Foreclosure Fairness Program report

Annual program performance report per RCW 61.24.163

COMMUNITY ECONOMIC
OPPORTUITES
FORECLOSURE FAIRNESS

V3.0

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REPORT TO THE LEGISLATURE

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Executive summary

Overview

This annual report provides Foreclosure Fairness Program (FFP) data to satisfy the reporting requirements in RCW 61.24.163(18) and additional programmatic context and background. The full text of the legislative reporting requirements is in the table below:

Table 1: Locations of annual reporting requirements in this report

Subsection	Statutory language	Location
(a)	"The performance of the program, including the numbers of borrowers who are referred to mediation by a housing counselor or attorney."	Table 2
(b)	"The results of the mediation program, including the number of mediations requested by housing counselors and attorneys."	Tables 4, 5 and 6
(b)	"The number of certifications of good faith issued, the number of borrowers and beneficiaries who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the numbers of loans restructured or modified."	Table 7
(b)	"The change in the borrower's monthly payment for principal and interest, and the number of principal write-downs and interest rate reductions."[1]	Table 4
(b)	"To the extent practical, the number of borrowers who report a default within a year of restructuring or modification."	Commerce conducted a survey in 2014, which determined that this information is not available.
(c)	"The information received by housing counselors regarding outcomes of foreclosures."	Table 3
(d)	"Any recommendations for changes to the statutes regarding the mediations program."	Recommendations

[1] Chapter 61.24.163 RCW requires Commerce report on "the change in the borrower's monthly payment for principal and interest." This data is contained in private documents that are not available to Commerce and is therefore not included in this report.

Summary of issues and recommendations

Commerce identified and briefly summarized three primary issues and two recommendations below. For more information on these issues and recommendations, please see the full sections within the report.

Issues recognized by Commerce:

- **Expected increase of referrals due to borrowers exiting forbearance:** The program is preparing for an increase in referrals due to the sizeable number of borrowers exiting COVID-19-related mortgage forbearance programs. We expect an increase in referrals beginning in January 2022.

- **Introduction of the Homeowner Assistance Fund (HAF):** The state of Washington received $173.1 million from the federal government through the American Rescue Plan for the Homeowner Assistance Fund. However, the outlined funding structure of these new funds might not meet the potential program needs.

- **Current reporting structure:** The current statutory reporting requirements for the Foreclosure Fairness Program are outdated and an unnecessary allocation of resources and time. The current report structure does not allow stakeholders and legislators to access the most current program data.

Commerce recommendations:

- **State support for the Homeowner Assistance Fund:** The federal government implemented a dedicated of $9.3 billion fund through the American Rescue Plan called the Homeowner Assistance Fund (HAF).[2] Washington was allotted $173.1 million through the plan, with 10% available immediately. However, the current structure of the funding might not provide the opportunity to serve our communities effectively without additional state funding. For an overview of the Homeowner Assistance Fund and the American Rescue Plan, please see the section titled "American Rescue Plan Act (2021)."

- **Revise the legislative report requirements for the program:** Commerce recommends that the program's legislative reporting requirements be changed to allow dynamic web-based data that better reflect program performance. This will ensure that legislators and stakeholders have the most current information available.

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[2] U.S. Department of the Treasury, "Homeowner Assistance Fund: Data and Methodology for State and Territory Allocations," [Homeowner Assistance Fund Data and Methodology clean20210414 (treasury.gov)](treasury.gov)

Background

Program history

The Legislature created the Foreclosure Fairness Program (FFP) in 2011 in response to the significant number of foreclosures resulting from the Great Recession. The program provides an opportunity for borrowers facing foreclosure to find alternatives by demanding mediation with their lenders (beneficiaries). In 2013, the second full year of the program's operation, there were more than 37,000 foreclosures statewide,[3] and the mediation program received more than 2,500 referrals.[4] As the state recovered from the recession, the number of foreclosures and referrals declined steadily.

Agency partner roles and responsibilities

The Foreclosure Fairness Act (FFA) assigns the primary responsibility for developing and managing the FFP to the Department of Commerce (Commerce).

