



**Department of Commerce**  
Innovation is in our nature.

# Foreclosure Fairness Program

*Annual Report on Program Performance (RCW 61.24.163)*

December 2015  
Report to the Legislature  
Brian Bonlender, Director

## Acknowledgements

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# Executive Summary

## Overview

The Foreclosure Fairness Act ([RCW 61.24.163](#)), initially passed by the Legislature in April 2011, reshapes the non-judicial foreclosure process in Washington State to help protect homeowners from unnecessary foreclosures.

The Act assigns the primary responsibility for developing and managing the Foreclosure Fairness Program to the Department of Commerce (Commerce). This work is done in collaboration with the Washington State Housing Finance Commission, Department of Financial Institutions, Office of the Attorney General, Office of Civil Legal Aid, and with Dispute Resolution Centers,<sup>1</sup> mediators, attorneys (private and legal aid), and housing professionals.

The legislation calls for the development of the Foreclosure Fairness Fund and the Foreclosure Mediation Program. The Mediation Program, developed and managed by Commerce, assists homeowners (“borrowers”) in navigating through the foreclosure process and avoiding foreclosure when possible.

The program is funded through fees paid by mortgage lenders (“beneficiaries”). Beneficiaries are required to pay a \$250 fee into the Foreclosure Fairness Fund for each Notice of Default issued to owner-occupied residential real properties. Some beneficiaries are exempt from this fee. Money deposited in the fund is expended on homeowner counseling, development and operation of the Mediation Program, Act enforcement and consumer protection, foreclosure prevention outreach and education, and legal assistance for low- and moderate-income homeowners.

Housing professionals agree that keeping people in their homes is not the only possible positive outcome of the Mediation Program. 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. Mediation gives borrowers the chance to understand their options and requires beneficiaries to explain why some options may not be available.

This report fulfills the requirement of [RCW 61.24.163\(18\)](#) for Commerce to report annually on the results of the Foreclosure Fairness Act and the Mediation Program.

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<sup>1</sup> Dispute Resolution Centers (DRCs) 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.

## Key Program Outcomes

Most data presented in this report is cumulative, covering the first four fiscal years of the program, from its enactment on July 22, 2011, through June 30, 2015, unless otherwise indicated. Key outcomes include:

- In partnership with several Dispute Resolution Centers and other key stakeholders, Commerce trained more than 300 potential foreclosure mediators; 229 were approved to conduct foreclosure mediations in Washington State. There are currently 117 active mediators.
- There are currently 64 housing counselors (including legal aid attorneys) experienced in foreclosure counseling in the state.
- Housing counselors and attorneys referred 7,814 borrowers to Commerce for mediation.
- Of the 7,814 referrals, 5,821 cases have been closed and/or certified by the mediators. The rest are either pending, were certified after June 30, 2015, or have been found to be ineligible for mediation.
- Out of all the closed/certified cases, 49 percent of them ended with agreement being reached between the homeowner and the beneficiary (most of which were home-retention agreements).

## Legislative Improvements

The success of the Foreclosure Fairness Program is directly connected to the relationships established with all of the program stakeholders. Each time the Act has been amended, Commerce has worked with stakeholders to achieve consensus on implementation of the new guidance.

Passage of Engrossed Substitute Senate Bill (ESSB) 6052 during the 2015 third Special Legislative Session resulted in Commerce receiving direction via a proviso to convene a workgroup of stakeholders to review the state's Deed of Trust Act ([RCW 61.24](#)). The workgroup includes stakeholders from financial institutions, loan servicing and trustee service companies, advocacy groups representing homeowners and borrowers, and approved foreclosure mediators. Meetings are underway, with the first having occurred on September 2, 2015. Results of the workgroup will be discussed in a separate report due to the Governor and Legislature by December 1, 2015, as required in the proviso.

## Background

### Program Creation and Amendments to the Statute

The Foreclosure Fairness Program originated in the Foreclosure Fairness Act, a bipartisan effort in the 2011 legislative session to reduce the impact of foreclosures in our state. The program's purpose is to reduce unnecessary foreclosures by providing homeowner counseling and foreclosure mediation.

After its original enactment, the Legislature made significant changes to the Act ([SSB 5988](#) during the special session of 2011, [SHB 2614](#) during the 2012 session, and [HB 2723](#) during the 2014 session) to improve the productivity of foreclosure mediations and to make the overall process more efficient and transparent. Representatives of the beneficiaries (mortgage lenders), housing advocates, trustees, counselors, and mediators supported these changes.

Over the years, Commerce hosted several meetings with these stakeholders to discuss changes to make the program more effective. The changes included shifting the order of documents exchanged, lengthening the period for mediation, providing civil immunity to mediators, and clarifying and expanding the borrowers' eligibility criteria for the program.

The most recent changes to the Act ([HB 2723](#), 2014 session) improved the beneficiary notification process to the borrower (prior to the Notice of Default), broadened the mediation eligibility criteria by expanding the "borrower" and the "residential real property" definitions, introduced *voluntary* mediation (when the borrower failed to elect mediation within the statutory timeline), clarified the locations of the mediation session and the "meet & confer" meeting, and modified the distribution of the funds to ensure the continuous operation of the program given that revenues are decreasing.

