



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

December 10, 2013

Advisory Ruling #120

Re: Your request for an advisory ruling whether the Bureau of Consumer Credit Protection is a "judicial body"

Dear :

You have asked our opinion on whether the Bureau of Consumer Credit Protection is a "judicial body" as referenced in the Official Bureau Interpretations of the federal Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X. The impetus for your question is the amendment to Regulation X, section 1024.41(f), which states "[a] servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless ... [a] borrower's mortgage loan obligation is more than 120 days delinquent." When a servicer sends to a Maine consumer the notice of right to cure default required by 14 MRSA, section 6111 (the "6111 notice"), the servicer must, within three days, report to the Bureau of Consumer Credit Protection that the notice has been sent ("the Report"). If the Report is deemed a first notice or filing, the 6111 notice could not be sent to Maine consumers until they were nearly 4 months delinquent, and assistance available to those homeowners from the Bureau's foreclosure intake and referral service would be substantially delayed.

By way of guidance, the Consumer Financial Protection Bureau (CFPB) issued an Official Bureau Interpretation on September 13, 2013 stating "[w]here foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a *court or other judicial body*" [italics mine].

The question, therefore, is whether the Report constitutes a "first notice or filing." That issue, in turn, is conditioned on whether the Bureau of Consumer Credit Protection is a "judicial body."

The Bureau has jurisdiction to issue an Advisory Ruling on its own status, as well as on RESPA issues, having been granted specific authority to enforce RESPA under state law pursuant to 9-A MRS secs. 3-316, 9-311-A and 10-307.



PRINTED ON RECYCLED PAPER
OFFICES LOCATED AT:

PHONE: (207)624-8527 (VOICE) 76 NORTHERN AVENUE, GARDINER, MAINE FAX: (207)582-7699

TTY USERS CALL MAINE RELAY 711
INTERNET: WWW.CREDIT.MAINE.GOV

Advisory Ruling #120
December 10, 2013
Page Two

In our view, the Bureau is clearly not a judicial body. Judicial bodies are established under the separate Judicial Branch of state government, and consist of judges who can issue final determinations based on the law. The Bureau, in contrast, is an administrative body, authorized to make regulatory determinations. If it is necessary to enforce those determinations, the Bureau can act only through the Office of the Attorney General by bringing a civil action in a court, which is an actual judicial body, *see* 9-A MRS sec. 6-113. Further, any administrative appeal by a respondent is to a court; *see* Maine's Administrative Procedures Act, 5 MRS sec. 8001 *et seq.*

For these reasons, the Bureau is not a judicial body, and therefore the Report does not qualify as the "first notice or filing" referenced in the new Regulation X language.

Sincerely,

William N. Lund
Superintendent