the parties. If the consumer does not qualify for any programs, or the consumer fails to abide by the terms of the temporary loan modification program, the case can proceed to a court hearing.

Some participants in the process, especially lenders and their foreclosure attorneys, have expressed frustration at the mediation program administered by the Judicial Branch, stating that it results in delays. Supporters of the program, however, point to a study of more than 500 cases that showed modifications reached in more than 100 of those cases, and also tout the importance of requiring active participation by the lender, stating that in some cases, the mediation session has been the first opportunity for consumers to deal directly with a representative of the entity foreclosing against them.

The members of the study group understood that the scope of their jurisdiction is limited to the Bureau's foreclosure *prevention* activities, and does not extend to the separate mediation program. However, it was also clear that the two programs share a common goal of keeping homeowners in their homes in appropriate cases, and ensuring that all proper avenues are explored in avoiding residential displacement.

Therefore, the study group developed information about the current connections and communications between the two programs, and discussed how those connections and communications can be strengthened and efforts coordinated. This task was aided by the participation in the second meeting by two representatives of the Judicial Branch, Mary Ann Lynch and Lauren Blake-Welliver.

The two programs already benefit from some common features and individuals. For example, when the Bureau sends its outreach materials to consumers in default, that information contains an explanation of the court process – including the mediation opportunity – that will follow if they do not remedy their situation promptly. Consumers who call the Bureau's hotline do so at all stages of the foreclosure sequence, from early default through post-auction.

More significantly, the counselors who take assignments of cases at the default stage often continue to advise and assist the homeowners even if lenders file a foreclosure action in court. Some of the counselors are very experienced in the mediation process, and trainers at the pre-mediation “informational sessions” are likely to be HUD-certified counselors, including those under contract with the Bureau.

There is a natural limit, however, to the extent to which the overlap and commonalities of the two programs exist or would be appropriate. Generally speaking, the Bureau's foreclosure prevention program occurs in the relatively-informal time period during early default, before the file has been sent to the lender's foreclosure department or forwarded to a Maine-licensed attorney to initiate legal action. It is relatively common during these stages for lenders to grant temporary loan modification requests, and for short-term repayment plans to be established, pending the gathering or additional information such that a decision on a permanent plan can be reached.

During this time, it's the counselor's job to work with the homeowner in gathering the appropriate financial information, and confirming that the information is received by the lender. The counselor educates the consumer about the time frames involved, since they are often longer than anticipated, and the counselor helps the homeowner to anticipate additional requests for more or updated information. If the process begins to take too long, or if the counselor believes the case is not receiving proper attention, the counselor can escalate the case through direct contact with the lender or by calling upon the Bureau to facilitate that escalation.

The court-sponsored mediation program, in contrast, is in every way part of the formal judicial process, coordinated by a court-appointed mediator and overseen by a District or Superior Court judge. The Judicial Branch has established strict rules of civil procedure governing the process, and failure to comply with deadlines or production of documents and information requirements can have ramifications for all parties.

The study group recommends that the Bureau continue to work with the Judicial Branch's mediation program to ensure that the two efforts complement one another. The Bureau should ask the mediation program's managers to review the written descriptions of the mediation program contained in the Bureau's outreach materials, to confirm accuracy and relevancy. As time permits, employees of the Bureau's foreclosure prevention program should attend a pre-mediation informational session, as well as a mediation session, to familiarize themselves with the process. Organizers of the two programs should work together to make certain the corps of counselors is able to maintain its numbers and resources, in the face of potential cuts in federal or private funding for housing counseling programs.

## **7) Other Issues Raised and Determinations Made During the Study Process**

### *1) Reduction in size and weight of the informational packets.*

In the early days of the program, large manila envelopes were used to mail information to consumers. Last year, the contents were reduced, and two-sided printing was utilized, such that the information fit easily in a letter-sized envelope.

This fall, in response to the efforts of the study group and to ensure that the package weighed less than one ounce, the contents were again trimmed, such that the package now qualifies for the lowest postal rates.

*2) Resolving inconsistencies in state postage rates charged to the program.*

In surveying mail returned for inaccurate or obsolete addresses that had been provided by lenders, Bureau staffers noticed that at times, different postal rates were charged for mailing the same-sized packets of information. Upon closer inspection, the Bureau learned that the packet, even with several efforts to reduce its mass, weighed almost exactly one ounce. Mail handlers at the state mail service, which processes the Bureau's mail, would assign a "just under" or "just over" category to the sometimes-hundreds of informational packages that were mailed out each day.