Commerce partners with the following entities to perform the work:

- Washington State Housing Finance Commission (WSHFC)
- Office of the Attorney General (AGO)
- Office of Civil Legal Aid (OCLA)

The Foreclosure Fairness Program also collaborates with:

- Dispute Resolution Centers
- Mediators
- Attorneys (private and civil legal aid)
- Housing counselors

Washington State Department of Commerce

Commerce is charged with the program's overall management and administration of the Foreclosure Fairness Fund. Commerce is responsible for recruiting, training and approving mediators. Commerce also receives referrals and assigns mediators to eligible cases. Additionally, Commerce is responsible for maintaining a list of approved foreclosure mediators. The act identifies the following groups as eligible to become foreclosure mediators:

- Attorneys
- Retired judges
- U.S. Department of Housing and Urban Development-approved counselors
- Employees and volunteers of Dispute Resolution Centers

Commerce requires participating mediators take foreclosure mediation training and have additional documented mediator training and experience.[5] As of November 2021, there are 63 active mediators on

[3] From unpublished data provided by Zillow.
[4] From Commerce Foreclosure Fairness Program database.
[5] Washington State Department of Commerce, "Interested in Becoming a Mediator?" (2013), ffp-interested-in-becoming-mediator-2013.pdf (wa.gov)

Commerce's approved list. Mediators have full discretion in conducting the sessions and determining outcomes.

Washington State Housing Finance Commission

The Washington State Housing Finance Commission (WSHFC) administers a homeowner counseling program. The commission also oversees the toll-free Homeownership Resource Hotline (1-877-894-HOME (4663)), which provides homeowners with free foreclosure prevention counseling. Much of the FFP funds directed to the WSHFC support free-to-consumers foreclosure-related housing counseling services throughout the state, including:

- Information and referrals
- Preparation for and representation at meet-and-confer sessions
- Preparation for and representation at mediation
- Homeowner education and participation in community projects benefiting homeowners

Washington State Office of the Attorney General

The Office of the Attorney General's Consumer Protection Division created the Foreclosure Compliance Program to enforce the Deed of Trust Act. The Foreclosure Compliance Program investigates complaints related to foreclosure.

Office of Civil Legal Aid

The Office of Civil Legal Aid (OCLA) contracts with qualified legal aid programs to provide no-cost legal assistance to low- and moderate-income homeowners in matters related to foreclosure. Commerce partners with OCLA to provide this assistance. OCLA grants all of the Foreclosure Fairness Act funds it receives to Northwest Justice Project (NJP), which provides statewide support for this work.[6]

NJP provides housing counseling services and no-cost legal services to low- and moderate-income homeowners facing foreclosure on their primary residences. These legal services include representation in defense of all forms of foreclosure, including mortgage, property tax, utility lien, court-ordered forced-sale and homeowner/community associations.

Borrowers in danger of losing their homes often need help addressing civil legal issues, in addition to foreclosure. In certain instances, NJP’s advocates address other consumer needs to achieve greater economic security. That might mean challenging or negotiating other debts and liabilities or helping the homeowner apply for property tax relief to reduce monthly expenses. In instances beyond their expertise, the advocates refer homeowners to other resources or community partners.

[6] Data representing NJP's housing counselor services is included in data provided by the WSHFC.

Program outcomes

Program data is collected and presented in two ways:

1. Cumulative program data over the life of the program, from state fiscal year 2012 through 2021

2. Data from state fiscal year 2021

Singular fiscal year data does not always reflect the full impact on borrowers, neighborhoods and communities, as some mediations span several years. In some cases, the tables below compare data from the FFP's life to data from state fiscal year 2021 to provide a complete picture of program performance.

Special note on program data and performance

State fiscal year 2021 is the first full fiscal year affected by the COVID-19 pandemic. Due to this, the overall data specific to state fiscal year 2021 reflects abnormally low activity compared to previous years. For example, overall referrals to mediation in fiscal year 2021, as seen in Table 2, were the lowest in program history due to the federal protections provided by the CARES Act and other mortgage relief assistance. On the other hand, the number of clients served and referrals made by housing counselors to other service agencies were much higher than in previous years. The Washington State Housing Commission believes this is due to homeowners' financial uncertainty during the COVID-19 pandemic.

