



Department of Commerce

Foreclosure Fairness Program

Annual Report on Program Performance

Pursuant to RCW 61.24.163

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Report to the Legislature
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Washington State Department of Commerce

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Executive Summary

Overview

This annual report to the Legislature of the Foreclosure Fairness Program (FFP) is submitted pursuant to chapter [61.24.163 RCW](#). As required by statute, this report contains:

- “The performance of the program including the numbers of borrowers who are referred to mediation by a housing counselor [4,552] or attorney [6,277].” For details, see Figure 6.
- “The results of the mediation program, including the number of mediations requested by housing counselors and attorneys [total of 10,829].” For details, see Figure 6.
- “The number of certifications of good faith issued¹, the number of borrowers [289] and beneficiaries [260] who failed to mediate in good faith², and the reasons for the failure to mediate in good faith³, if known, the numbers of loans restructured or modified⁴.”
- “The change in the borrower’s monthly payment for principle and interest⁵, and the number of principal write-downs and interest rate reductions.” See Figure 9.
- “To the extent practical, the number of borrowers who report a default within a year of restructuring or modification.” A review was done in 2014. The results were inconclusive, and it was determined not to be practical. For more details, see Footnote 24.
- “The information received by housing counselors regarding outcomes of foreclosures.” This information is included in the report from the Housing Finance Commission, Figure 5.
- “Any recommendations for changes to the statues regarding the mediation program.” Commerce is not seeking specific legislative changes in the 2019 legislative session. See the Recommendations section for more details.

¹ Even though the certification specifically tracks the parties “not in good faith,” there are multiple outcomes that are not explicitly tracked as good faith.

² There were also 15 cases in which both the beneficiary and the borrower were found “not in good faith.”

³ Typically, reported reasons for lack of good faith for either or both the borrower and the beneficiary include:

- Lack of timely or accurate provision of documents to the mediator and the other party.
- Failure to timely appear at, or participate in, mediation.
- Failure to pay the person’s share of the mediation fee.
- Beneficiary’s representative is not being authorized to make binding decisions.

⁴ From the way the certification is structured, we are not able to uniquely identify restructures and modifications. For more information, see Figure 9.

⁵ Chapter 61.24.163 RCW requires Commerce to report on “the change in the borrower’s monthly payment for principle and interest.” This data is contained in private documents that are not available to Commerce and, therefore, is not included in this report.

This report also contains the following additional content provided for context:

- An assessment of the current state of foreclosures in Washington.
- An analysis of changes to the Foreclosure Fairness Act (FFA) (Chapter 58, Laws of 2011).
- Background on changes to the FFA prior to 2018.
- A description of how Foreclosure Fairness Program funds are distributed.
- A description of the mediation process.

Key Findings

Declining Foreclosures and Program Revenue

Favorable conditions in the real estate market, providing alternatives to foreclosure, and enhanced residential mortgage lending standards have resulted in a decline in foreclosures since 2013. That decline created a financial challenge for the program, as revenues fell to a level that made it difficult to match the costs associated with meeting the requirements of the statute.

In response, state partners (described in the “Program Overview”) worked diligently to reduce costs and released \$350,000 of reserve funds to cover the fiscal year 2018 costs. The Legislature passed Residential Real Property – Abandonment and Foreclosure (Chapter 306, Laws of 2018), providing a \$75 increase to the Notice of Trustee Sale fee. At the time of this report, the new fee structure had recently been implemented, so more time is needed to determine whether this increase is enough to maintain the statewide infrastructure of the program during periods of lower foreclosure activity.

Changes in the Foreclosure Field

With the sunset of the federal Homeowners Affordable Modification Program (HAMP) at the end of 2016, the FFP is now the only government program available to Washington homeowners that provides mediation as a part of the foreclosure process with a mechanism to bring beneficiaries to the table to identify alternatives to foreclosure. As the Washington economy has improved and the number of foreclosures has fallen to pre-2008 numbers, foreclosure can be seen less as a community crisis and more as a personal crisis for the households involved. The FFP is still important for those households facing the crisis of foreclosure.

Summary of Mediation Results

Since the program’s start in 2011 through June 30, 2018, the program received 10,829 referrals, with 9,060 of those cases closed or certified by the mediator. Of the mediation cases closed or certified, 60 percent ended with an agreement between the homeowner and beneficiary, most of which are home-retention agreements. The remaining cases are currently pending or were

deemed ineligible for mediation.⁶ In fiscal year 2019, the program anticipates receiving about 700 referrals for mediation.

Importance of Meaningful and Timely Data

Data on the precise number of fees that should have been collected and the total volume of foreclosures in the state eligible for the program were not readily available until state fiscal year 2016. Before that, beneficiary fees were tied to Notices of Default, nonrecorded documents sent directly to the homeowner and not publicly available.⁷ The 2015 Legislature tied beneficiary fees to Notices of Trustee Sales, recorded documents that are publicly available. This change was implemented to provide better visibility into foreclosure activity.

The 2018 Legislature made changes to the Notice of Trustee Sale and recording process to provide additional insight into foreclosure activity. It will be more clear how well this worked at the end of fiscal year 2019, when a full year of data are available from county auditors. However, even with a common form and process, not all counties use the same recording system.

For more information, see the “Funding” section. For more information about the changes in statute, see the “Legislative Amendments to the Foreclosure Fairness Act” section.

⁶ When cases are found to be ineligible, it is typically because the beneficiary was exempt, or the timing of the referral missed the window of eligibility specified in the Foreclosure Fairness Act.

⁷ For more detail, see “2015 Amendments” in Appendix A.

Introduction

Background

The Washington State Legislature passed the 2011 Foreclosure Fairness Act (Chapter 58, Laws of 2011) to reshape the non-judicial foreclosure process in Washington to help protect homeowners from avoidable foreclosures. The intent of the program is to ensure that, even when foreclosure is unavoidable, the process is fair and transparent, and gives both the borrower and the beneficiary the opportunity to meet and make well-informed decisions.

Program Overview

Mediation

Mediation, an integral component of the program, is paid through a separate fee, shared equally between the beneficiary and homeowner involved in the mediation. Housing professionals agree that keeping people in their homes is not the only possible positive outcome of mediation. Mediation gives borrowers the chance to understand their options and requires beneficiaries to explain why some options may not be available.

Agency Partner Roles and Responsibilities

The FFA assigns the primary responsibility for developing and managing the Foreclosure Fairness Program to the Department of Commerce (Commerce). This work is done in partnership with the Washington State Housing Finance Commission, the Office of the Attorney General, and the Office of Civil Legal Aid, and in collaboration with Dispute Resolution Centers,⁸ mediators, attorneys (private and civil legal aid), and housing professionals. Initially the Department of Financial Institutions was providing education and outreach on foreclosure prevention, but with decreased funds available, Commerce assumed these responsibilities on an as-needed basis.

The Department of Commerce initiated and directed a program and development phase that involved all of the state agency partners. This process determined the following agency roles and responsibilities:

- Washington State Department of Commerce: Commerce is charged with the overall management of the program and the administration of the Foreclosure Fairness Fund and is responsible for training, approving and maintaining a list of mediators and assigning them to mediations.

⁸ Dispute Resolution Centers are a statewide network of organizations that provide alternatives to legal remedies. The state has provided funding for these organizations for several years to reduce court caseloads by providing affordable mediation to resolve several types of disputes, including parenting plans, divorce, landlord-tenant issues, and most recently, foreclosure. Learn more: <http://resolutionwa.org/>

- Washington State Housing Finance Commission: The Commission administers a homeowner-counseling program, as required by the Act. The Commission oversees the toll-free Homeownership Resource Hotline, which provides homeowners free foreclosure prevention counseling.
- Washington State Office of the Attorney General (AGO): The Consumer Protection Division of the AGO created the Foreclosure Compliance Program, as required by and, to enforce, the Deed of Trust Act. The purpose of the Foreclosure Compliance Program is to investigate consumer protection complaints related to foreclosure.
- Office of Civil Legal Aid (OCLA): The OCLA contracts with qualified legal aid programs to provide free legal assistance to low- and moderate-income homeowners in matters related to foreclosure.