Following the discovery of this inconsistent treatment of the mail, senior Bureau employees met with officials of the state mail service, and obtained from those officials a commitment to assess the lower-cost postage rate to all informational packages mailed to Maine homeowners. This change alone could save the program \$8,000 per year, funds that can, in the future, be applied to direct homeowner assistance.

*3) Causing the Bureau to avail itself of the lower of the two postage rate-steps ("time of day charges")*

As the result of this study process, the Bureau held further discussions with Maine state mail service personnel, and learned that state agencies are assessed two different postage rates, depending on whether mail is delivered to the state service in the morning (lower cost), or the afternoon (higher cost). This disparity, unknown to most state agencies, is the result of different labor rates that must be paid to sorters and handlers. Because of this knowledge, gained as the result of inquiries sparked by the study group's activities, the Bureau began holding its informational mailings prepared after noontime, to the next business day (except before long holiday weekends), resulting in additional savings without a substantive reduction in consumer outreach.

*4) Making more accurate the informational package's description of the civil foreclosure process.*

One of the advantages of the diversity and expertise of the members of the study group was the ability to assign specific tasks to certain members, based on their education and experience. One study group member, attorney David J. Jones, has participated in hundreds of foreclosures on behalf of a wide variety of lenders and creditors. Mr. Jones completed a review and revision of the informational outreach package's description of the civil foreclosure process in Maine, based on his many years of experience in court. The process and accompanying time frames involved in civil foreclosure differ from state to state, even in states with similar judicial foreclosure statutes. It is vitally important that information provided to homeowners be accurate as it relates to the experiences they are likely to encounter here in Maine. The revised language was incorporated into the

outreach packages being mailed in early November, and Maine homeowners now benefit from receiving information tailored to their own state and their own circumstances, rather than reading advice drafted for a national audience, which often has little relevance to the Maine court system.

*5) Working with lenders and servicers to reduce, to the extent possible, multiple mailings to consumers.*

The majority of foreclosure actions, especially those from out-of-state lenders and servicers, emanate from a relatively small number of law firms. While the responsible lawyers must hold a license to practice law in Maine, some of the most active foreclosure firms are actually located in New Hampshire and Massachusetts. If the actions of these law firms (at the “Notice of Right to Cure Default” stage of the proceeding) result in multiple names being provided, then the Bureau’s resources are unnecessarily expended.

In once such case, Bureau staff identified an unusual number of duplicate names originating from a law firm located outside Maine. Staff contacted members of the law firm, and learned that the firm interpreted Maine’s “Notice of Right to Cure” law as requiring that notices be sent to every address in its files from the beginning of the loan process, to the time of default.

Senior staff of the Bureau then discussed this interpretation with the foreclosure department at the law firm, and clarified that Maine law calls for notices to be sent only to the current or last known addresses, not to old addresses that are obsolete (such as those resulting from a re-numbering of a town’s streets). The firm accepted the clarification of the law’s requirements, thus avoiding the need to mail more than 100 duplicate letters annually from names and addresses originating from this firm.

*6) Ensuring consistency between housing counselor information mailed to consumers, and the counselor information listed on the Bureau’s website.*

Information listed on the Bureau’s website is used by more parties than just homeowners. Specifically, foreclosing attorneys are required under current law to include a list of HUD-certified housing counselors along with the Notice of Right to Cure Default. Attorneys obtain that information from the Bureau’s website. Although the law specified that HUD-approved counselors should be listed, the list included counselors who, although they are HUD-certified, no longer perform foreclosure prevention services. Following this discovery, the list posted on the website was amended to be identical to the list provided to consumers as part of the outreach program, consisting of only those HUD-certified counselors known to the Bureau to offer foreclosure prevention services.



## Conclusion and Additional Action Steps

The study group was successful in meeting its responsibility to review the Bureau's current foreclosure prevention outreach and housing counseling program, and to identify ways in which it can be administered in the most efficient manner possible.

The varied experiences and viewpoints of study group members permitted a wide range of findings, such that the outreach program will offer more accurate and complete information to Maine homeowners facing foreclosure.

