

Foreclosure Prevention Revolving Trust Fund

- The filing fee of \$750 on each new foreclosure action may generate tens of millions annually to the Foreclosure Prevention Revolving Trust Fund, the proceeds of which are distributed to the Department of Commerce, the Ohio Supreme Court, the Attorney General, the Housing Trust Fund (Fund 6460), and counties. There may also be additional revenue generated through loan repayments. The bill exempts certain filings from the new filing fee.
- The six-month moratorium on residential foreclosures may affect the timing of when Foreclosure Prevention Revolving Trust Fund revenue is received. The total amount received may also be affected to the extent that the moratorium results in borrowers becoming current on mortgages or developing workout plans to avoid foreclosure.

State foreclosure database – Department of Commerce and Ohio Supreme Court

- The bill requires the Department of Commerce, in consultation with the Ohio Supreme Court to implement a state foreclosure database by October 1, 2009. The cost of this database would be paid from amounts available in the Foreclosure Prevention Revolving Trust Fund. The six-month moratorium on foreclosures may have a bearing on the amounts available for this purpose in the near term.

Mortgage servicer registration – Department of Commerce

- There would be a gain in revenue to the Consumer Finance Fund (Fund 5530) from any registration fee and fine revenue received from mortgage servicers, although this amount is uncertain. There would be a corresponding increase in expenses to regulate mortgage servicers.

Consumer Sales Practices Act – Attorney General

- The bill applies the Consumer Sales Practices Act (CSPA) to transactions between mortgage servicers and their customers. As a result, the number of transactions handled by the Office of the Attorney General's Consumer Protection Section, funded out of the GRF and the Consumer Protection Enforcement Fund (Fund 6310) is likely to increase. However, the number and magnitude of complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill is unknown. Thus, whether the bill will create additional ongoing operating expenses to the Consumer Protection Section, as well as the amount of those potential costs, is uncertain. It is also uncertain how much civil penalty revenue may be collected annually from persons in violation of the bill's requirements and subsequently deposited to the credit of Fund 6310.

Criminal background checks – Attorney General

- This bill requires criminal background checks to be conducted on mortgage servicers. Applicants would be required to pay the associated fees. The Attorney General's General Reimbursement Fund (Fund 1060) may realize a gain in revenue

corresponding to the number of background checks conducted in order to offset the additional costs such additional background checks would present for BCII.

State court cost revenue

- As a result of the bill, it is possible that some persons, who may not have been prosecuted and convicted under existing law, will be prosecuted and convicted. If so, the state may gain locally collected court cost revenues that are deposited to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020).

Short sales – treatment by county auditors for taxation purposes

- If including short sales in determining tax valuations of real property in reappraisals and updates lowers valuations, state base cost funding to school districts would be increased and state reimbursement of the real property tax rollbacks would be decreased, resulting in a net increase in GRF expenditures.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010 – FUTURE YEARS
Counties and Municipalities	
Revenues	Gain to counties from Foreclosure Prevention Revolving Trust Fund distributions
	Potential gain from court costs, filing fees, and fines
Expenditures	Potential increase from new civil and criminal cases
School Districts	
Revenues	Possible loss by including short sales in determining tax valuations
Expenditures	- 0 -
Other Local Governments	
Revenues	Possible loss by including short sales in determining tax valuations
Expenditures	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

Foreclosure Prevention Revolving Trust Fund

- Counties would gain revenues from the portion of the Foreclosure Prevention Revolving Trust Fund that is required to be distributed to boards of county commissioners.

Local criminal justice system revenues and expenditures

- As a result of the new penalties this bill contains, some persons, who may not have been successfully prosecuted and convicted under existing law, could be prosecuted and sanctioned. These effects could in turn increase local criminal justice expenditures related to investigating, prosecuting, adjudicating, and sanctioning offenders who violate the provisions of the bill. It is uncertain how many new cases will result from these penalties, but the bill creates the potential for additional court cost, filing fee, and fine revenues to be collected by county and municipal criminal justice systems statewide, which may offset some of the additional cost.

Courts of common pleas

- It is unclear how the bill will affect the courts of common pleas across the state. The bill provides for a six-month moratorium on foreclosure actions beginning at the time of the bill's enactment, so any fees generally collected from foreclosure filings would presumably not be collected during that time.

Short sales – treatment by county auditors for taxation purposes

- Including short sales in determining tax valuations of real property in reappraisals and updates would have an indeterminate effect on valuations, perhaps lowering them or leaving them little changed or unchanged.