Funding

The program is funded through fees paid by mortgage lenders (“beneficiaries”). As of the second quarter of fiscal year 2018, beneficiaries are required to pay a \$325 fee into the Foreclosure Fairness Fund for each original Notice of Trustee Sale recorded against owner-occupied residential real properties. Beneficiaries who record fewer than 50 Notices of Trustee Sale in the calendar year are exempt from this fee. The fund pays for homeowner counseling, development and operation of the program, enforcement and consumer protection, foreclosure prevention outreach and education, and legal assistance for low- and moderate-income homeowners.

Beneficiaries initially paid a \$250 fee into the Foreclosure Fairness Fund for each Notice of Default, a document sent directly to the homeowner and not publicly available. As a private document, it was impossible to determine the total fee income that should have been received, and an amount due by each beneficiary. Effectively, the program operated on the honor system.

To address the inability to determine how much fee income should be received, the 2016 Legislature passed Foreclosure Fairness Account – Expenditures and Remittances (Chapter 196, Laws of 2016). As a result, beneficiaries now report and pay for each original Notice of Trustee’s Sale, which is a recorded, publicly available document. As of the second quarter of Fiscal Year 2018, legislation increased the fees beneficiaries pay to \$325.⁹

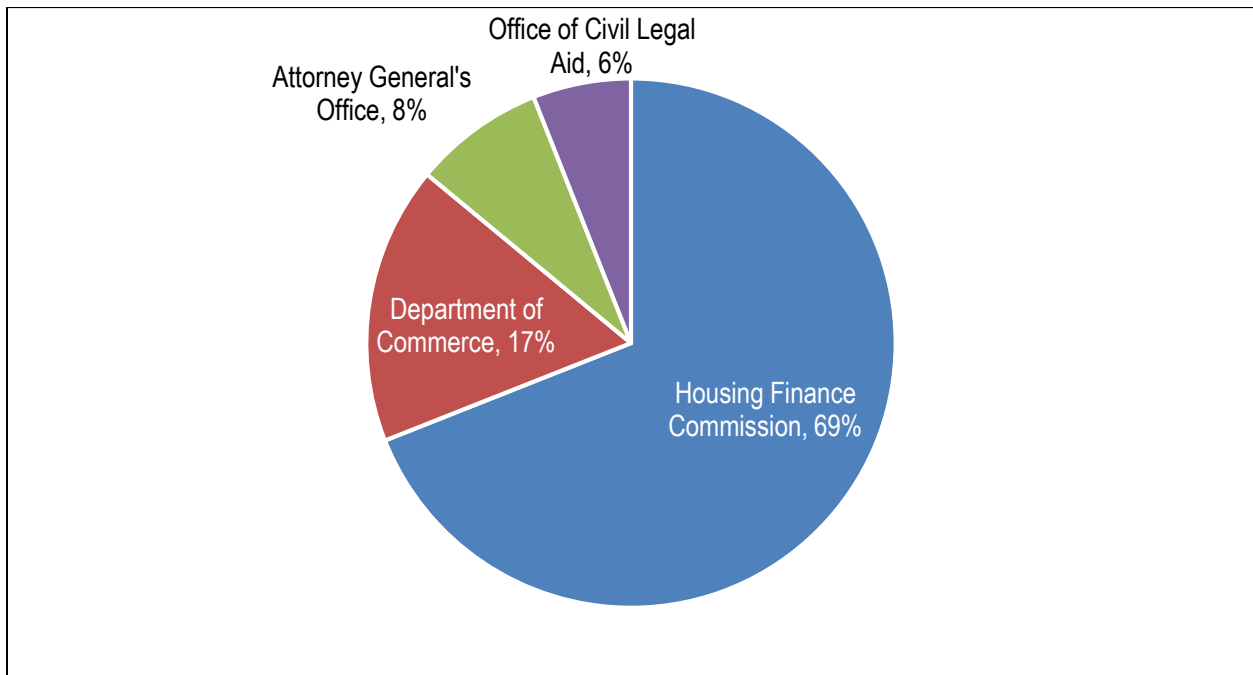
⁹ Before July 1, 2016, federally insured depository institutions that issued fewer than 250 Notices of Default in a year could claim their exemption from these fees during the following calendar year. Beginning July 1, 2016, federally insured depository institutions that record less than 50 Notices of Trustee’s Sale in the previous year are exempt from the fee.

The funds pay for:

- Free homeowner foreclosure counseling.
- Consumer protection and act enforcement.
- Development and oversight of the mediation process (mediators are paid by a separate fee split between the homeowner and the beneficiary).
- Foreclosure prevention outreach and education.
- Free legal assistance for low- and moderate-income borrowers.

The passage of Foreclosure Fairness Account – Expenditures and Remittances (Chapter 196, Laws of 2016) also modified RCW 61.24.172, which outlines the distribution of funding to the agencies providing services under the Act. Effective July 1, 2016, \$400,000 per biennium will be allocated to fund the Homeownership Resource Hotline. The partner agencies receive a percentage of the remaining funds distributed are shown in Figure1.

Figure 1: Foreclosure Fairness Program Distribution of Funds to Partner Agencies



Favorable conditions in the real estate market, providing alternatives to foreclosure, and enhanced residential mortgage lending standards have resulted in a decline in foreclosures since 2013. That decline created a financial challenge for the program, as revenues fell to a level that was unable to match the costs associated with meeting the requirements of the statute. Figure 2 shows the declining revenues and expenditures for the program from fiscal year 2012 through fiscal year 2018.

Figure 2: Foreclosure Fairness Fund Revenues and Expenditures, FY 2012 through FY 2018

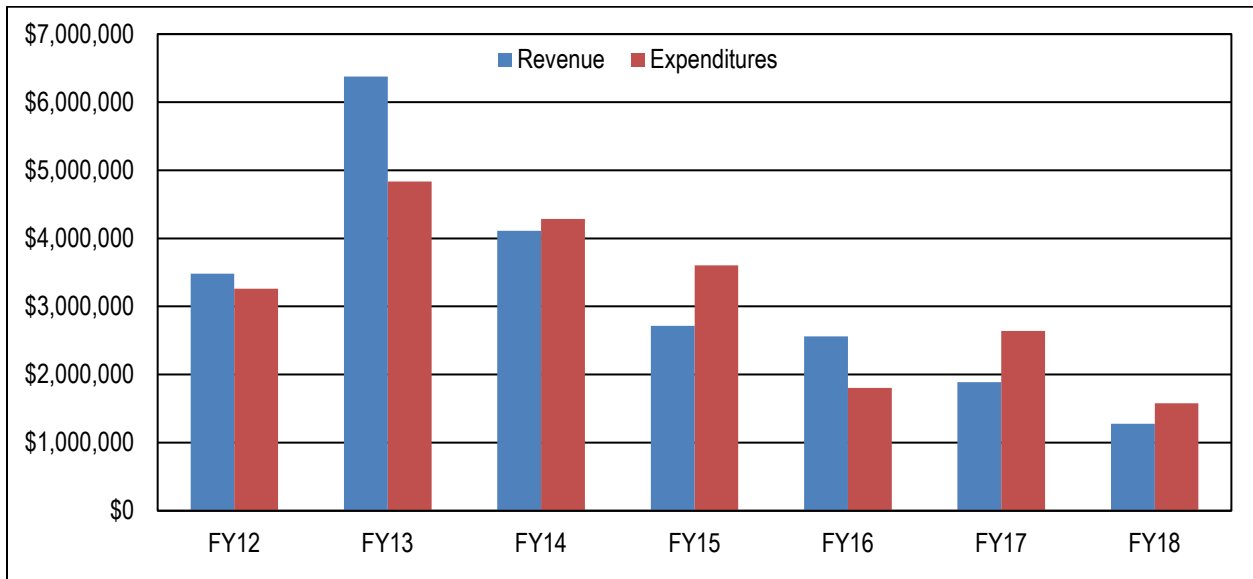
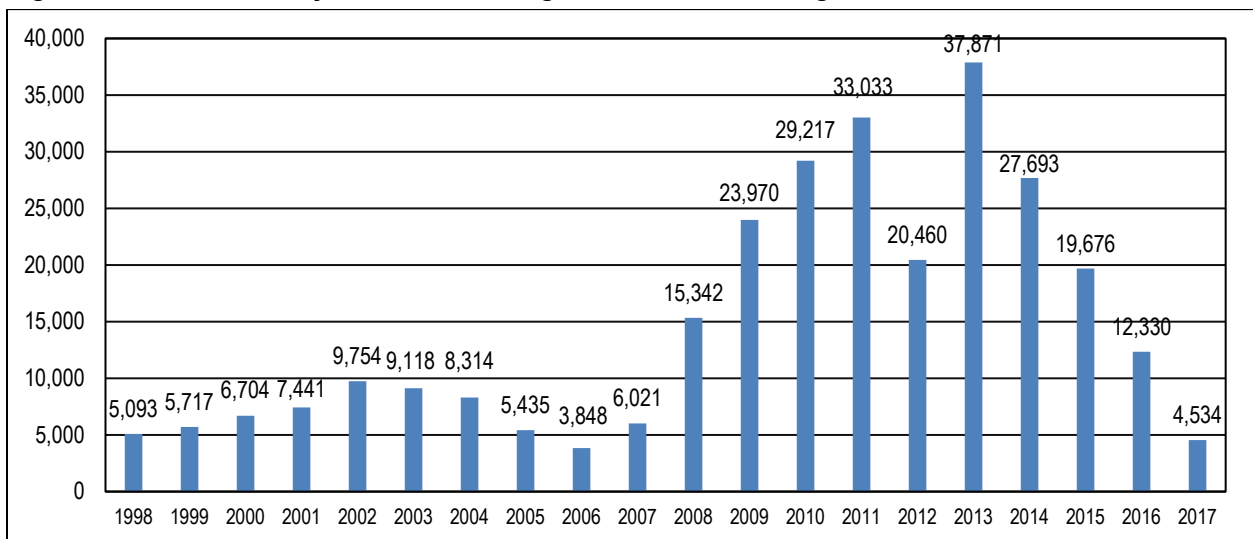