Program data

The following tables and figures, Tables 2-7, show data as required in statute. For a navigational guide through the data and the statutory reporting requirements, refer to Table 1 above. Table 2 is an overview of mediation referrals the FFP has received overall and specifically in state fiscal year 2021.

Table 2: Mediation referral cases since program start and state fiscal year 2021

Mediation referrals	Since program start, SFY 2012-2021	SFY 2021 cases
Total mediation referrals received	11,934	104*
Referred by housing counselors	5,198 (44%)	55 (53%)
Referred by attorneys (private and civil legal aid)	6,736 (56%)	49 (47%)
Cases assigned to mediators (includes cases that have been mediated, closed or currently pending an outcome)	1,0784	92
Cases completed/closed	1,4110	216
Cases ineligible for mediation (typically because the beneficiary was exempt or the referral missed the statutory eligibility window)	1,211	14

Source: Washington State Department of Commerce

* Uncharacteristically low due to the protections provided to homeowners in the CARES Act

Table 3: Housing counseling agencies' overall case outcomes[7]

Category description	Cases in SFY 2021
Outputs	
Clients	3,243
Referrals to other services	5,541
Outcomes	
Pending outcomes (still in counseling)	643
Withdrawals from counseling	16
Home retention arguments	341
Non-retention agreements	26
No agreements	160
Foreclosures	3

Source: Washington State Housing Finance Commission

[7] The number of "Clients" and "Referrals to other services" is significantly higher than previous years due to increased outreach by homeowners facing uncertainty during the COVID-19 pandemic.

Tables 4, 5 and 6 reflect the outcomes of cases certified since the program's inception, with state fiscal year 2021 results broken out. These tables contain data from the FFP database and include referrals from both housing counselors and private attorneys.

Table 4: Mediation session outcomes in cases where an agreement was reached

Outcomes	SFY 2012 - 2021	SFY 2021
Mediation session(s) occurred — agreement reached	3,084	66
Borrower stayed in home (subcategories below are not mutually exclusive)	2,381	54
Reinstatements	215	7
Repayments	79	8
Extension	204	5
Adjusted rate to fixed rate	230	1
Amortization extensions	521	15
Interest rate reductions	973	19
Principal reductions	118	0
Monthly principal payment reductions	386	6
Monthly interest payment reductions	273	5
Refinances	68	5
Other loan structures/modifications	919	13
Principal forbearances	178	4
Interest forbearances/write-offs	47	3
Fees and penalties forbearances/write-offs	36	1
Other forbearances[8]	73	3

Source: Washington State Department of Commerce

[8] Because of the way the certification is structured, Commerce is not able to identify unique restrictions and modifications.

Table 5: Outcomes in cases in which no mediation occurred

Outcomes in which no mediation occurred	SFY 2012-2020	SFY 2021
Number of cases in which no mediation occurred	4,281	114
Home-retention agreement reached before session	2,274	79
Non-retention agreement reached before session	303	12
Borrower withdrawal from mediation (not included in other categories)	681	4

Source: Washington State Department of Commerce

Table 6: Mediation session outcomes in cases in which borrower did not stay in home

Non-retention (categories are not mutually exclusive)	SFY 2012-2021	SFY 2021
Deeds in lieu	55	0
Short sales	237	1
Voluntary surrenders	48	0
Cash for keys	30	0
Other non-retention agreements	449	11

Source: Washington State Department of Commerce

Table 7: Mediation session outcomes in cases with findings of not in good faith

Findings of not in good faith	SFY 2012 - 2021	SFY 2021
Borrower not in good faith[9]	1,067	15
Beneficiary not in good faith	347	4
Both borrower and beneficiary not in good faith[10]	31	0

Source: Washington State Department of Commerce

[9] Typically reported reasons for lack of good faith for either or both the borrower and beneficiary include: Lack of timely or accurate provisioning of documents to the mediator or other party; failure to appear at or participate in mediation; failure to pay the mandated share of the mediation fee; beneficiary's representative was not authorized to make binding decisions.
[10] Even though the certification specifically tracks parties "not in good faith," multiple outcomes are not explicitly tracked as being in "good faith."