Detailed Fiscal Analysis

State Foreclosure Prevention Project

The bill creates the State Foreclosure Prevention Project in the Department of Commerce to (1) collect residential mortgage foreclosure information, (2) track loss mitigation efforts, (3) encourage viable loan modifications, and (4) seek solutions to avoid foreclosures for residential mortgage loans. As part of the project, the bill requires the Director of Commerce and the Ohio Supreme Court to create a state foreclosure database, establishes a new fund to provide assistance meant to reduce the number of foreclosures, and requires the creation of comprehensive minimum loan modification standards. The possible fiscal effects of these initiatives are discussed in greater detail below.

State foreclosure database – Department of Commerce and Ohio Supreme Court

The bill requires the Director of Commerce to design and develop, in consultation with the administrative section of the Ohio Supreme Court, a state foreclosure database to track residential mortgage foreclosure information and to promote the efforts of the State Foreclosure Prevention Project.¹ The database is to be implemented by October 1, 2009. Only the Administrative Director of the Ohio Supreme Court, the Director of Commerce, the Superintendent of Financial Institutions, the Ohio Attorney General, and the clerks of court for county courts of common pleas would have access to this information. Although the cost of the database, which is currently uncertain, would be funded by the Foreclosure Prevention Revolving Trust Fund, the six-month moratorium on certain foreclosure proceedings would presumably affect the amounts available for design and implementation in the short term, though the bill does not prohibit the filing of new foreclosure actions.

¹ The Supreme Court documents foreclosures through the *Ohio Courts Summary* publication. To collect the data for that publication, the Ohio Supreme Court's Case Management Section receives monthly reports from common pleas court judges regarding foreclosures and many other types of cases.

Currently, the Supreme Court is working on the Ohio Courts Network (OCN), a project funded by the Ohio Courts Technology Initiative. OCN is essentially a database warehouse of case information from courts across the state. It will allow for connectivity of all courts, and it is largely completed. Presumably, much of the information required for the state foreclosure database provided for in this bill is or could be stored in the OCN. Other fiscal issues that may impact the Court and are currently under review involve the potential moneys collected in the newly created fund to be made available to the Court as well as the total and ongoing costs of designing, implementing, and maintaining the state foreclosure database.

The database is to be used in a number of ways specified by the bill. First, based on a review of the information in the database, the Director of Commerce is to prepare an annual report to the General Assembly describing the operation of the state foreclosure prevention project, including the number of borrowers helped, the effectiveness of the funds in preventing foreclosure, recommendations for further efforts needed to reduce foreclosures, and so forth.

The database is also to be used by the Department of Commerce to determine whether any mortgage servicer has failed to provide required disclosures or information or if servicers are not acting in good faith to provide borrowers with an effective method to discuss payment options for past due amounts and alternatives to foreclosure. If the servicer has violated any such requirements, those violations may be considered when the Department determines the character and general fitness of the mortgage servicer to be licensed or registered.

Finally, the database is to be used by courts or judicial officers to confirm that a mortgage servicer has provided all required notices to the borrower before a foreclosure action may be filed. Clerks of court entering writs of execution in a residential foreclosure action must file that information about that action with the Administrative Director of the Ohio Supreme Court so that it may be included in the database.

Foreclosure Prevention Revolving Trust Fund

Eligible assistance

The bill creates the Foreclosure Prevention Revolving Trust Fund to provide funding for the following five purposes:

1. To provide grants to foreclosure prevention counseling entities to maintain or expand foreclosure prevention efforts;
2. To offer grants to individuals or counseling entities to provide emergency foreclosure prevention assistance loans;
3. To provide loans and grants to nonprofit or local government entities to provide relocation assistance or acquire mortgage loans or properties from creditors in order to restructure the loans or restore the properties to productive use;
4. To establish and maintain the state foreclosure database; and

5. To cover the costs of the state foreclosure prevention project and the associated costs the Department of Commerce's Division of Financial Institutions incurs for outreach and education, and to support the investigation of mortgage fraud and fraudulent foreclosure prevention schemes in the state.