Figure 3 shows that the state experienced a high point in foreclosure activity in 2013. Foreclosure activity has continued to decrease each year since. We are currently experiencing foreclosure activity at a level similar to the volume seen before the 2008 recession.

There is still uncertainty around what will constitute a normalized volume of foreclosure activity, and the decrease in overall volume has not correlated to an equal decrease in the resources necessary to administer the program. State partners and stakeholders continue to look for ways to ensure the program continues to function within financial constraints and to minimize the effect of variable foreclosure activity.

Figure 3: Foreclosures by Year, 1998 through June 2017, Washington State



Source: Unpublished data provided by Zillow.

Homeowners' Path to Mediation

This section provides an overview of the foreclosure mediation process for context related to the remainder of the report.

Meet and Confer Period

The “meet and confer” period, prescribed in the Deed of Trust Act, identifies clear steps of notification prior to foreclosure:

- Beneficiaries must issue a Notice of Pre-Foreclosure Options at least 30 days before issuing a Notice of Default. The Notice of Pre-Foreclosure Options explains to the borrower that they are in danger of losing their home, that free counseling is available to help them understand their options, and the potential for mediation. It also informs the borrower of the opportunity to meet with the beneficiary to try to resolve the issue (known as the “meet and confer” meeting).
- If the borrower responds to the Notice of Pre-Foreclosure Options and requests a “meet and confer,” a Notice of Default may not be issued for an additional 60 days.
- After the Notice of Default is issued, beneficiaries must wait at least 30 days before recording a Notice of Trustee’s Sale.

Referral to Mediation

Following the “meet and confer” period, beneficiaries and borrowers may meet for mediation:

- Borrowers become eligible for mediation once a Notice of Default is issued and remain eligible until 20 days after the recording of the Notice of Trustee’s Sale, and if their beneficiary is not exempt from mediation.¹⁰
- Borrowers must be referred to Commerce for mediation by an attorney or a housing counselor. The services of the housing counselors are free to borrowers.
- Upon the receipt of a complete referral, Commerce has 10 days to assign a mediator and notify all of the parties that mediation was requested.

The assigned mediator has 70 days to complete the mediation (it can extend beyond 70 days if both parties agree to an extension). The participants in the mediation must address the issues of foreclosure that may enable the parties to come to an agreed resolution. To do this, the mediator will ask the participants to consider the borrower’s economic position, the net present value¹¹ of receiving payments from a modified mortgage compared to the recovered costs following foreclosure, affordable modifications, and any applicable loss mitigation

¹⁰ Federally insured depository institutions that were not a beneficiary in more than 250 trustee sales in a year may certify to Commerce their exemption from mediation status during the following calendar year.

¹¹ In the context of foreclosures, net present value is an accounting calculation that the beneficiary performs to help them compare the costs of a loan modification to the costs of a foreclosure.

guidelines for loans insured by the Federal Housing Administration, the Veterans Administration, or the Rural Housing Service.

Mediation Certification

Since the inception of the program, Commerce has developed standards, coordinated and conducted training, and approved 229 foreclosure mediators. In addition, Commerce developed guidelines and forms for the mediation and certification process:

- Within seven business days of the completion of the mediation, the mediator must certify the outcome of the mediation to Commerce and send copies to all parties involved.
- This certification must indicate whether a resolution was reached, must include a description of the resolution, and must indicate whether the parties participated in good faith.
- If no agreement was reached, they must also include a description of the Net Present Value analysis used and its results.
- A finding that the beneficiary did not act in good faith constitutes a defense to the non-judicial foreclosure action. A borrower may use this finding in court to stop the foreclosure.
- A finding that the borrower failed to mediate in good faith authorizes the beneficiary to proceed with the foreclosure.

Commerce receives all certifications from the mediators and sends copies of the certifications showing “Beneficiary Not in Good Faith,” to the AGO and to the DFI.

The Consumer Protection Division of the AGO enforces the Deed of Trust Act (RCW 61.24), which includes the Act and the program. The AGO reviews the “Beneficiary Not in Good Faith” certifications it receives from Commerce and watches for patterns and repeat violators. It may take action by further investigating or escalating with a beneficiary that repeatedly failed to act in good faith.

DFI licenses some of the beneficiaries that are participating in foreclosure mediation in Washington. DFI reviews the “Beneficiary Not in Good Faith” certifications it receives from Commerce and may open complaints with its licensees. DFI may contact the borrower and/or the mediator to request more information. Once DFI has all the necessary information, it decides on the appropriate course of action, on a case-by-case basis. Data on “Not in Good Faith” decisions are included in Figure 10 on page 30 under “Outcomes.”

The Current Foreclosure Climate

With the sunset of the federal Homeowners Affordable Modification Program (HAMP) at the end of 2016, the Foreclosure Fairness Program is even more important to Washington state homeowners. At the height of the foreclosure crisis, HAMP was one of the remedies the federal government put in place by to help borrowers threatened with the loss of their homes.

Initiated in 2009, HAMP provided a structure for homeowners to request and receive modifications of their mortgages. It also standardized the reporting documents required to underwrite proposed loan modifications while simultaneously suspending the foreclosure process. The enactment of the Washington State Foreclosure Fairness Act in 2011 complemented the federal program and gave homeowners access to mediation and a broader range of opportunities to avoid foreclosure.

Without HAMP, the FFP is now the only government program available to Washington state homeowners that includes mediation as part of the foreclosure process and gives homeowners a mechanism to bring beneficiaries to the table to identify alternatives to foreclosure. As Washington's economy has improved since the Great Recession and the number of foreclosures has fallen to pre-2008 numbers, the negative effects of foreclosures on communities has decreased. However, foreclosure remains a personal crisis for the individuals and families involved.