### Description of the Foreclosure Fairness Program

#### Roles and Responsibilities

The Foreclosure Fairness Program authorizing legislation spells out some roles and responsibilities for various partners. Other roles were identified through a program development phase, initiated and directed by Commerce, and involving all of the partners. Following are the various agencies involved with the program along with their responsibilities under the Foreclosure Fairness Act.

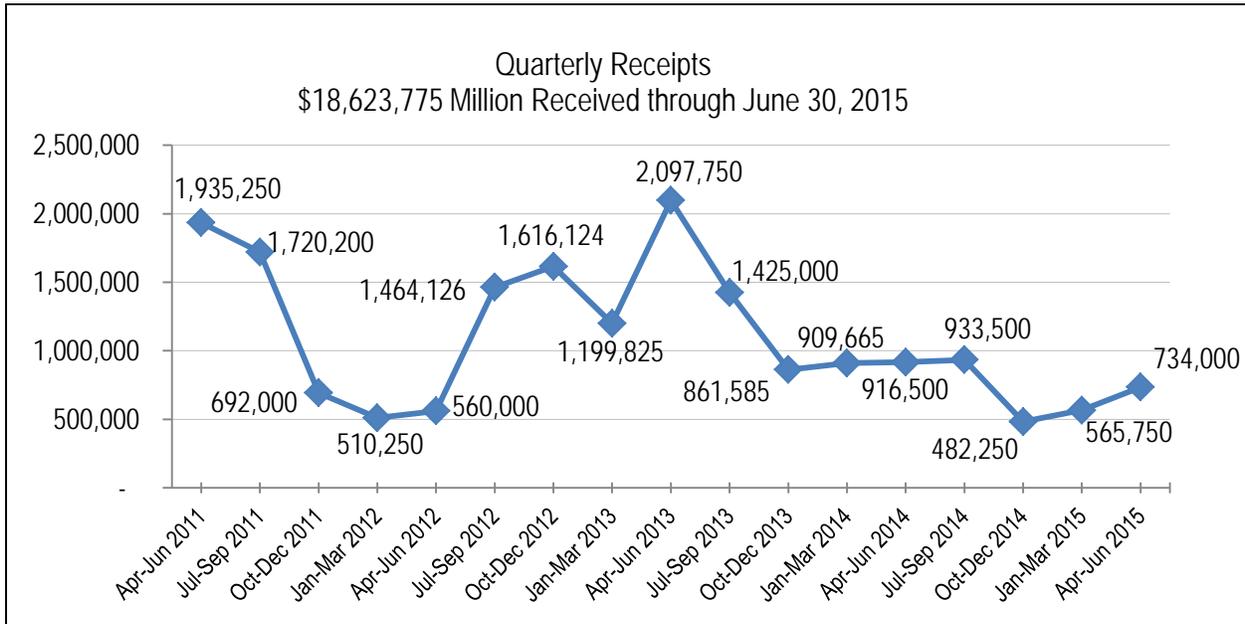
- **Washington State Department of Commerce:** Commerce is charged with the overall development and management of the Foreclosure Fairness Program, including the Mediation Program, and the administration of the Foreclosure Fairness Fund. Commerce is also responsible for training, approving, and maintaining a list of approved foreclosure mediators, and assigning them to mediation cases.

- **Washington State Housing Finance Commission:** The Washington State Housing Finance Commission (Commission) administers a homeowner-counseling program, as required by the Foreclosure Fairness Act. The Commission oversees a toll-free Homeownership Resource Hotline where homeowners in need of foreclosure prevention assistance can call and receive free foreclosure prevention counseling.
- **Washington State Department of Financial Institutions:** The Washington State Department of Financial Institutions is responsible for conducting homeowner pre-purchase and post-purchase outreach and education programs, and raising public awareness of the services provided under the Foreclosure Fairness Program.
- **Washington State Office of the Attorney General:** The Consumer Protection Division of the Washington State Attorney General’s Office created the Foreclosure Compliance Program to enforce the Deed of Trust Act, as required by that Act, and investigate consumer protection complaints.
- **Office of Civil Legal Aid:** The Office of Civil Legal Aid contracts with qualified legal aid programs to provide free legal assistance to low- and moderate-income homeowners in matters related to foreclosure.