Revenue distribution

The funding source for the Trust Fund is a \$750 filing fee paid by mortgage servicers and submitted to the Department of Commerce on foreclosure actions involving a residential mortgage loan. No foreclosure judgment can be granted until the mortgage servicer provides evidence that the fee has been paid. The bill requires the Director of Commerce to establish an accounting system to track the county that corresponds to each filing fee that is paid so that each county's share of the funds can be determined. The bill distributes the proceeds in the fund in the following manner:

- 10% to the Consumer Finance Fund (Fund 5530) for outreach, education, and investigation of mortgage fraud and fraudulent foreclosure prevention schemes;
- 5% to the Attorney General for investigation of illegal activities associated with mortgage fraud and foreclosure prevention fraud. The Attorney General may use these funds to contract with local public prosecutors engaged in the investigation of foreclosure prevention fraud.
- Up to 5% to the Administrative Director of the Ohio Supreme Court; and
- The remainder divided between the Ohio Housing Trust Fund (Fund 6460) and boards of county commissioners. The amount awarded to county commissioners must be distributed on a pro rata basis of the funds submitted with respect to the foreclosure filings in each county to provide loan assistance to qualified counseling and foreclosure prevention entities, nonprofit entities, and individuals.

It is important to note that no \$750 filing fee is collected as part of (1) foreclosure filings on unoccupied property or on properties for which a filing fee was paid during the past 24 months with respect to the same mortgage loan, (2) filings made by a credit union, or (3) filings by "community banks," or those Ohio-headquartered depository institutions with less than \$2.5 billion in assets that originated and services the mortgage loans being foreclosed.

In CY 2008, the Ohio Supreme Court reported 85,773 new foreclosure filings. However, the CY 2008 figure includes all new foreclosure filings. Since certain types of filings are exempted from the fee, it is unclear as to what proportion of cases the fee would apply. Nevertheless, even if only a fraction of new foreclosure filings would include the payment of the filing fee, such revenue could easily be in the tens of millions of dollars annually.

The six-month moratorium on certain mortgage foreclosure proceedings on residential properties occupied by the owner or the tenant of an owner may have an effect on revenue to the Foreclosure Prevention Revolving Trust Fund, at least initially. These filings could drop significantly during the moratorium. If so, borrowers could use the time provided by the moratorium to become current on their mortgages or develop a workout plan to avoid foreclosure. For those unable to avoid foreclosure, the effect of the moratorium would appear to simply put off initial filing fee revenue to the Foreclosure Prevention Revolving Trust Fund until the moratorium expires, which would be in the first half of FY 2010.

Comprehensive minimum loan modification standards – Department of Commerce

The bill requires the Director of Commerce to adopt rules describing comprehensive minimum loan modification standards to advise mortgage servicers of modification alternatives and evaluate the loan modification efforts of mortgage servicers. The standards are intended to keep a borrower in the borrower's home under certain circumstances. The standards must include some combination of certain features, such as interest rate reductions, extension of the loan term, and deferral or reduction of principal. The program must be in compliance with federal loan modification programs.

Mortgage servicer registration

The bill requires mortgage servicers or those persons offering accelerated residential mortgage payment plans for compensation or gain to be registered with the Department of Commerce's Division of Financial Institutions (DFI) and to abide by certain standards of practice (discussed in detail below). Mortgage servicers servicing second mortgages are currently required to be registered under the Ohio Mortgage Loan Act, however, the Department of Commerce does not track registrants based on whether they are exclusively servicers or lenders. The bill specifies that registered mortgage lenders and registered mortgage brokers are exempt from registration but must not violate certain prohibitions on the actions of mortgage servicers and must comply with certain standards of practice required of mortgage servicers.

Mortgage servicers operating without a registration would be prohibited from collecting any interest or charges on loans they are servicing after they receive notice of the violation by the Department of Commerce or a court. Applicants for registration must pay a \$200 investigation fee, a \$1,000 annual registration fee, and any additional fee required by law. As a result, there would be a gain in revenue to the Consumer Finance Fund (Fund 5530) from these fees, depending on the number of servicers who register.

Applicants for a mortgage servicer registration would be required to undergo civil and criminal records checks and pay for these costs. Mortgage servicers must also be bonded or otherwise meet certain net worth requirements. If a mortgage servicer changes its place of business outside of the original municipal corporation where the

servicer was originally registered, the servicer would be required to submit a new application and pay the required investigation and registration fees.

All of these new requirements are likely to increase costs for DFI. It could be that additional staff is needed to handle new registrations, investigations, provide legal counsel, and provide program support. Ultimately, the additional cost arising from DFI's regulation of mortgage servicers would depend on the revenue generated from mortgage servicer registration fees.

Mortgage servicer requirements and prohibitions

The bill places a number of requirements on mortgage servicers (as those entities service residential mortgage loans in Ohio) that are generally geared toward protecting borrowers. These include a 60-day notification to the borrower before filing a foreclosure action and a subsequent filing with the Administrative Director of the Ohio Supreme Court indicating the date the notice was mailed, attempting a resolution, modification, or workout to a delinquency if requested by the borrower, correcting erroneous information submitted to a credit reporting agency, and various DFI reporting requirements.