The Benefits of Mediation

The overall benefits to beneficiaries and homeowners are many. Both parties benefit from a mediation process that is structured, organized and provides the opportunity for beneficiary and borrower to have a supervised and frank discussion about alternatives to foreclosure. For the borrower a mediation agreement may result in the reduction of their mortgage principal, an interest rate reduction and lower, affordable monthly payments. However, not all successful mediations result in the homeowner keeping the home. There are several non-retention strategies that can provide the opportunity for the homeowner to relinquish the home with a more beneficial timeline than foreclosure and sometimes with small financial incentives.¹²

The Negative Impacts of Foreclosure

The loss of a home has many negative impacts. There is of course, the financial loss. For many middle and low-income homeowners, their house is the largest asset they own. Homeownership has long been touted as a sound investment opportunity to fund one's retirement and/or to accumulate resources to provide for a child's education. The assets lost to a family due to foreclosure can reverberate across several generations through lost

¹² See Appendix A – Comparison of Non-Retention Strategies.

inheritances, no matter how small.¹³ A foreclosure can result in the loss of 200 – 300 points on a borrower’s credit report, an effect lasting up to seven years during which the homeowner has limited access to credit at affordable rates. There also can be tax implications if the Internal Revenue Service identifies the forgiven mortgage debt as income.

The Most Vulnerable Populations

There is also evidence that foreclosure, or indeed any forced move, has a negative effect on the health and well-being of homeowners and their families. The two demographics most vulnerable to the negative effects of a forced move are children¹⁴ and the elderly. According to data from the Washington Homeowners Resource Center, in fiscal year 2018, 40 percent of the calls to the Homeowners Hotline were from households with minor children.

For children, leaving one’s home often means leaving behind their school, their friends and a broader community. Disruptions like this are linked to a decrease in academic performance and a delay in the development of interpersonal skills. When the move is forced rather than planned, the disruption in the household increases. The entire family experiences the stress of financial upheaval that leads up to, or results from, the loss of a home in foreclosure.¹⁵

At the height of the housing crisis in 2012, the AARP did a study looking specifically at the effects of the housing crisis on the elderly and much of the information surfaced is still applicable in this time of fewer foreclosures. For seniors, recovery from foreclosure has many challenges as many of them will have depleted their retirement funds in an attempt to save their home, and they have a fixed income with rising expenses. Unrelated to the financial crisis older people are carrying more mortgage debt as they age and thus have more to lose when their home is foreclosed on, at the same time they have less time to recover financially. It is particularly difficult for older people to find decent affordable housing, especially if landlords check credit reports. AARP has also found that, even after the financial crisis, the elderly still have a higher percentage of loans delinquent for more than 90 days.¹⁶

¹³ Saegert et al, “Mortgage Foreclosure and Health Disparities: Serial Displacement as Asset Extraction in African American Populations,” *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, Vol. 88, No. 3, (2011), <https://opencuny.org/alternativehousingresearch/files/2012/03/mortgage-foreclosure-and-health.saegertetal.pdf>

¹⁴ The Brookings Institution, “The Ongoing Impacts of Foreclosure on Children,” <https://www.brookings.edu/research/the-ongoing-impact-of-foreclosures-on-children/>

¹⁵ Urban Institute, “Where the Kids Go: Foreclosure Crisis and Mobility in Washington D.C.,” <https://www.neighborhoodinfodc.org/pdfs/412342-Where-Kids-Go.pdf>

¹⁶ AARP Public Policy Institute, “Nightmare on Main Street: Older Americans and the Mortgage Market Crisis,” https://www.aarp.org/content/dam/aarp/research/public_policy_institute/cons_prot/2012/nightmare-on-main-street-AARP-ppi-cons-prot.pdf

One Older Couple’s Experience with the Foreclosure Fairness Program

The experience of Robert, a Jefferson County resident, is one example of the positive outcomes available to older persons referred to the Foreclosure Fairness Program:

“Robert was 69 when the startup company he worked for went out of business. He had lost most of his retirement savings in the 2008 crash, so he and his wife spent through their personal savings quickly. Soon they were behind on their mortgage, but their lender would not even talk to them about an accommodation. They applied for mediation through the Foreclosure Fairness Program at the Department of Commerce. By entering the Foreclosure Mediation Program, the foreclosure process was paused, which allowed the homeowner time to secure a job, and his housing counselor at American Financial Solutions time to negotiate a loan modification. Robert and his wife were able to save their home, and now they feel secure enough to once again start planning for their retirement. Although this case never had a mediation session, these homeowners would have most likely lost their home without the Foreclosure Fairness Program, which ensures that both parties, the homeowner and the beneficiary, act in good faith to explore alternatives to foreclosure.”

Margarita Mueses
NCHEC Bilingual Certified Foreclosure Intervention and Default Counselor
American Financial Solutions¹⁷

Although foreclosure volume has decreased, the work associated with the program has not shown a similar decrease. As shown below in Figure 4, the percentage of foreclosures related to reduction or loss of income has decreased while those related to divorce, medical issues, and death have increased. These foreclosures are far more complex than income-related foreclosures, and often include difficult legal issues and one or more disengaged or hostile parties. As a result, housing counselors and mediators have not seen a reduction in workload equal to the reduction in volume. This makes the decreased revenue supporting the non-profit housing counselor agencies a more significant challenge to address.

Figure 4: Breakdown of Reason for Default, Fiscal Year 2016 through Fiscal year 2018

Fiscal Year	Reduction/Loss of Income	Divorce/Medical/Death
2016	46%	39%
2017	40%	43.3%
2018	40%	44.1%

Source: Washington State Homeownership Resource Center

¹⁷ Used with express permission.

How Unexpected Medical Bills Set the Stage for Foreclosure

The following story highlights how a sudden catastrophic injury can throw a family into a financial tailspin that leads to foreclosure:

“My husband and I had our own concrete business, and we were making good money until my husband broke his back on the job and was no longer able to work. He had several surgeries and even with health insurance, we ended up with a \$35,000 medical bill. We tried to get control of our finances but with five kids and a significantly reduced income, we ultimately decided to file for bankruptcy. We were resigned to giving up the house and we’d been looking for another place to live but we couldn’t find any rentals we could afford that would accommodate a family of seven. We’d all moved in with my mother-in-law for about six months and that was just too stressful for everyone. So it was a great relief when we received information about the Foreclosure Fairness Program at the Department of Commerce and realized there was a good chance we could save the house. We entered into mediation in 2017 and it was an awesome experience. Yes, it was long and drawn out, and we were buried in paperwork, but it was worth it. We now have a manageable monthly mortgage payment. The debt we owe didn’t go away, it was tagged on as a balloon payment at the end of the loan, but we are making extra payments each month to help bring that down. It’s not easy for us to ask for help, but everyone who worked with us on the mediation was compassionate and respectful. I don’t wish it on anyone, but if I knew someone experiencing foreclosure, I would definitely recommend that they use the mediation program.”

Rosa M. Revey-Jacobs
Ferndale, Washington
Whatcom County¹⁸

Each homeowner’s foreclosure experience is unique, and the Foreclosure Fairness Program aims to create a fair, transparent and standardized process for homeowners seeking to avoid foreclosure.

¹⁸ Used with permission.

Legislative Amendments to the Foreclosure Fairness Act

2018 Amendments

Stakeholder Work

The success of the Foreclosure Fairness Program is directly related to the relationships established with all stakeholders involved. The main stakeholders include homeowner advocates, the banking industry, trustees, mediators, housing counselors, and the state program partners identified in this report. Commerce worked with these stakeholders to achieve consensus each time the Foreclosure Fairness Act (Act) was amended.

Through the years, the stakeholders have met to discuss changes necessary to make the program more effective. No changes were made during the 2017 legislative session. The changes summarized below are a result of two years of work by the stakeholder group led by Rep. Orwall. For changes made over the course of the program, see Appendix A.