Items needing continued attention by the Bureau include:

- 1) Achieving 100% adoption and use by housing counselors of the uniform reporting form, to improve accountability and record-keeping;
- 2) Working with the housing counselors, and amending existing contracts as required upon renewal, such that all reports are received on a monthly basis;
- 3) Incorporating amendments to the Bureau's cover memo to homeowners, improving, to the extent consistent with the proper governmental tone, the readability of that memo;
- 4) Strengthening connections between the Bureau's foreclosure prevention program, and the mediation program administered by the Judicial Branch, to ensure that the Bureau staff has an accurate working knowledge of the mediation program's operations, with the goal that the two programs work in a complementary fashion; and
- 5) Monitoring names and addresses provided by lenders, servicers and attorneys, as well as labels on outreach packages returned to the Bureau as undeliverable, to spot trends resulting in excessive or duplicative mailings, and remedying those issues to save printing and postage costs.

The Bureau wishes to thank those who volunteered for this study group, for their time and expertise toward the goal of administering the most streamlined program possible.

## Attachments

Attachment #1: Public Law 2011, Chapter 427, Section C-1, "*Evaluation of ways to streamline the State's foreclosure prevention outreach and housing counseling program*"

Attachment #2: Uniform "Counselor Reporting Form" developed by the bureau in the fall of 2011, and currently in use by (9) of the (11) counselors under contract.

Attachment #3. Current cover memo utilized by the bureau in its foreclosure prevention outreach packet.

Attachment #4. Proposed modifications to the bureau's cover memo, designed to improve readability of the document.

## Attachment #1

PUBLIC Law, Chapter 427, LD 1338, 125th Maine State Legislature  
An Act To Amend the Maine Consumer Credit Code To Conform with  
Federal Law

### PART C

**Sec. C-1. Evaluation of ways to streamline the State's foreclosure prevention outreach and housing counseling program.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, referred to in this Part as "the bureau," shall facilitate meetings and other communications among interested parties to evaluate and determine the ways in which the State's foreclosure prevention outreach and housing counseling program may be streamlined and made more efficient in accordance with this section.

1. The bureau shall invite participation from representatives of the following groups:
  - A. State-chartered banks;
  - B. State-chartered credit unions;
  - C. Nondepository licensed mortgage lenders;
  - D. Federally chartered financial institutions;
  - E. Loan servicers;
  - F. Attorneys who represent lenders;
  - G. Attorneys who represent homeowners;
  - H. Nonprofit housing counselors;
  - I. Homeowners;
  - J. The Department of Professional and Financial Regulation, Bureau of Financial Institutions; and
  - K. Two members of the Joint Standing Committee on Insurance and Financial Services, representing each of the 2 parties holding the largest number of seats in the Legislature.

The bureau may invite additional interested parties to attend and participate.

2. The bureau shall ensure that the interested parties evaluate, at a minimum, the following issues:
  - A. Whether the mailing of informational packages from the State should be delayed, from the current requirement for mailing simultaneously with the notice of right to cure default pursuant to the Maine Revised Statutes, Title 14, section 6111, to a later time, such as after the homeowner is 60 days in default;
  - B. Whether the results of housing counselor efforts should be reported in a standardized format to make evaluation of those results more efficient;

C. Whether the informational package mailing process under paragraph A could be carried out by the lenders rather than by the bureau;

D. Whether lenders and servicers should be required to make available to regulators, counselors or consumers the names and contact information for individuals within the lenders' and servicers' companies who are authorized to approve loan modifications, short sales or other alternatives to foreclosure;

E. Whether joint obligors on a mortgage can be provided with a single informational packet under paragraph A, rather than the current requirement that every mortgagor receive that information;

F. Whether the current composition of the informational package under paragraph A can be improved to be clearer, more understandable to and more useable by homeowners;

G. How the outreach and counseling process can best be integrated, when necessary, into the judicial system's foreclosure mediation program pursuant to Title 14, section 6321-A; and

H. Any other issues, as appropriate.

3. The bureau shall provide notice of meetings to all interested parties and to members and staff of the Joint Standing Committee on Insurance and Financial Services.

4. The bureau shall report the findings of the interested parties, including any recommendations and suggested legislation, to the Joint Standing Committee on Insurance and Financial Services by December 7, 2011. The committee may submit a bill related to the suggested legislation to the Second Regular Session of the 125th Legislature.