The bill would also prohibit servicers from engaging in a number of actions, such as collecting unreasonable fees, initiating a foreclosure without proof of ownership, failing to provide written notice to the borrower before placing certain insurance on property subject to a loan, failing to refund unearned premiums paid or charged to the borrower for that insurance if the borrower provides evidence that the forced placement of insurance is no longer necessary, and using various unfair, deceptive, or unconscionable means to collect any claim on a residential mortgage loan.

DFI disciplinary actions

The Superintendent of Financial Institutions is authorized to revoke, suspend, or refuse to renew any mortgage servicer registration if, pursuant to an administrative hearing, (1) a mortgage servicer fails to comply with the provisions of the bill, the Consumer Sales Practices Act, federal debt collection laws, or any other applicable law, (2) the registrant has been convicted of or pleads guilty to a felony or certain other offenses involving theft, stolen property, forgery, fraud, money laundering, and so forth, or (3) if the registrant's comparable registration or license in any other state has been revoked.

In addition to or instead of any revocation, suspension, or registration denial, DFI may impose a monetary fine. Fines are limited to \$1,000 for each day of a violation. DFI may request a court of common pleas to enjoin violations of the mortgage servicer registration provisions. For persons acting as a mortgage servicer without a registration, DFI may request, and the court may impose, a civil penalty for that conduct of no more than \$5,000 per violation. All fines so collected are deposited into the Consumer Finance Fund (Fund 5530).

Consumer Sales Practices Act – Attorney General

The bill makes certain violations of the requirements and prohibitions an unfair or deceptive trade practice subject to the remedies available in the Consumer Sales Practices Act (CSPA). Overall, the statute authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies for various consumer transactions and provides consumers with a private right of action.

Civil remedies available

Under the CSPA, there are two civil remedies available for handling violations of the Consumer Sales Practices Act: one civil remedy would be available to the Attorney General's Office, who can investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action, and the other civil remedy would be available to consumers.

The Attorney General's Office may pursue civil remedies and its Consumer Protection Section, funded by both the GRF and the Consumer Protection Enforcement Fund (Fund 6310), would handle the associated legal work. However, it seems likely that the Attorney General's Office would try to settle the issues surrounding violations of these new prohibitions prior to initiating any formal legal action. For example, the violators could simply agree to cease their conduct, and assuming they do so, the Attorney General's Office would stop incurring any related legal expenses. Similar to the procedures taken in existing Consumer Sales Practices Law cases, the Attorney General's Office would seek court action against a person as a last resort if they perceive that the person is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General's Office could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade violators to cease their offending behavior.

If, on the other hand, the Attorney General's Office successfully pursues a civil remedy under preexisting Consumer Sales Practice Law, the court adjudicating the matter can award the Attorney General all costs and expenses associated with its investigation, in addition to reasonable attorney's fees. The court may also order civil penalties up to \$25,000. Three-quarters of this civil penalty (as much as \$18,750 if the maximum \$25,000 possible fine is assessed), as well as the investigation costs and attorney's fees, would be credited to the state's Consumer Protection Enforcement Fund (Fund 6310). The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as \$6,250 if the \$25,000 maximum possible fine is assessed).

Potential for new civil cases

As a result of the bill, the number of transactions handled by the Consumer Protection Section is likely to increase. However, the actual number of cases filed in county courts would most likely be relatively small as, under its current practice, the Attorney General's Office would seek to use every means available to resolve the

complaint before filing in court. The number and magnitude of related complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill are unknown. Thus, whether the bill will create additional ongoing operating expenses to the Consumer Protection Section, as well as the amount of those potential costs, is uncertain.

As noted above, a consumer injured by a violation of the new sections would also be able to pursue civil remedies, which means that additional civil suits could be filed. The filing of such civil suits would likely generate some additional filing fee and court cost revenue for counties and municipalities and place some additional burdens on the courts that will have to adjudicate these matters. It is uncertain how many consumers will elect to pursue a civil remedy without the assistance of the Attorney General, but the number is assumed to be small as injured persons would, most likely, report a complaint to the Attorney General's Office initially and then allow the Consumer Protection Section to seek a resolution to the complaint.

Background checks

The bill requires that the Superintendent of the Division of Financial Institutions of the Department of Commerce request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct criminal records checks of mortgage servicer applicants to determine whether applicants have been convicted of or plead guilty to certain criminal violations of an existing or former law of this state, any other state, or the United States.