## Funding

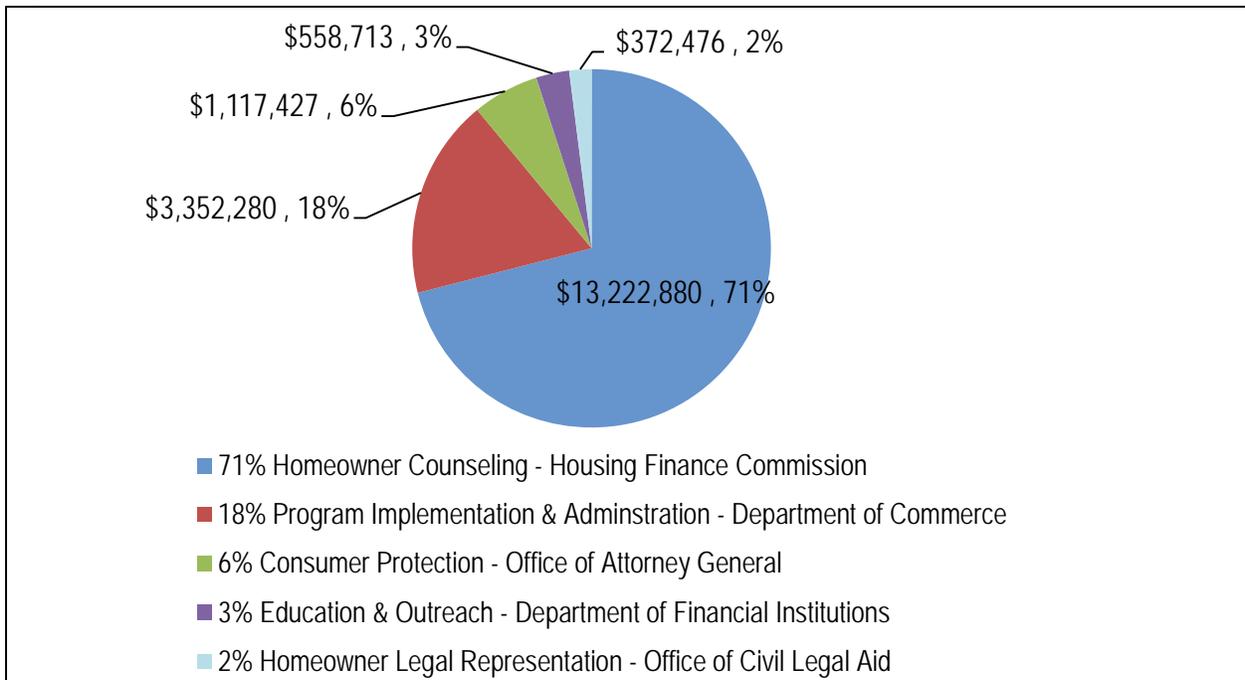
The Foreclosure Fairness Program is exclusively supported by private funds. Beneficiaries pay a \$250 fee into the Foreclosure Fairness Fund for each Notice of Default issued to owner-occupied residential real properties in Washington. Federally insured financial institutions that issue fewer than 250 Notices of Default in a year may claim their exemption from these fees during the following calendar year. The Fund pays for free homeowner foreclosure counseling, consumer protection and act enforcement, development and operation of the Mediation Program, foreclosure prevention outreach and education, and free legal assistance for low- and moderate-income borrowers. **Figures 1 and 2** below illustrate the revenue received into the Fund and its allocation as of June 30, 2015.

Figure 1: Foreclosure Fairness Fund Revenue, as of June 30, 2015



Note: Funds received by Commerce in a quarter are fees for Notices of Default issued by beneficiaries in the previous quarter. Beneficiary reports and payments are due to Commerce 45 days after the end of each quarter ([RCW 61.24.174](#)).

Figure 2: Foreclosure Fairness Fund Allocation, as of June 30, 2015



## Meet & Confer Period

The “meet & 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 & confer” meeting).
- If the borrower responds to the Notice of Pre-Foreclosure Options and requests a “meet & 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 Sale.

## Referral to Mediation

Following the “meet & 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 Sale, and if their beneficiary is not exempt from mediation.<sup>2</sup>
- Borrowers must be referred for mediation to Commerce 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 (longer if both parties agree to the 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 Value<sup>3</sup> of receiving payments from a modified mortgage compared to the recovered costs following foreclosure, affordable modifications, and any applicable loss mitigation guidelines for loans insured by the Federal Housing Administration, the Veterans Administration, or the Rural Housing Service.

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<sup>2</sup> 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.

<sup>3</sup> In the context of foreclosures, Net Present Value is an accounting calculation that the beneficiary performs in order to assist them in comparing the costs of a loan modification to the costs of a foreclosure.

## Mediation Certification

Since Foreclosure Fairness Program inception, 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 if a resolution was reached, a description of the resolution, and 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 Washington State Attorney General’s Office (AGO) and to the Washington State Department of Financial Institutions (DFI).

The Consumer Protection Division of the AGO enforces the Deed of Trust Act ([RCW 61.24](#)), which includes the Foreclosure Fairness Act and the Foreclosure Mediation Program. (See [RCW 61.24.172](#).) 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 needed 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 6 on pages 17-20 under “Mediation Results.”

## Program 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 1,054 calls during the July 2014-June 2015 fiscal year. Since the passage of the Foreclosure Fairness Act, the number of housing counselors contracted has decreased from **77** to **64** counselors (including some 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 Foreclosure Fairness 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 Foreclosure Fairness 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. Commerce approved 229 mediators to conduct foreclosure mediations in Washington. Currently, there are 117 active mediators conducting foreclosure mediations in our state.

Commerce hosted an all-foreclosure mediator training event November 2, 2015. Attendance was mandatory for all approved mediators who wish 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 Foreclosure Fairness Act and any applicable federal guidelines, as well as expand their skills through sharing their best/effective practices, creating a more consistent body of practice among all foreclosure mediators in Washington State.