Challenges and programmatic opportunities

During state fiscal year 2021, the number of foreclosures and referrals to mediation decreased significantly due to protections provided to homeowners in the CARES Act. In state fiscal year 2019, the most recent full year before COVID-19, there were 140 quarterly referrals on average. During state fiscal year 2021, the average was 26. While the number of referrals for mediation dropped significantly, the legal aid and housing counselor organizations have experienced an increase in the number of calls from homeowners seeking to understand their options. With many pandemic-related homeowner protections due to expire, the state faces the possibility of a significant increase in foreclosures and referrals for mediation.

It is hard to predict when the program will see an increase in referrals that address default and foreclosure actions or how much volume will increase. It is possible that many who were in foreclosure before seeking forbearance and those unable to address the issues that led to entering forbearance will need to seek housing counseling, civil legal aid or mediation assistance. However, the program expects that the forbearance protections provided time to resolve the issues that led to entering forbearance for some homeowners.

CARES Act (2020) and forbearance

The CARES Act and other federal and state actions provided significant protections for most homeowners facing foreclosure. The CARES Act covered all federally-backed mortgages, which are about 90% of mortgages in Washington, according to estimates from the Department of Financial Institutions. The act provided a mortgage payment forbearance option for eligible borrowers who have suffered a financial hardship due to the COVID-19 pandemic.[11] Forbearance is a postponement of mortgage payments but does not forgive the debt. Once borrowers exit forbearance, options vary depending on the borrower's situation and the options their lender is able or willing to provide. In situations where there does not seem to be a mutually beneficial option for the lender and borrower, a referral to mediation through the FFP is one way the borrower may avoid foreclosure.

People who have not requested a forbearance option due to the pandemic can do so from Oct. 1, 2021, until the end of the COVID-19 national emergency. The initial forbearance period will last up to six months and can be extended another six months if the initial period expires during the pandemic. This applies to all FHA, VA and USDA borrowers.[12] The multiple extensions of these protections provided significant safeguards for homeowners facing foreclosure and eviction throughout the pandemic. However, with many people expected to exit forbearance beginning in January 2022, a significant rise in referrals is likely to occur.

Table 8 shows the timelines for forbearance protections, depending on when the borrower initially entered into forbearance. This table includes the possible forbearance timelines from the beginning of the pandemic to the most recent change made on Sept. 27, 2021.

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[11] HUD "CARES Act Forbearance Fact Sheet," IACOVID19FBFactSheetConsumer.pdf (hud.gov)
[12] U.S. Department of Housing and Urban Development, "Mortgagee Letter 2021-24," ML - C19 FB HECM Extension (6) 9.21.21 (hud.gov)

Table 8: COVID-19 forbearance timelines

Initial forbearance date	Initial forbearance period	Additional forbearance period	Forbearance extensions	Maximum forbearance period
March 1-June 30, 2020	Up to 6 months	Up to 6 months	Up to 6 months (in 3 month increments)	Up to 18 months
July 1-Sept. 30, 2020	Up to 6 months	Up to 6 months	Up to 3 months	Up to 15 months
Oct. 1, 2020-June 30, 2021	Up to 6 months	Up to 6 months	None	Up to 12 months
July 1-Sept. 30, 2021	Up to 6 months	Up to 6 months	None	Up to 12 months
Oct. 1, 2021-End of the COVID-19 national emergency	Up to 6 months	Up to 6 months (if the initial forbearance will be exhausted and expires during the COVID-19 national emergency)	None	Up to 12 months (if the borrower is eligible for the additional COVID-19 forbearance period)

Source: U.S. Department of Housing and Urban Development

The American Rescue Plan Act (2021)

The American Rescue Plan,[13] signed into law by President Joe Biden in March 2021, is a $1.9 trillion investment in the U.S. economy to assist with COVID-19 pandemic recovery efforts.[14] The American Rescue Plan builds upon federal legislation introduced in 2020 by the Trump administration to assist with the economic response to the pandemic, such as the CARES Act and the Consolidated Appropriations Act. The American Rescue Plan provides several types of financial relief to eligible U.S. and Washington residents, including the Homeowner Assistance Fund (HAF). The HAF establishes a large funding pool for each state to assist struggling homeowners through loans and grants to catch up with their mortgage payments.[15]