Program Changes

The \$250 fee associated with the recording of a Notice of Trustee Sale, previously issuance of a Notice of Default, had been unchanged for nearly a decade. Because of declining foreclosures, activity revenue for the program was insufficient to maintain the statewide infrastructure of the program. Several efforts have been implemented to help stabilize the program in fiscal year 2019:

- Increasing the fee to \$325.
- Reducing program costs.
- The addition of rule-making authority for future adjustments to the fee, which will allow the program to be more responsive to changes in foreclosure activity.

Finally, an administrative change was made to remove references to the Home Affordability Mortgage Program (HAMP), which sunsetted on Dec. 31, 2016.

Non-Program Changes

The Deed of Trust Act, which encompasses the Foreclosure Fairness Act, also saw the following changes to:

- Help cities and counties address blighted and abandoned homes.
- Provide additional notice to those owners in default with a reverse mortgage.
- Modify the Notice of Trustee Sale form and recording process to help identify foreclosure activity.
- Assist successors in interest.
- Create a process and timeline for a trustee to file a declaration of nonmonetary status.

2016 Amendments

The passage of Foreclosure Fairness Account – Expenditures and Remittances (Chapter 196, Laws of 2016) resulted in three significant changes to the Foreclosure Fairness Program:

- Revised the funding allocation to the entities providing services under the Act.
- Change when beneficiary fees are paid – at the recording of the Notice of Trustee’s Sale rather than the issuance of the Notice of Default.
- Changed the exemption from paying the fee to beneficiaries with fewer than 50 Notices of Trustee’s Sale in the preceding year, rather than 250 issuances of Notices of Default.

2015 Amendments

The operating budget for the 2015-17 biennium included a proviso to convene a workgroup of stakeholders to review the state’s Deed of Trust Act (Chapter 61.24 RCW). The workgroup included stakeholders from financial institutions, loan servicing and trustee service companies, advocacy groups representing homeowners, and approved foreclosure mediators. Results of the workgroup were submitted to the governor and Legislature in December 2015.¹⁹

2014 Amendments

Foreclosures (Chapter 164, Laws of 2014) provided many changes to the FFA, including a broadening of the definitions for “borrower” and “residential real property” that expand program eligibility criteria. Changes to beneficiary procedures included:

- Increased transparency and borrower knowledge of the foreclosure process.
- Allowed voluntary participation in the mediation program if certain criteria are met.
- Allowed Commerce to authorize mediation fees.
- Modified funding allocations to ensure the continuous operations of the program given the decreasing level of program revenue.

2012 Amendments

In 2012, the Legislature made significant changes to the FFA through Homeowners in Crisis – Assistance (Chapter 185, Laws of 2012) to improve the productivity of foreclosure mediations and to make the overall process more efficient and transparent. These amendments:

- Improved the timing and order of the documents exchanged to make it work more effectively for both the borrower and the beneficiary.
- Allowed the beneficiary to use the information provided by the borrower to complete their review prior to the mediation.

¹⁹ Washington State Department of Commerce, “Deed of Trust Act Stakeholder Workgroup,” (2015), <http://www.commerce.wa.gov/wp-content/uploads/2016/06/Commerce-Deed-of-Trust-Act-Workgroup-2015.pdf>

2011 Amendments

After the Legislature passed the FFA, the Legislature made changes related to civil immunity for mediators and borrower eligibility in Foreclosures – Mediation (Chapter 4, Laws of 2011 2nd Sp. Sess.). Changes included:

- Civil immunity for mediators was added to prevent them from withdrawing from the program due to the potential risk of being sued by one of the parties in civil court.
- Eligibility requirements for borrowers were changed so that borrowers are referred to mediation after receiving a Notice of Default. This change proved to be beneficial. Prior to this change, many borrowers were missing the opportunity to meet and confer with their beneficiary and going straight to mediation. This is more in line with the design of the Deeds of Trust Act.

Representatives of the beneficiaries (mortgage lenders), housing advocates, trustees, counselors, and mediators supported these changes.

Program Performance

Department of Commerce's Performance

Statewide Counselors

Housing counseling and mediation services are available to borrowers across the state. Borrowers seeking housing counseling contact the Homeownership Resource Hotline, where their call is prioritized and referred to a free-of-charge local housing counselor. The Homeownership Resource Hotline provider reported a monthly average of 539 calls during the 2018 state fiscal year, down from 779 during the 2017 state fiscal year.

Since the passage of the Foreclosure Fairness Act (Act), the number of housing counselors contracted has decreased from 64 to 40 (including legal aid attorneys who provide housing counseling-like services). These counselors, as well as private attorneys, refer mediation-eligible cases to Commerce. Commerce then assigns mediators to these cases based on the borrower's county of residence and the mediators' capacity and availability.

Approved Foreclosure Mediators

In addition, to receiving referrals and assigning mediators, Commerce is responsible for maintaining a list of approved foreclosure mediators. The Act identifies attorneys, retired judges, U.S. Department of Housing and Urban Development-approved housing counselors, and employees and volunteers of dispute resolution centers as eligible to become foreclosure mediators. Commerce requires participating mediators to take foreclosure mediation training and have additional documented mediator training and experience.

Commerce trained more than 300 mediators on the requirements of the Act, federal loan programs and foreclosure laws during two series of two-day trainings in June 2011 and May 2013. The second day of each training series included a full day of hands-on mediation practice hosted by regional dispute resolution centers around the state. Through the 2011 and 2013 trainings, Commerce approved 229 mediators to conduct foreclosure mediations in Washington. Out of the total 229 mediators trained, 74 active mediators currently conduct foreclosure mediations in Washington.

Commerce hosted a foreclosure mediator-training event Nov. 2, 2015. Attendance was mandatory for all approved mediators who wished to continue to serve in the program. The purpose of the event was to provide a forum for all mediators to more consistently apply the Act and any applicable federal guidelines, as well as expand their skills through sharing their best practices, creating a more consistent body of practice among all foreclosure mediators in the state.

Referrals to Mediation

From July 2011, when the program began, through June 2018, Commerce received 10,829 referrals to mediation:

- Housing counselors made 4,552 (42 percent) of these referrals, and attorneys (private and legal aid) made 6,277 (58 percent).
- 1,134 (10 percent) of the referrals were deemed ineligible.
- 9,748 (90 percent) of the referrals were deemed eligible and assigned to the Commerce-approved mediators.
- 9,060 (95 percent) of the 9,748 assigned or eligible cases were closed or certified by the mediators as of June 30, 2018.

As of June 30, 2018, 311 referrals were pending mediator certification. More details about the mediation outcomes are presented later in this report, in the “Results of the Mediation Program” section.

Program Administration Accomplishments

Commerce continues to improve and streamline the administration of the program to more effectively serve the public and all the program’s stakeholders. The following list includes highlights of the accomplishments made in state fiscal year 2018:

- Received and processed 676 new referrals to mediation.
- Continued streamlining the administrative process, from referral intake to assigning mediators and notifying the parties, and assisting mediators throughout the process.
- Revised and continuously improved the Foreclosure Fairness Program Guidelines,²⁰ a tool for mediators, referrers, beneficiaries, and other interested stakeholders.
- Collaborated with legislators and key stakeholders to identify strategies to sustain the program.

Program Partner Performance

The program partners submitted the following reports on their work related to meeting the requirements of the Foreclosure Fairness Act.

Housing Finance Commission

The data presented in this section was provided by the Washington State Housing Finance Commission (the Commission), as required by RCW 61.24.160(6). It covers state fiscal year 2018.

²⁰ Washington State Department of Commerce, “Foreclosure Fairness Program Guidelines,” <https://deptofcommerce.app.box.com/s/xw4a4peivjkg1k861effqlrays4wzwfe>

Commerce partners with the Commission to administer a homeowner-counseling program, as required by the Foreclosure Fairness Act. Counseling is available at no cost to Washington homeowners in need of assistance. From the beginning of the Foreclosure Fairness Program, the Commission partnered with 16 housing counseling agencies around the state (including two legal aid agencies, Northwest Justice Project and Northwest Consumer Law Center) that had at least two years of experience in providing foreclosure prevention counseling. Due to decreasing demand, the number of foreclosure-prevention counselors dropped from 52 to 40 at the time this report was prepared.