## Referrals to Mediation

From July 2011, when the program began, through June 2015, Commerce received 7,814 referrals to mediation.

- Housing counselors made 3,140 (or 40 percent) of these referrals, and attorneys (private and legal aid) made 4,674 (or 60 percent).
- 903 (or 11.6 percent) of the referrals were deemed to be ineligible.
- 6,911 (or 88 percent) of the referrals were deemed eligible and assigned to the Commerce-approved mediators.
- 5,821 (or 74 percent) of the 7,814 assigned/eligible cases were closed and/or certified by the mediators as of June 30, 2015.
- 1,090 referrals were pending mediator certification as of June 30, 2015.

More details about the mediation outcomes are presented later in this report, in the “Results of the Mediation Program” section.

## Fiscal Year 2014-2015 Program Administration Accomplishments

Commerce continues to improve and streamline the administration of the Foreclosure Fairness Program, in order to more effectively serve the public and all of the program’s stakeholders. The following list includes just a few highlights of the accomplishments made in the last fiscal year (July 1, 2014, to June 30, 2015):

- Received and processed 1,451 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.
- Approved five new foreclosure mediators.
- Revised and continuously improved the [Foreclosure Fairness Program Guidelines](#) manual for mediators, referrers, beneficiaries, and other interested stakeholders.
- Redeveloped and improved the Commerce Foreclosure Fairness Program [website](#) with a focus on homeowners and other stakeholders.
- Revamped and improved the reporting format for counselling services provided under the Foreclosure Fairness Program in partnership with the Washington State Housing Finance Commission and all counseling agencies. The new reporting format was used by the counseling agencies during the 2014-2015 fiscal year.
- Planned and launched a large television and online campaign with KING5, in partnership with the Department of Financial Institutions, to target awareness of the foreclosure prevention services provided under the Foreclosure Fairness Program in the three counties with the highest number of program referrals: King, Snohomish, and Pierce.

## **Housing Finance Commission’s Performance**

Commerce partners with the Washington State Housing Finance Commission (Commission) to administer a homeowner-counseling program, as required by the Foreclosure Fairness Act. Detailed housing counseling data and outcomes reported by the Commission are included later in this report in the “Outcomes of Housing Counseling” section.

The Commission executed contracts with Commerce to provide resources needed to operate and maintain a statewide foreclosure counseling program. In this role, the Commission:

- Subcontracts with a statewide network of housing counselors who provide default and foreclosure counseling and provide payment for their services using Foreclosure Fairness Act funds from Commerce.
- Makes efforts to align practices, policies, and quality of service of the counseling agencies in a consistent manner on a statewide basis.
- Collects and provides data to Commerce regarding the performance of the counseling agencies and the outcomes of services provided to their clients.
- Monitors complaints against housing counselors and takes corrective action when necessary.

Counseling outcomes reported by the Commission include:

- 1,414 participating borrowers were able to reach agreement (home-retention or non-home-retention).
- 753 borrowers were reported as not reaching agreement and/or having their house foreclosed by the beneficiary.

## **Department of Financial Institutions’ Performance**

The Washington State Department of Financial Institutions (DFI) is responsible for conducting homeowner pre-purchase and post-purchase outreach and education programs. From the Act’s enactment in 2011, DFI and Commerce worked together closely to raise public awareness about the services provided under the Foreclosure Fairness Program.

From the beginning of the program through June 30, 2014, DFI:

- Printed 90,000 Foreclosure Fairness Program brochures and distributed 63,000 to the public.
- Printed 35,000 copies of the translated brochures for distribution in direct mail packages and online orders from foreclosure prevention organizations.
- Printed and distributed 20,000 Foreclosure Fairness Program business card-style handouts.
- Direct-mailed 5,646 postcards to homeowners identified to be in foreclosure.

- Direct-mailed 1,384 letters (with brochures, translated brochures, and business cards) to a variety of organizations, non-profits, churches, local government offices, chambers of commerce, and school districts.
- Distributed more than 41,000 *Guide to Home Loans* workbooks.
- Shared Foreclosure Fairness Act, homeownership, and financial education information at more than 200 conferences and workshops, and provided information at six Realtor events.
- Provided funding and support for Seattle University Law School and Northwest Justice Project direct-mail campaign in Seattle.
- Produced video public service announcements that ran 835 times on statewide television channels.
- Revised the brochure and translated it in the top 10 non-English speaking languages in Washington (Spanish, Vietnamese, Russian, Chinese, Korean, Somali, Cambodian, Arabic, Tagalog, and Samoan).
- Provided program outreach on multiple Hispanic Affairs Commission-coordinated radio shows (in Spanish) with a statewide audience.
- Maintained relations with Asset Building Coalitions and other organizations working on foreclosure prevention.
- Conducted a 22-week media campaign focusing on the I-5 corridor and Spokane County that included 11 print and online publications; Google, Yahoo, Facebook, and Bing online ads; and nine radio stations running an estimated 3,600 spots.
- Placed screen ads in movie theaters in targeted counties.
- Sent direct mail to 100,000 recipients via ValPak.
- Worked with Commerce and the city of Seattle to target at-risk communities in the Seattle area.
- Updated the Washington Homeownership Information website ([www.homeownership.wa.gov](http://www.homeownership.wa.gov)), including the Foreclosure Fairness Act page and links.
- Worked with Northwest Justice Project and a PhD candidate from University of Washington to develop a *Foreclosure Mapping Report* to better guide future outreach efforts. The result was a 275-page report <https://nwjustice.org/washington-state-foreclosure-mapping-report> accessible to all housing counselors, attorneys, and the public.