Homeowner Assistance Fund (HAF)

The U.S. Department of the Treasury characterizes the HAF as a tool to prevent mortgage delinquencies and defaults, foreclosures, loss of utilities or home energy services, and displacement of homeowners experiencing financial hardship after Jan. 21, 2020.[16] The American Rescue Plan allotted $9.3 billion to the program, $173.1 million of which is being awarded to Washington.[17] The Legislature authorized Commerce to use these funds to assist Washington residents dealing with housing crises. Commerce, the Washington State Housing Finance Commission, and other housing agencies have worked together to plan for the distribution and utilization of these funds.

The current structure of the HAF program involves the creation of a pilot program in the first half of state fiscal year 2022, with 10% of the funds directly available for the pilot and the rest of the funds available through 2025. The public comment period for the pilot program and the overall utilization of these funds was in June 2021.

HAF pilot plan (2021)

The state partners have two goals for the HAF pilot,[18] both of which are directed and led by guidance from the U.S. Treasury. These goals are intended to be broad, and ongoing adjustments to both the pilot and final program are expected. The two goals for the HAF pilot are:

3. To maintain and increase Washington's existing network of foreclosure support for all homeowners and begin offering direct financial foreclosure prevention assistance to homeowners earning up to 150% of the Area Median Income (AMI). The HAF pilot will also include a specific focus on homeowners who could not receive forbearances during the COVID-19 pandemic and homeowners facing an imminent loss of housing.

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[13] H.R. 1319, "American Rescue Plan Act of 2021," https://www.congress.gov/bill/117th-congress/house-bill/1319/all-actions?overview=closed#tabs
[14] NCSL, "The American Rescue Plan Act Provisions," The-American-Rescue-Plan-Act-Provisions_v01.pdf (ncsl.org)
[15] The White House, "The American Rescue Plan," American-Rescue-Plan-Fact-Sheet.pdf (whitehouse.gov)
[16] U.S. Department of the Treasury, "Homeowner Assistance Fund," https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund
[17] U.S. Department of the Treasury, "Homeowner Assistance Fund: Data and Methodology for State and Territory Allocations," Homeowner Assistance Fund Data and Methodology clean20210414 (treasury.gov)
[18] From Department of Commerce "American Rescue Plan Act - Homeowner Assistance Fund - PROGRAM PILOT," (July 1, 2021)

4. To inform planning for and design of the final HAF program, with the intent to submit a formal program plan to Treasury by Dec. 31, 2021 (subject to change).

The pilot is the first step in the overall distribution of the $173.1 million available to assist Washington homeowners. Given the proven success of Washington's foreclosure prevention network and the FFP, the HAF pilot will bring immediate relief. It will also serve as the necessary foundation to build the full HAF program using the remainder of Washington's funds under the American Rescue Plan Act.

The funding distribution structure of the HAF pilot program is expected to be complete in late 2021, with the distribution of the first funds occurring shortly after that. However, once the program begins the distribution process, there may be a shortfall in funding for significant program components, including legal aid and housing counseling.

Moving forward

Although the immediate future of the foreclosure climate in Washington remains unknown, the program is making plans to increase capacity to meet higher demands, if necessary. There are also a series of program improvements and developments that have been made or are being implemented to assist with the future facilitation of the program.

ESHB 1108 (2021)

During the 2021 legislative session, the Legislature passed ESHB 1108.[19] ESHB 1108 makes several changes to the FFP, both in response to the direct effects of the COVID-19 pandemic and recommendations made in the state fiscal year 2020 FFP Report. This legislation contains several changes to the program, which took effect immediately upon signing due to emergency clause. Outlined below are the changes ESHB 1108 made to the Foreclosure Fairness Program and what the program has done to integrate the changes:

- **Removal of owner-occupied requirement:** ESHB 1108 removes the owner-occupied requirement from the eligibility criteria for a referral, except if the borrower is a successor-in-interest. This change was included in the bill's emergency clause and took effect immediately upon signing in May 2021. The definition of residential real property, in terms of the FFP, includes properties of up to four units, whether or not the property is occupied. Due to this change, the referral form produced by Commerce and used by referrers was updated to clarify the change in eligibility criteria. Program staff also alerted referrers, borrower representatives and mediators of the expanded eligibility criteria for referrals.