The bill also requires that criminal record information from the Federal Bureau of Investigation be obtained as part of the criminal records check. All fees shall be paid by the applicant. Thus, there is no net fiscal effect on the Department of Commerce resulting from this provision. BCII charges \$22 and \$24 for state and national background checks, respectively. Thus, the Attorney General's General Reimbursement Fund (Fund 1060) may realize a gain in revenue corresponding to the number of background checks conducted in order to offset the additional costs such additional background checks would present for BCII.

Short sales – treatment by county auditors for taxation purposes

The bill would require county auditors, in determining the true value of real property, to treat a short sale as an arm's length sale for tax purposes. Arm's length sales between willing sellers and buyers that occur within a reasonable length of time before or after the tax lien date are used, along with other methods, in determining true value. Taxable value of real property is generally 35% of true value. A short sale is defined for this purpose as "a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction." Certain types of transactions—such as foreclosures, bank sales, sales to relatives, and sales under

duress—are not currently considered to be arm’s length sales and so do not enter into these calculations.

Personnel in county auditors’ offices told LSC that they would consider a short sale to fall into this category, so current procedures would exclude these sales in determining true value. Some commented, however, that the auditor’s office might not be aware in all cases that a sale was a short sale, unless it was identified as such on the conveyance form or discovered in subsequent review of real estate listings. This appears to imply that some short sales may be currently included in determining valuations. According to the Department of Taxation, the information needed to implement this change (the loan balance at the time of the transfer) is not a part of the public record and will not be readily available when the auditor is reviewing the sale after the fact. As a result, implementing the change would appear to require collecting the additional information on the closing transaction.

Contacts differed in their assessments of the effect of including short sales in determining true value. One thought was that including them would tend to lower property values. Another said that there is no consistent relationship between relative valuation and whether a sale is a short sale or not. A third thought was that inclusion of short sales would not make much of a difference, because the number of short sales in the total mix of sales probably would not be high enough to change property valuations by much. A contact in a county auditor’s office of a county with numerous real property parcels said that they use a statistical analysis process in determining valuations for larger areas that trims “outliers” so that short sale valuations which are out of alignment with most of the valuations in the initial sample would be removed from the final set of observations used to assign valuations.

State and local criminal justice effects

The table below lists those criminal prohibitions included in the bill as well as the potential maximum prison sentence and fine. At the state level, the GRF and the Victims of Crime/Reparations Fund (Fund 4020) may experience a minimal gain in the amount of court cost revenue from these penalties. Violators of felonies of the fifth and fourth degrees typically are not sentenced to prison, as there is a preference against such an action unless the offense involves certain drug offenses. As such, it is not likely that the state will incur incarceration expenses.

At the local level, the bill's provisions could increase local criminal justice expenditures related to investigating, prosecuting, adjudicating, and sanctioning offenders. However, it is uncertain how many new cases would result from the bill's new penalties. Any increase in costs related to prosecuting and adjudicating these cases may be at least somewhat offset through court cost and fine revenue, making it likely that any additional cost would not be more than minimal.

Criminal Penalties Associated with Mortgage Servicers				
Offense	ORC Reference	Penalty	Possible Prison Term	Possible fine
Not being registered as a mortgage servicer and engaging in the business of collecting money, credit, or chooses in action for residential mortgage loans or otherwise act as a mortgage servicer	1323.21 (A)(1)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Not being registered as a mortgage servicer and collecting accelerated mortgage payments from a biweekly or other accelerated payment plan that the person operates, arranges, or offered to arrange in connection with a residential mortgage	1323.21 (A)(2)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on certain documents (by a mortgage servicer)	1323.33(F)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Knowingly instructing, soliciting, proposing, or otherwise causing a borrower to sign in blank a document (by a mortgage servicer)	1323.33(G)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Interfering or obstructing an examination or investigation by the superintendent of financial institutions	1323.31	Felony of the 4th Degree	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	Not more than \$5,000

Courts of common pleas

For the purpose of this fiscal analysis, the bill most notably provides a six-month moratorium on foreclosure proceedings from the date of the bill's enactment. Given the six-month moratorium, the courts of common pleas would potentially not collect revenue from the fees assigned to foreclosure filings. The amount of lost revenue is unclear, and LSC fiscal staff continues to research the filing fees charged by courts of common pleas across the state. Further, after the six-month moratorium expires, it would be difficult to reliably predict the effect on future case filings.