From July 1, 2014 to June 30, 2015, DFI:

- Launched a large public awareness media campaign that included 25 radio stations, 19 radio station websites, four Spanish radio stations, one Spanish radio website, Pandora, 40,000 Val Pak mailings within Pierce County, online newspapers (TheColumbian.com, TheOlympian.com, TheNewsTribune.com, TheStranger.com, TacomaWeekly.com, Spokesman.com and SeattleTimes.com), online social media advertising (Facebook, Bing, Yahoo). The campaign covered King, Thurston, Mason, Clark, Skagit, Snohomish, Pierce, Wahkiakum, Spokane, Whatcom, Clallam, Jefferson, Grays Harbor, Lewis, Cowlitz, Skamania, Kittitas, and Chelan counties.

- Printed 25,000 Foreclosure Fairness Program brochures and distributed more than 22,500 to the public in the following languages: Spanish, Chinese, Arabic, Cambodian, Samoan, Tagalog, Russian, Korean, and Vietnamese.
- Direct-mailed 100,000 Pierce, King and Snohomish residents who searched for “foreclosure” or “loan modification” via KOMO/Sinclair websites.
- Updated and printed 52,000 *Guide to Home Loans* workbooks with 16,244 being distributed.
- Facilitated Commerce’s mailing of 4,290 flyers to schools in the Tacoma School District, as well as an electronic flyer created for the district’s parent information site, Peachjar.
- Maintained relations with Asset Building Coalitions and other organizations working on foreclosure prevention.
- Updated the Washington Homeownership Information website ([www.homeownership.wa.gov](http://www.homeownership.wa.gov)), including the Foreclosure Fairness Act page and links.
- Direct-mailed 443 letters (with brochures, translated brochures, and business cards) to a variety of organizations, non-profits, churches, local government offices, chambers of commerce, and school districts.
- Provided program brochures and business cards at approximately 80 state-wide events.
- Provided program outreach on multiple Hispanic Affairs Commission-coordinated radio shows (in Spanish) with a statewide audience.

As of October 2015, DFI is conducting a large television and online campaign with KING5. This campaign includes a 15-second and a 30-second PSA that will run on KING/KONG/NWCN, as well as a “New Day Northwest” episode and “Foreclosure Prevention Minute” on NWCN with Northwest Justice Project Attorney Lili Sotelo as speaker. The online campaign will target users with online program advertising when they search for the following key words: foreclosure, mortgage, loan modification, unemployment, short sale, HAMP, HARP, refinance, mortgage default, Foreclosure Fairness Act, and Foreclosure Mediation.

## **Office of the Attorney General’s Performance**

The Consumer Protection Division of the Attorney General’s Office (AGO) created the Foreclosure Compliance Program (FCP) to enforce the Deed of Trust Act, as required by that Act. During the last fiscal year (July 1, 2014, to June 30, 2015), the FCP received 730 complaints and inquiries.

- 649 direct consumer complaints and inquiries.
- 42 housing counselor complaints and inquiries.
- 39 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 provide consumers with protections afforded under the Foreclosure Fairness Act. Overall, the grant recipients reported that as of the end of June 2015, more than \$29 million has been expended through their programs throughout the state.

Between July 1, 2014, and June 30, 2015, the AGO took the following actions to enforce the Deed of Trust Act.

- On October 3, 2014, the Attorney General's Office entered into an Assurance of Discontinuance with MTC Financial, Inc. d/b/a Trustee Corps, in which the latter agreed to cease foreclosing on behalf of its sister company, to reform deceptive communication methods with homeowners, and to reform its timeline for foreclosure on owner-occupied real property.
- On October 3, 2014, the Attorney General's Office entered into a Consent Decree with RTED IRVINE, LLC, in which the latter agreed to cease using its sister company as foreclosure trustee. RTED also paid \$50,000 in relief to consumers upon whom it foreclosed.
- On November 10, 2014, the AGO entered into a Consent Decree with Cal-Western of Washington, Inc., that resolved its May 15, 2014 lawsuit over Cal-Western's failure to provide consumers with a working phone number in its foreclosure notices. The Consent Decree provided \$87,600 in direct consumer relief.
- On November 10, 2014, the AGO entered an Assurance of Discontinuance with Cal-Western Reconveyance, LLC, in which the latter agreed not to conduct foreclosures in Washington unless it came into compliance with the "physical presence" requirement of RCW 61.24.030(6).
- On April 9, 2015, the Attorney General's Office entered an Assurance of Discontinuance with Clear Recon Corp., which agreed to change its practices regarding the inclusion in reinstatement estimates of fees from prior discontinued foreclosures, where the reason for the prior discontinuance was servicer or trustee error.
- On May 8, 2015, the AGO filed an amicus curiae brief with the Washington Supreme Court in the case of Trujillo v. Northwest Trustee Services, Inc., arguing that homeowners may maintain a CPA action where the trustee fails to obtain an unambiguous beneficiary declaration pursuant to RCW 61.24.030(7)(a), even if the beneficiary is subsequently proved to be the "actual holder" of the note. On August 20, 2015 the Washington Supreme Court issued a decision adopting the AGO's argument.
- The AGO monitored compliance with and distribution of consumer relief for Washington borrowers pursuant to its December 19, 2013, Consent Decree with Ocwen Financial Corporation and its subsidiary Ocwen Loan Servicing and its June 17, 2014 Consent Decree with SunTrust Mortgage, Inc.