- **Ineligibility revision:** Expands ineligibility of referrals if the property is vested in a partnership, corporation or limited liability company when the notice of default is issued. If the property is vested when the notice of default was issued, the lenders to these properties cannot be mandated to engage in mediation.

- **Beneficiary exemption update:** The updated rules surrounding beneficiary exemption are three-fold. ESHB 1108 addresses a revision in fee exemptions for calendar years 2021 and 2022, mediation exemptions for calendar years 2021 and 2022, and an updated exemption structure beginning in 2023.

Before ESHB 1108 was introduced, beneficiaries could apply for exemption from paying fees into the FFP if they recorded fewer than 50 notices of trustee sales in Washington during the previous calendar year. The CARES Act became law at the end of March 2020, and foreclosures in Washington plummeted for the last three quarters of calendar year 2020. The significant drop in foreclosure activity allowed for the possibility that many institutions to whom this exemption would not normally apply qualified for an exemption for calendar year 2021. After the passage of ESHB 1108, FFP staff requested beneficiaries resubmit fee and mediation exemptions, previously submitted in January 2021, to reflect their 2019 records instead of their 2020 records. When foreclosure numbers decreased in 2020, institutions that typically would not qualify for the exemption suddenly did. The exemption was created without the forethought of a pandemic. The response to that

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[19] ESHB 1108 was codified as Chapter 151, Laws of 2021. The session law is available at this link. You can also view a legislative report produced by Commerce on our website: Washington State Foreclosure Fairness Program.

pandemic created a situation where institutions that would not otherwise have been exempted from the fees and mediation would be exempted as a result of external forces on their business volume, rather than normal business volume. This change means these institutions are again required to pay fees into the FFP account.

The language of the bill includes the following:

- **Fee exemption:** Only financial institutions recording fewer than 50 notices of trustee sales in the 2019 calendar year qualify for a fee exemption for the 2021 and 2022 calendar years.
- **Mediation exemption:** Only financial institutions that were not beneficiaries of deeds of trust in more than 250 trustee sales of residential real property in the 2019 calendar year qualify for an exemption from mediation in the 2021 and 2022 calendar years.
- **Funding mechanism change:** Beginning Jan. 1, 2022, the funding mechanism for the FFP will be based on the number of notices of default a beneficiary issues, instead of the number of notices of trustee sales recorded. This change rectifies the funding shortfalls of the FFP, an issue that was evident before the COVID-19-related decrease in foreclosures. This new fee will be set at $250 per NOD recording, and beneficiaries will remit a lump-sum payment to the program quarterly.
- **Future fee exemption structure:** Beginning Jan. 1, 2023, fee exemption status will be based on the number of notices of default a beneficiary issued in the previous calendar year. Currently, fee exemptions are based on the number of notices of trustee sales. In 2023, financial institutions seeking an exemption from FFP fees must record fewer than 250 notices of default in the previous calendar year to qualify.

The personal information of borrowers obtained by Commerce included in notices of defaults is exempt from public disclosure to protect homeowners' privacy.

The future of mediation is virtual

The COVID-19 pandemic is changing how the world operates in various ways. One of these major changes is the use of virtual and remote business tools. Since the inception of the Foreclosure Fairness Program in 2011 and the ultimate beginning of the program in 2012, mediators were assigned eligible cases based on their specified county-based service areas. However, this structure created incomplete representation for Washington's rural counties due to the lack of mediators residing in or near those areas. Therefore, if all parties agree, Commerce interprets the current statutes to allow virtual mediations. Virtual mediation allows borrowers to access the program with mobility or transportation challenges. If virtual mediation is requested and accepted, the mediator would still be selected based on their county service area.

Ultimately, the program aims to maintain a virtual option for all mediation cases if all parties agree. Accordingly, Commerce is implementing changes that allow virtual mediation in any county if the mediator and all parties have agreed to the virtual option. However, as the current FFA statute states, the borrower will continue to have the right to request in-person mediation in the county in which they reside.