BCCP REPORTING	Attachment #2 – Uniform “Counselor Reporting Form”	
Agency Name:	ABC Non-Profit	
Month	December	
Year	2011	
# of December referrals from BCCP	0	
# of 2011 BCCP referrals	0	
Status of active referrals:	(Select from the drop down below)	Enter #
	Applied for a loan modification	
	Waiting on homeowner	
	Short Sale Pending	
	Waiting on lender/servicer	
	Mediation Pending	
	<b>TOTAL PENDING:</b>	<b>0</b>
# of referrals resolved during this period?	(Select from Drop down below)	Enter #
	Foreclosed	
	Perm Loan Modification	
	Filed Bankruptcy	
	Deed-in-Lieu	
	Referred to Legal	
	Reverse Mortgage	
	Short Sale	
	Property Sold	
	Referred to other social agency	
	Repayment plan/forebarence Agreement	
	<b>TOTAL RESOLVED</b>	<b>0</b>
	<b>TOTAL OVERALL</b>	<b>0</b>

## **Attachment #3 – Current Cover Memo**

### **Re: Free housing counseling available in Maine to help you avoid foreclosure**

Dear Homeowner:

You should have received a letter from your mortgage company within the past few days informing you that you were late on your mortgage payment. (Lenders are required by law to report to us, confidentially, when they mail delinquency notices to Maine consumers.) If you miss a number of payments, you may face foreclosure on your home. We encourage you to take action now to prevent that from happening.

We are a state agency, and we have entered into contracts with non-profit groups all over Maine in order to help reduce foreclosures and assist homeowners struggling to make their mortgage payments. We can connect you with a free housing counselor located here in Maine to talk with you about your situation and to help you work with your mortgage company. Often, homeowners can avoid foreclosure if they take action.

Call the bureau's Foreclosure Prevention Hotline, **1-888-664-2569** (1-888-NO-4 CLÖZ) to get connected to free advice and assistance you can trust. We'll answer the phone in person Monday through Friday, 8 a.m. through 5 p.m., or if you leave a message during any evening or over the weekend, we will call you back the next workday.

We work with counselors from Aroostook County to York County, and we will put you in touch with a housing counselor near you. So that we can make the fastest possible referral for you, gather information together before you call, such as the amount of your mortgage payment, your current monthly income, the approximate totals of your other debts and any recent mailings you may have received from your lender.

In the future, if you are served with court papers starting a foreclosure, you will receive a form that will allow you to raise any legal defenses to the claim, and to request free mediation. If you are served, read the documents carefully, seek legal advice or call out hotline immediately with any questions, and be certain to mail the one-page response form to the court within 20 days of the date you were served.

If you are having trouble making your mortgage payments, please do not wait until it is too late. Call our hotline at 1-888-664-2569 today to learn your options. You may also visit our website for resource information at [www.Credit.Maine.gov](http://www.Credit.Maine.gov) .

Sincerely,

William N. Lund, Superintendent  
Maine Bureau of Consumer Credit Protection

Enclosure: List of HUD-approved housing counselors, and additional information

## **Attachment #4 – Proposed modifications to bureau’s cover memo**

### **Free Foreclosure Help from the Maine Bureau of Consumer Credit Protection**

Dear Homeowner:

You may have gotten a letter from your mortgage lender within the past few days. The letter gives you 35 days to catch up on late payments. This is known as a Notice to Cure. It’s an early warning that if you don’t take action you will lose your home.

Maine law requires mortgage lenders to alert us when they send a Notice to Cure to you. Our records show that a Notice to Cure was sent to you. We want you to know that free, trustworthy foreclosure help is available. We urge you to take advantage of this free help now.

In this packet is contact information for housing counselors and legal resources. There is also

- a fact sheet about foreclosure
- a letter that you can use to ask for a loan modification
- a warning that some companies offering foreclosure assistance are not to be trusted.

### **Free Housing Counseling**

The State of Maine has hired non-profit Housing Counselors throughout the State of Maine to help you work with your mortgage lender and answer questions like:

- Can I afford to keep my home?
- What modification programs are available to me?
- Is a short sale or deed in lieu a good idea for me?

Call us at **1-888-664-2569**. Have this information on hand when you call:

- Your monthly income
- Your monthly mortgage payment
- The approximate totals of your other debts
- Recent letters from your mortgage lender
- Letters from companies who say they can help you if you pay them

### **Free Foreclosure Mediation**

Usually, a sheriff brings you the court papers to start a foreclosure. This is known as service of a complaint. The complaint will include a one-page form that allows you to raise defenses and ask for free mediation. Mail the one-page form to the court within 20 days of service if you want free mediation. The Court will then send you more information about mediation.

If you’re already working with your lender it’s still a good idea to request free mediation.

**Don’t wait. Call or visit our website today.**

Sincerely,

William N. Lund, Superintendent  
Maine Bureau of Consumer Credit Protection

Enclosure: List of HUD-approved housing counselors and other resources