Figure 5 shows a breakdown by category of the total number of clients assisted by the Commission’s counselors and legal aid attorneys and the outcomes of counseling. The Total Outputs and Total Outcomes include all parts of the counseling process and are not exclusive to the Meet & Confer, Mediation, and Appeals/Escalation.

The Commission reports that between July 1, 2017, and June 30, 2018, their counselors and legal aid attorneys helped 3,174 borrowers. Counselors and legal aid attorneys attended 1,384 “meet and confer” meetings between borrowers and their beneficiaries, and 341 mediation sessions. The Commission also reports that 411 borrowers were referred to other types of services, such as legal and financial assistance.

Before, during, and after mediation outcomes reported by the Commission include:

- 1,236 participating borrowers were able to reach agreement (home-retention or non-home-retention).
- 400 borrowers were reported as not reaching agreement and/or having their houses foreclosed by the beneficiary.

More details about mediation outcomes are presented in Figure 5 below.

It is important to note that although some borrowers do not reach an agreement with the beneficiary in mediation, the opportunity to meet and mediate opens the door for further, open communication with their beneficiaries.

Figure 5: Outcomes of Housing Counseling for State Fiscal Year 2018

Category Description	Cases
Totals*	
Outputs	
Clients	3174
Referrals to Other Services	411
Outcomes	
Pending Outcomes (still in counseling)	1394
Withdrawals from Counseling	144
Home Retention Agreements	1035
Non-Retention Agreements	201
No Agreements	372
Foreclosures	28
Meet and Confer	
Outputs	
Meet and Confer Sessions Attended	1384
Outcomes	
Pending Outcomes	1256
Withdrawals from Counseling	18
Home-Retention Agreements	65
Non-Retention Agreements	8
No Agreements	37
Mediation	
Outputs	
Mediation Referrals	415
Clients Assisted in Mediation	391

Category Description	Cases
Mediation Sessions Attended	341
Outcomes	
Referrals Ineligible for Mediation	8
Agreements Prior to Mediation	57
Withdrawals from Mediation	21
Loan Modifications Reached in Mediation	127
Other Home-Retention Agreements Reached in Mediation	47
Non-Retention Agreements Reached in Mediation	39
No Agreements Reached in Mediation	56
Mediation Sessions Continued (Outcome Pending)	72
Appeals or Escalations	
Outputs	
Appeals or Escalations	307
Outcomes	
Pending Outcomes	90
Withdrawals From Counseling	7
Home-Retention Agreements	145
Non-Retention Agreements	40
No Agreements	25

** The Total Outputs and Total Outcomes include all parts of the counseling process and are not exclusive to the Meet and Confer, Mediation, and Appeals/Escalation*

Office of the Attorney General

The data presented in this section was provided by the Washington State Office of the Attorney General (AGO), as required by RCW 61.24.160(6). It covers fiscal year 2018.

The Consumer Protection Division of the Attorney General's Office created the Foreclosure Compliance Program (FCP) to enforce the Deed of Trust Act, as required by that Act. During fiscal year 2018, the FCP received 218 complaints and inquiries. Of those complaints:

- 146 were direct consumer complaints and inquiries.
- 65 were housing counselor complaints and inquiries.
- Seven were attorney and other professionals' complaints and inquiries.

The FCP regularly receives case-specific and issue-related input from Commerce, including requests to respond to homeowners and counselors. The FCP and Commerce work collaboratively to solve common issues.

As a part of the 2012 National Mortgage Settlement, the AGO distributed \$43.8 million in grants to governmental agencies and non-profit organizations throughout the state. The agencies and organizations are using the grant funds to provide consumer access to housing counselors and legal services that help give consumers protections under the Foreclosure Fairness Act. The AGO continues to monitor grantee activities and expenditures.

Between July 1, 2017, and June 30, 2018, the AGO took the following actions to enforce the Deed of Trust Act and the Consumer Protection Act in the mortgage and foreclosure context.

- The AGO monitored compliance with servicing standards and distribution of consumer relief for Washington borrowers pursuant to its Feb. 5, 2016 consent decree with HSBC Bank USA, NA and its affiliates.
- The AGO monitored compliance with and distribution of consumer relief for Washington borrowers pursuant to its Dec. 19, 2013, Consent Decree with Ocwen Financial Corporation and its subsidiary Ocwen Loan Servicing.
- The AGO monitored compliance with and distribution of consumer relief for Washington borrowers pursuant to its June 17, 2014 Consent Decree with SunTrust Mortgage, Inc.
- On Jan. 3, 2018, the AGO, along with 48 other states and the District of Columbia, settled with PHH Mortgage for unfair and deceptive practices in servicing mortgages. Among other relief, PHH agreed to pay more than \$45.3 million to the states, \$30.4 million of which will go directly to eligible homeowners who submit a claim. Eligible borrowers include those who were foreclosed or were referred to foreclosure between Jan. 1, 2009 and Dec. 31, 2012. Borrowers who were foreclosed during the eligible period will qualify for a minimum payment of \$840. Other borrowers who were referred to foreclosure will receive a minimum payment of \$285. PHH paid \$390,000 for Washington's cost and fees. Of that amount, the AGO granted \$300,000 to Washington

State Housing Finance Commission on July 11, 2018 to fund housing counselors to help Washington consumers with foreclosure-related issues.

- On Sep. 19, 2017, the AGO obtained a consent decree in a previously filed lawsuit against Miriam Lozano d/b/a Primera Services relating to Ms. Lozano's unlicensed and deceptive practices as a mortgage broker who purported to help distressed homeowners obtain a mortgage loan modification and avoid foreclosure. The consent decree provides for full restitution of identified consumers, and enjoins Ms. Lozano from engaging in similar violations in the future.
- On Dec. 14, 2017, the AGO obtained a consent decree from CitiMortgage, Inc. to resolve the company's execution and recording of documents in county recorder's and auditor's offices that incorrectly identify Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary to deeds of trust, contrary to the Supreme Court's decision in *Bain v. Metropolitan Mortgage Group, Inc. (Bain)*, 175 Wn.2d 83, 285 P.3d 34 (2012). The consent decree requires payment of \$33,000, and requires the company to correct all erroneous documents in which MERS purports to take action, such as appointing a successor trustee.
- On Dec. 22, 2017, the AGO obtained a consent decree from BECU to resolve its execution and recording of documents in county recorder's and auditor's offices that incorrectly identify Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary to deeds of trust, contrary to the Supreme Court's decision in *Bain v. Metropolitan Mortgage Group, Inc. (Bain)*, 175 Wn.2d 83, 285 P.3d 34 (2012). The consent decree requires payment of \$8,000, and requires the company to correct all erroneous documents in which MERS purports to take action, such as appointing a successor trustee.
- On May 17, 2018, the AGO filed a lawsuit against Real Estate Investment Network, LLC (REIN) and three individuals alleging they engaged in unfair and deceptive acts or practices to help homeowners get excess funds following judicial and non-judicial foreclosure sales – that is, foreclosure sale proceeds remaining after the foreclosed debt is satisfied and the costs of the sale are paid. On May 29, 2018, the court entered a stipulated preliminary injunction restraining REIN and its employees from engaging in the complained-of activities. This case remains pending before the King County Superior Court.

The AGO also participated in a series of stakeholder meetings convened by Rep. Orwall concerning (a) funding levels for the Foreclosure Fairness Account (and therefore the availability of housing counselors, legal aid attorneys, and the administration of the mediation program); (b) the circumstances under which servicers and beneficiaries will be permitted, in the wake of the *Jordan v. Nationstar* case, to enter and secure abandoned property; and (c) cities' and counties' ability to remediate blighted properties in the foreclosure context. The resulting bill passed the Legislature.

Office of Civil Legal Aid

The data presented in this section was provided by the Washington State Office of Civil Legal Aid (OCLA) as required by RCW 61.24.160(6). It covers the last fiscal year of the program, from July 1, 2017, through June 30, 2018.