Throughout the pandemic, Commerce provided regular guidance to FFA mediators on conducting mediations in compliance with the governor's safety guidelines. As a result, since the pandemic began, almost all mediations were virtual with parties participating by phone or video conference platform. The pandemic forced full integration of virtual environments, which means that previously underserved smaller and rural counties now have greater access to mediation through virtual sessions.

New program database implementation

Commerce has been developing a new mediation database throughout state fiscal year 2021. The new database will help process referrals and certifications more efficiently and streamline the process by incorporating a self-service component for external users. External users will be able to enter referral information directly into the database, increasing Commerce efficiency because staff will no longer be required to transcribe information from a digital referral form into the database. This new system is a direct investment in the overall program and will be a much-needed tool once foreclosure mediation referrals increase.

Improvements of the new database

Through an approved SAW account, external users will be able to make the following actions directly:

- Referrers will be able to submit mediation referrals.
- Mediators will be able to submit case certifications.
- Beneficiaries will be able to submit quarterly fee reports.
- Beneficiaries will be able to file fee and mediation exemption requests.

Commerce staff are using the new FFP database internally. External testing will begin toward the end of 2021 or in early 2022. Once the testing phase concludes, the official external launch of the database is planned for 2022 for all referrers, mediators and beneficiaries. The external launch timeline is subject to change based on the findings made during the external testing period.

New mediator onboarding and training

Currently, the program's mediators have sufficient capacity to meet program needs as the state returns to pre-COVID activity levels. However, with the real possibility that referrals will rise significantly as forbearances end and recognizing a low attrition rate as mediators retire, the program is preparing to bring on new mediators as needed. Having consulted with Dispute Resolutions Centers and independent mediators already with the program, we are developing a new web-based on-demand training to orient new mediators and provide current mediators an opportunity to update their knowledge base. The program intends to recruit and train mediators as needed to increase capacity.

Recommendations

Revise document reporting requirement

By statute, Commerce must provide an annual report to the Legislature. Commerce proposes moving the reporting mechanism to the Foreclosure Fairness Program (FFP) website, where it can be updated quarterly in a dynamic format beginning in state fiscal year 2022. Since the beginning of the FFP, these reports have been static narrative documents out of sync with the FFP's fluid environment. FFP decision making is driven by an active and engaged stakeholder group including members of the Legislature, Commerce staff, borrowers' advocates (housing counselors and attorneys), beneficiaries' advocates (attorneys and trustees), and representatives from the financial institutions (lenders, mortgage bankers and credit unions). Often, key meetings are held and legislative decisions are made after the report is published. Once the report is published and distributed internally and externally, it often contains information that is at least six months out of date.

As technology and direct access to information continue to evolve, the methods of reporting data and activity for the FFP should be addressed. The structure and requirements of the annual legislative report do not meet the program's or stakeholders' needs. Technology allows Commerce to present FFP data and performance metrics on our website in a real-time and quarterly fashion. This technology should be used to replace the annual static report with a streamlined, current and accessible datasheet.

Commerce recommends that the required data be provided quarterly on the program website instead of an annual report starting in state fiscal year 2022.

State support for the Homeowner Assistance Fund

The HAF is an excellent tool for the state of Washington to help struggling homeowners avoid foreclosures whenever possible. However, HAF's current funding structure might not adequately fund housing counseling and legal aid. U.S. Treasury guidance limits legal aid and housing counseling activity to 5% of the fund. Given the staffing levels necessary to address the anticipated volume of foreclosure activity as forbearances end, 5% of the fund provides just over a year of funding for foreclosure prevention staff. The program intends to submit a final plan increasing the allocation of funds to counseling and legal aid efforts, but this also reduces the amount of direct assistance available. This is also subject to U.S. Treasury approval.

An infusion of state funds may be needed to reconcile this funding shortfall, meet the need of the new program, and help Washington residents who need homeowner and mortgage assistance. Housing counseling and legal aid advocates are the cornerstones of the HAF program, and additional funding may continue to be necessary. However, the exact amount is unknown; as the pilot program begins distributing the first round of funding, the size of the funding gap will become clearer.