- The AGO monitored compliance of Ally (formerly known as GMAC), Bank of America, Citi, JPMorgan Chase, and Wells Fargo with the servicing standards and other terms of the 2012 National Mortgage Settlement.

In addition, on February 4, 2015, the AGO entered into a Consent Decree with Standard & Poor's Financial Services, LLC, resolving a lawsuit relating to S&P's rating of residential mortgage-backed securities and other structured finance securities. The AGO returned most of the settlement funds to the state's General Fund, and awarded \$3 million in *cy pres* grants, the majority of which went to fund legal aid attorneys, FFA mediation programs, and WSHFC's homeowner-assistance efforts.

The AGO has also participated in a stakeholders group that has examined potential amendments to the Foreclosure Fairness Act and Deed of Trust Act.

### **Office of Civil Legal Aid's Performance**

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

During the last fiscal year (July 1, 2014, to June 30, 2015), NJP received 716 calls from homeowners seeking legal assistance, a 12 percent decrease from last fiscal year. Of those calls, 57 were deemed ineligible and 659 were accepted for representation. The majority of these calls were from residents along the I-5 corridor, with King County residents making 19 percent of the calls, followed by Pierce County (16 percent), Snohomish County (12 percent), and Clark County (10 percent). Spokane County residents made the majority of calls from east of the Cascades (6 percent).

NJP's foreclosure prevention work during July 2014-June 2015 saw a continued increase in litigation to enforce provisions of the Foreclosure Fairness Act, including two cases that went before the State Supreme Court. At the same time, NJP negotiated a significant number of affordable loan modifications at the "meet & confer" stage or prior to the first mediation session, saving the time and expense of prolonged mediation. Most beneficiaries who received a Not-in-Good-Faith certification were willing to continue negotiation after mediation was closed rather than proceed with foreclosure. NJP represented homeowners in the relatively small number of cases where beneficiaries who received Not-in-Good-Faith certifications filed judicial foreclosure actions.

NJP also represented a significant number of homeowners who faced foreclosure following a divorce or the death of a family member. These cases require extensive legal work in the area of family law, probate, government benefits and/or bankruptcy before home-retention

agreements can be reached. NJP is uniquely qualified to provide the myriad of legal services that a homeowner in foreclosure faces. By addressing barriers to income, NJP can help assure sustained affordability of mortgage payments.

Unfortunately, several housing counselor agencies have closed their doors due to budget cuts. NJP has taken on cases that would have gone to these agencies. With two certified housing counselors on staff, NJP is meeting the challenge and providing excellent assistance to homeowners who might otherwise have nowhere to go. The counselors carry their own state-wide caseloads and have introduced the use of Hope LoanPort to facilitate the loan modification application process.

In addition to direct representation, NJP engages in extensive outreach and education. Those efforts included writing a series of articles in Spanish language newspapers highlighting homeowner rights during foreclosure and publicizing the foreclosure hotline number; conducting two radio interviews on a Spanish language station; conducting a television interview about the Foreclosure Fairness Act on New Day Northwest; as well as taping a public service announcement that ran repeatedly on King5 (as part of the DFI-launched campaign, see above).

NJP also edited and distributed *The Washington Foreclosure Prevention Resource Guide* and conducted a series of homeownership workshops in Snohomish County. NJP staff attorneys chair the King County Financial Empowerment Network's Foreclosure Prevention Team, which consists of local housing counselors, other legal service providers, and federal, state and city officials who meet once a month to collaborate on foreclosure prevention efforts in the Seattle-King County metropolitan area. NJP staff attorneys and housing counselors work with community partners and affiliate organizations, educating social and human service organizations on foreclosure prevention, and lending foreclosure expertise to organizations such as Housing Justice Project, Consumer Debt and Bankruptcy Clinics in Seattle and Tacoma, and Volunteer Lawyer Programs.

## Results of the Mediation Program

The data presented in this section is cumulative, covering the first four fiscal years of the program, from its enactment on July 22, 2011, through June 30, 2015. The Mediation Program was developed and is administered by Commerce.

### Referrals to Mediation

Mediation cases are referred to Commerce by either housing counselors (approximately 40 percent) or attorneys (approximately 60 percent). Of the 7,814 referrals received through June 30, 2015, Commerce assigned 6,911 to approved mediators; and 903 were deemed ineligible. 5,821 of the assigned cases have been mediated and/or completed. The remaining assigned cases were pending mediation/completion as of June 30, 2015.