Commerce partners with the Office of Civil Legal Aid to provide free legal assistance to low- and moderate-income homeowners in matters related to foreclosure. OCLA grants all of the Foreclosure Fairness Act (FFA) funds it receives to the statewide Northwest Justice Project (NJP) for the provision of civil legal aid services.

NJP's specialized Foreclosure Unit continues to successfully fight for home retention among low- and moderate-income homeowners facing default on their home mortgage. Relying on FFA substantive and procedural protections in the context of mediations, housing counseling activities, and litigation, NJP's Foreclosure Unit estimates that it preserved more than \$8.8 million in homeowner equity during FY-2018.

During FY-2018 (July 1, 2017 - June 30, 2018), NJP saw a 20 percent decrease in homeowners seeking help to protect their homes over the prior fiscal year. This decrease is related to an industry-wide decrease in delinquent mortgages.

In the last fiscal year, a total of 511 homeowners sought legal assistance through NJP's dedicated foreclosure hotline. Of these, 37 were determined ineligible, and 474 were accepted for some form of representation. In addition, during the last year NJP closed 194 cases after providing extensive legal assistance to homeowners.

The great percentage (44 percent) of homeowners represented by NJP lived in the most populous Puget Sound counties of King (18 percent), Pierce (12 percent), and Snohomish (13 percent). Requests from homeowners for legal assistance dropped in every county with the exception of Jefferson and Cowlitz counties. NJP provided legal assistance and representation to homeowners in all 39 Washington counties over the last two fiscal years.

NJP's foreclosure prevention representation during FY-2018 continued to focus on using FFA protections, and provisions, including "meet and confer" and mediation, as well as successfully pursuing Not-in-Good Faith certifications to ensure homeowners are provided the benefit of all options and opportunities to retaining their home.

The Foreclosure Unit recently played a central role in identifying and regulating a financial scam experienced by Washington homeowners. Due to increasing equity in homes, many foreclosed homes sell for much more than the liens on the property. Most homeowners are unaware they have a right to these excess proceeds. A group of "investors" began preying on this lack of knowledge, offering cash right before the foreclosure auction to acquire title, thereby entitling the investor to the surplus funds that rightly belonged to the homeowners who lost their

houses through foreclosure. The problem is that representatives of the company often offered \$10,000 in cash when the homeowner would legally have been entitled to much more in surplus funds -- as much as \$100,000 more in some cases. In addition to representing homeowners against these investors, NJP worked closely with the Attorney General, which brought suit under Washington State's Consumer Protection Act.²¹

Using FFA and other funds, NJP continues to play a major role in homeowner community education and outreach. Advocates regularly attend debt defense clinics and other similar events. Additionally, an FPU advocate continues to chair the Foreclosure Prevention Action Team of the Financial Empowerment Network (FEN) of Seattle-King County. The FEN brings together homeowner advocates across the state to coordinate responses to issues seen in foreclosure defense. This group regularly updates its comprehensive on-line guide to foreclosure defense in Washington. The group also remains in close contact with the Department of Commerce to discuss the FFA mediation program and modes of improvement for the program.

A significant development affecting the availability of foreclosure-related assistance during this period has been the reduction of other well-trained homeowner advocates in Washington, specifically housing counselors. The lack of capacity and resources to support homeowners facing possible foreclosure makes it even more critical that NJP continue its foreclosure defense work. NJP has retained its two full-time housing counseling paralegals, which has mitigated some of the impact of the resulting gap in services. However, Washington will confront a significant lack of resources, and expertise, if confronted with another spike in foreclosures. Maintaining a robust foreclosure defense practice at NJP will combat this shortage.

As of July 1, 2018, FFA funding supported 1.5 FTE Foreclosure Unit attorneys, down from 3 FTE attorneys when FFA revenues provided additional funding. NJP's foreclosure representation capacity has, since 2012, been supplemented with significant resources made available from the Office of the Attorney General, from the National Foreclosure Settlement Agreement. At its peak, total Foreclosure Unit staffing was 15 FTE attorneys and four paralegals. The ATG funding will be exhausted at the end of 2019, resulting in the loss of additional statewide foreclosure prevention capacity starting in FY-2020 and beyond. With the wind down of the ATJ funding and reductions of FFA funding in recent years, NJP's Foreclosure Unit staffing is down to seven attorneys and three paralegals, and will be reduced even further in FY 2019; all of which makes the FFA contribution -- while small -- that much more important.

²¹ See <https://www.atg.wa.gov/news/news-releases/ag-ferguson-sues-company-scramming-foreclosed-homeowners>

Results of the Mediation Program

The data presented in this section is cumulative, covering July 22, 2011, the enactment of the bill, through June 30, 2018. Commerce administers the Mediation Program.

Referrals to Mediation

Mediation cases are referred to Commerce by housing counselors (about 42 percent) and attorneys (about 58 percent). Of the 10,829 referrals received through June 30, 2018, Commerce assigned 9,748 to approved mediators, and 1,134 were deemed ineligible; 9,060 of the assigned cases have been mediated, completed or both. The remaining assigned cases were pending mediation, completion or both as of June 30, 2018.

Figure 6 tallies the mediation referrals that Commerce received through the end of this reporting period and their outcomes. Figure 7 identifies the 10 counties with the highest numbers of referrals received by Commerce through June 30, 2018. Figure 8 illustrates the number of referrals received each quarter from the beginning of the program.

Figure 6: Cumulative Mediation Referrals July 22, 2011, through June 30, 2018

Mediation Referrals	Cases
Total Mediation Referrals Received	10,829
Referred by housing counselors	4,552 (42%)
Referred by attorneys (private and legal aid)	6,277 (58%)
Cases assigned to mediators*	9,748
Cases completed/closed through June 30, 2018	9,060
Cases ineligible for mediation**	1,134

* Includes cases that have been mediated or closed, as well as cases that are currently pending an outcome.

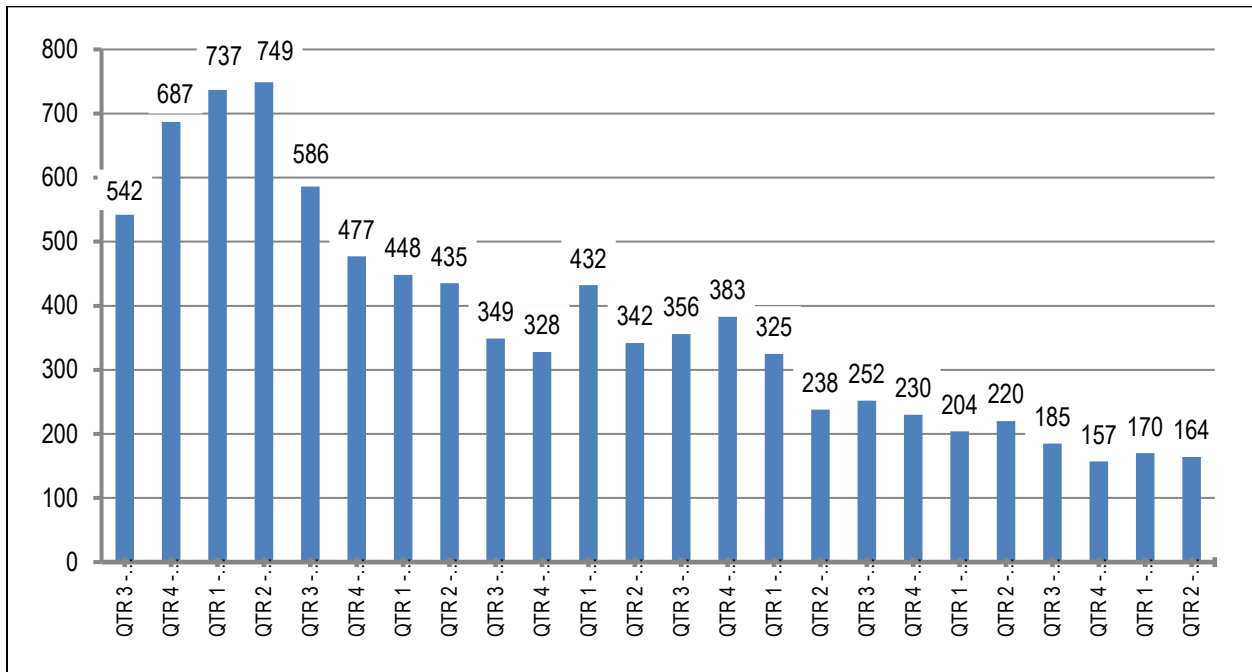
** Cases that have been referred to Commerce but upon further review have been found to be ineligible, typically because the beneficiary was exempt, or the timing of the referral missed the window of eligibility specified in the Foreclosure Fairness Act.