**Figure 3** below tallies the mediation referrals that Commerce received through the end of this reporting period and their outcomes. **Figure 4** identifies the 10 counties with the highest numbers of referrals received by Commerce through June 30, 2015. **Figure 5** illustrates the number of referrals received each quarter from the beginning of the program.

Figure 3: Mediation Referrals from Beginning of Program through June 30, 2015

Category Description	Cases
Mediation Referrals Received Through June 30, 2015	7,814
Referred by housing counselors	3,140 (40%)
Referred by attorneys (private and legal aid)	4,674 (60%)
Cases assigned to mediators*	6,911
Cases completed/closed through June 30, 2015	5,821
Cases pending mediations/certifications as of June 30, 2015**	1,090
Cases ineligible for mediation***	903

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

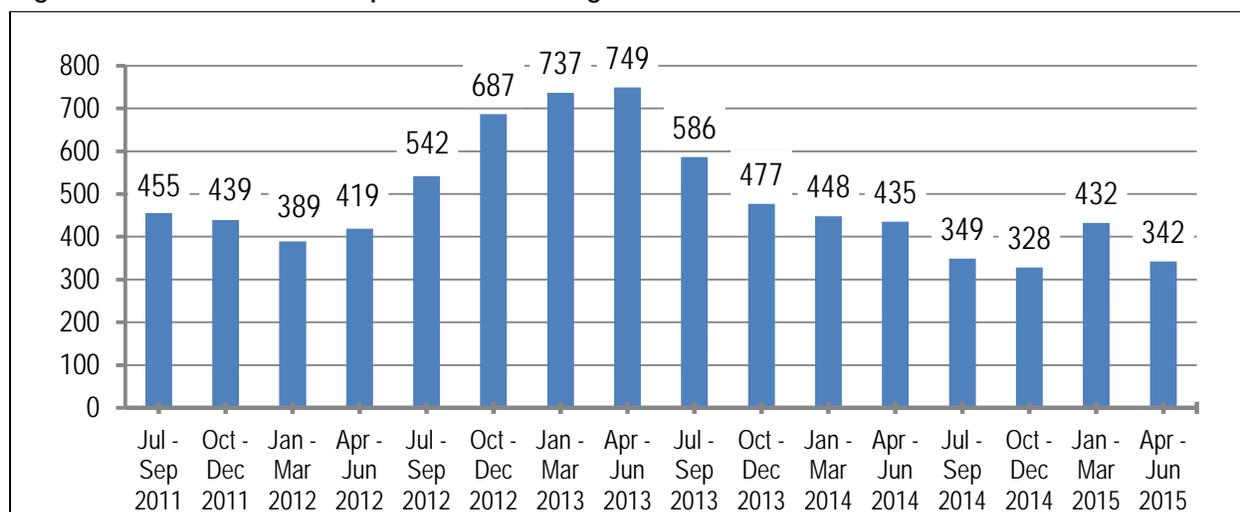
\*\*Cases that have been assigned to mediators, and as of June 30, 2015, for which Commerce has not received the certification from the mediator indicating if the mediation has occurred and describing the result of the mediation.

\*\*\* 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 4: Counties with the Highest Numbers of Referrals Received through June 30, 2015

Top 10 Counties	Referrals Received
King	3,119
Snohomish	1,357
Pierce	1,261
Spokane	506
Clark	370
Kitsap	202
Thurston	197
Yakima	122
Whatcom	99
Skagit	87

Figure 5: Referrals Received per Quarter through June 30, 2015



Note: Some of the numbers in Figure 5 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 6 below analyzes the 5,821 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 (i.e., lack of good faith on either the borrower’s or the beneficiary’s part).

For the cases with one or more mediation sessions, mediators submitted to Commerce certifications that indicated whether an agreement was reached in/after session. Reaching an agreement does not necessarily mean the borrower was able to stay in the house. 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 Mediation Program is fulfilled if both the borrower and the beneficiary are able to communicate openly and in good faith, and the borrowers understand all the available options or why some options are not available, and as a result make well-informed decisions.

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** also have the interest rate reduced. In a case like this, that same favorable result would be counted in all three subcategories.

In instances 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 6: Mediations/Cases Completed from Beginning of Program through June 30, 2015

Category Description (based on mediators’ certifications)	Cases
Cases Certified/Closed	5,821
Referred by housing counselors	2,394
Referred by attorneys (private and legal aid)	3,427

<b>Mediation Session(s) Occurred – Agreement Reached</b>	<b>1,675</b>
<b>Borrower Stayed in Home (subcategories below are not mutually exclusive)</b>	<b>1,333</b>
Reinstatements	82
Repayments	29
Extensions	126
Adjusted rate to fixed rates	117
Amortizations extended	284
Interest rate reductions	588
Principal reductions	90
Monthly principal payments reduced	243
Monthly interest payments reduced	175
Refinances	26
Other loan restructures/modifications	616
Principal forbearances	108
Interest forbearances/write-offs	26
Fees and penalties forbearances/write-offs	23
Other forbearances	41
<b>Borrower Did Not Stay in Home (subcategories below are not mutually exclusive)</b>	<b>342</b>
Deeds in lieu	32
Short sales	156
Voluntary surrenders	30
Cash for keys	21
Other non-retention agreements	188
<b>Mediation Session(s) Occurred – No Agreement Reached</b>	<b>1,890</b>
Parties mediated in good faith but unable to reach agreement	1,520
Borrower not in good faith	167
Beneficiary not in good faith	191
Both borrower and beneficiary not in good faith	12