Figure 7: Counties with the Most Referrals Received Through June 30, 2018

Top 10 Counties	Referrals Received
King	4,111
Snohomish	1,812
Pierce	1,766
Spokane	799

Top 10 Counties	Referrals Received
Clark	513
Kitsap	306
Thurston	298
Whatcom	186
Yakima	145
Skagit	144

Figure 8: Referrals Received per Quarter, July 2012 through June 30, 2018



Note: Some of the numbers in Figure 8 have been slightly adjusted from the numbers reported in previous legislative reports. Commerce has undertaken a large database maintenance and data integrity project during the past two fiscal years, resulting in some necessary corrections to previously reported data.

Mediation Results

Figure 9 analyzes the 9,060 cases that have been mediated and completed. The data presented is based on the mediator certifications received by Commerce. Some cases do not reach a mediation session due to a variety of factors, such as agreements between borrower and beneficiary reached prior to session, the borrower’s withdrawal from the mediation process, or one or both parties being unresponsive to the mediator (e.g., lack of good faith on either the borrower’s or the beneficiary’s part).

Figure 9: Outcomes of Mediation Sessions from Beginning of Program through June 30, 2018

Mediation Session Outcomes	Cases
Mediation Session(s) Occurred – Agreement Reached	2,690
Borrower Stayed in Home (subcategories below are not mutually exclusive)	2,102
Reinstatements	173
Repayments	54
Extensions	180
Adjusted rate to fixed rates	217
Amortizations extended	465
Interest rate reductions	919
Principal reductions	116
Monthly principal payments reduced	367
Monthly interest payments reduced	263
Refinances	50
Other loan restructures/modifications	830
Principal forbearances	171
Interest forbearances/write-offs	43
Fees and penalties forbearances/write-offs	35
Other forbearances	61
Borrower Did Not Stay in Home (subcategories below are not mutually exclusive)	588
Deeds in lieu	51
Short sales	221
Voluntary surrenders	44
Cash for keys	28
Other non-retention agreements	291
Mediation Session(s) Occurred – No Agreement Reached	2,783
Parties mediated in good faith but were unable to reach agreement	2,046
Borrower not in good faith	289
Beneficiary not in good faith	260
Both borrower and beneficiary not in good faith	15

For cases with one or more sessions, mediators submitted certifications to Commerce indicating whether an agreement was reached in or after the session. Reaching an agreement does not necessarily mean the borrower is able to stay in the home. In some cases, it is not possible because of the borrower’s financial situation. It is important to note that staying in the home is not the only possible positive outcome. The purpose of the program is fulfilled if both the borrower and the beneficiary are able to communicate openly and in good faith, and make well-informed decisions considering all available options.

Some subcategories listed below are not mutually exclusive. For example, the subcategories listed under “Borrower Stayed in Home” (under “Mediation Session(s) Occurred – Agreement Reached”) are not mutually exclusive because borrowers may receive a loan amortization extension, have the principal reduced, and have the interest rate reduced. In a case like this, that same favorable result would be counted in all three subcategories.

When an agreement was not reached or when a session did not occur, the mediators are required by statute to make a good-faith determination, which is reported to Commerce on the mediator’s certification. Typically, reported reasons for lack of good faith for either or both the borrower and the beneficiary include:

- Lack of timely or accurate provision of documents to the mediator and the other party.
- Failure to timely appear at, or participate in, mediation.
- Failure to pay their share of the mediation fee.
- Beneficiary’s representative not being authorized to make binding decisions.

Figure 10: Cumulative Mediations/Cases Completed Since Program Inception through SFY 2018

Outcomes Where No Mediation Occured	Cases
No Mediation Session Occurred	3,587
Home-retention agreement reached prior to session	1,892
Non-retention agreement reached prior to session	
Borrower withdrew from mediation (not included in other categories)	
Borrower not in good faith*	
Beneficiary not in good faith	61
Both borrower and beneficiary not in good faith	12
Other than above	

Source: Mediators’ certifications.

*Includes mediation cancelled by mediator due to borrower unresponsiveness, per RCW 61.24.163(11).

Borrowers in Default within a Year of Loan Restructuring or Modification

In chapter 61.24.163 RCW, Commerce is tasked with reporting performance and data, including, “to the extent practical, the number of borrowers who report a default within a year of restructuring or modification.”

The program worked with Commerce’s Research Services unit in early 2014 to develop a survey for borrowers who completed the mediation process with their beneficiaries and reached home-retention agreements, allowing them to stay in their homes. The survey consisted of telephone interviews with homeowners who had completed mediation through the Mediation Program and reached home-retention agreements about one year prior to the survey being conducted.²²

²² Washington State Department of Commerce, “Foreclosure Fairness Program Home Retention Survey,” (2014), <http://www.commerce.wa.gov/wp-content/uploads/2015/11/ffp-home-retention-survey-2014.pdf>

Recommendations

Commerce is not seeking specific legislative changes for the 2019 legislative session. This is a result of the significant changes adopted in the 2018 legislative session through Residential Real Property – Abandonment and Foreclosure (Chapter 306, Laws of 2018). At the time of this report's publication, those changes have been in effect for less than a year. It will take some time to determine what, if any, unintended consequences need to be addressed.

The state partners participate in a stakeholder group that convenes to discuss potential changes to the Foreclosure Fairness Act. Those meetings typically begin in December and continue through February and March.

Appendix A: Comparison of Foreclosure Outcomes (Non-Retention)

Figure 11: Comparison of Foreclosure Outcomes²³

	Short Sale	Mortgage Release (Deed-in-lieu)	Foreclosure
How is home ownership transferred?	Voluntary - borrower's responsibility to find a buyer and obtain the consent of the servicer and investor	Voluntary - borrower transfers title back to the owner of the mortgage - typically only available if there are no other liens on the property	Forced - public auction or sale by Sheriff
Does foreclosure stop?	Yes - once the short sale is Approved; but the foreclosure process may continue while the property is on the market	Yes - foreclosure stops as soon as the deed is accepted and recorded. Borrower still could face action on the note for a personal debt if not waived as part of agreement	No - foreclosure continues, and ownership of the property will transfer to the purchaser at sale
Eligible for future mortgage financing	Yes - in 2 - 4 years depending on lender	Yes - in 2 - 4 years depending on lender	Up to 7-year waiting period
Relieved of outstanding mortgage debt	For a short sale to close, all lien holders must release their interest in the property. If any lien holder is not paid in full by the sale, the conditions of that release can be full forgiveness of the remaining debt or retention of the right to pursue the borrower on debt not covered by the sale	Possibly - borrower may still be liable for some of any existing mortgage debt if selling price is less than outstanding mortgage balance and that liability is not waived as part of a deed in lieu process	If a junior lien forecloses, that foreclosure is subject to the debt of the senior lien. If the senior forecloses non-judicially, the obligation of the borrower is extinguished by operation of law
Get cash or relocation expenses	Yes - depending on beneficiary	Yes - depending on beneficiary	Perhaps from the purchaser as part of an agreement to vacate
Have time to transition out of the house	Yes - timing dependent on new owner	Yes - possible to lease home for up to 12 months	Purchaser at sale is entitled to possession 20 days after the sale

²³ Adapted from: Know Your Options by Fannie Mae, *Avoid Foreclosure*, <https://www.knowyouroptions.com/avoid-foreclosure/options-to-leave-your-home/foreclosure>