<b>No Mediation Session Occurred</b>	<b>2,256</b>
Home-retention agreement reached prior to session	984
Non-retention agreement reached prior to session	162
Borrower withdrew from mediation (not included in other categories)	503
Borrower unresponsive* and/or borrower not in good faith	412
Beneficiary not in good faith	32
Both borrower and beneficiary not in good faith	11
Other than above	152

\*Mediation cancelled by mediator due to borrower unresponsiveness, per [RCW 61.24.163\(11\)](#).

### **Borrowers in Default within a Year of Loan Restructuring/Modification**

In the statute establishing the Foreclosure Mediation Program, Commerce is asked to report performance and data about the program, including, “to the extent practical, the number of borrowers who report a default within a year of restructuring or modification” ([RCW 61.24.163 \(18\)\(b\)](#)).

The Foreclosure Fairness Program worked with Commerce’s Research Services staff in March/April 2014 to develop a pilot survey for borrowers who completed the mediation process with their beneficiaries and reached home-retention agreements, allowing them to stay in their homes. A survey was conducted consisting of telephone interviews with homeowners who had completed mediation through the Mediation Program and reached home-retention agreements approximately one year prior to the survey being conducted. The survey description and results were included at the end of the previous annual report (2014), and can be found on the Foreclosure Fairness Program [webpage](#).

## Outcomes of Housing Counseling

The data presented in this section was provided by the Washington State Housing Finance Commission (Commission) as required by [RCW 61.24.160\(6\)](#). It covers the last fiscal year of the program, from July 1, 2014, through June 30, 2015.

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 decreased from 77 to 64 at the time this report was prepared.

**Figure 7** 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, 2014, and June 30, 2015, its counselors and legal aid attorneys assisted 5,465 borrowers in need of assistance. Counselors and legal aid attorneys attended 2,810 "meet & confer" meetings between borrowers and their beneficiaries, and 529 mediation sessions. The Commission also reports that 921 borrowers were referred to other types of assistance, such as legal and financial assistance.

Counseling outcomes reported by the Commission (more details in **Figure 7** below):

- 1,414 participating borrowers were able to reach agreement (home-retention or non-home-retention).
- 753 borrowers were reported as not reaching agreement and/or having their house foreclosed by the beneficiary.

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 7: Outcomes of Housing Counseling, July 1, 2014, to June 30, 2015

Category Description	Cases
<b>Totals*</b>	
<b>Outputs:</b>	
Clients	5,465
Referrals to Other Services	921
<b>Outcomes:</b>	
Pending Outcomes (still in counseling)	2,675
Withdrawals from Counseling	633
Home Retention Agreements	1,218
Non-Retention Agreements	196
No Agreements	655
Foreclosures	88
<b>Meet &amp; Confer</b>	
<b>Outputs:</b>	
Meet & Confer Sessions Attended	2,810
<b>Outcomes:</b>	
Pending Outcomes	2,272
Withdrawals from Counseling	65
Home-Retention Agreements	158
Non-Retention Agreements	37
No Agreements	278
<b>Mediation</b>	
<b>Outputs:</b>	
Mediation Referrals	655
Clients Assisted in Mediation	510
Mediation Sessions Attended	529
<b>Outcomes:</b>	
Referrals Ineligible for Mediation	11
Agreements Prior to Mediation	238
Withdrawals from Mediation	33
Loan Modifications Reached in Mediation	115

Other Home-Retention Agreements Reached in Mediation	22
Non-Retention Agreements Reached in Mediation	29
No Agreements Reached in Mediation	111
Mediation Sessions Continued (Outcome Pending)	252
<b>Appeals/Escalations</b>	
<b>Outputs:</b>	
Appeals/Escalations	446
<b>Outcomes:</b>	
Pending Outcomes	256
Withdrawals from Counseling	11
Home-Retention Agreements	112
Non-Retention Agreements	29
No Agreements	38

*\* 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.*

## Legislative Improvements

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 all the program partners identified in this report. It is important to note that each time the Foreclosure Fairness Act was amended, Commerce worked with these stakeholders to achieve consensus.

As a good example, the most recent amendment to the Act, [HB 2723](#), was passed unanimously by both the 2014 House and Senate, and signed into law by Governor Jay Inslee on March 31, 2014. Commerce convened six stakeholder meetings to discuss these amendments and reach consensus before [HB 2723](#) was written. The amendments in [HB 2723](#) provided great improvements to the Act, including an expansion of “borrower” and “residential real property” definitions that expand program eligibility criteria; modifications to beneficiary procedures that increase transparency and borrower knowledge of the foreclosure process; voluntary participation in the foreclosure mediation program if certain criteria are met; permission for Commerce to authorize mediation fees; and fund allocation modifications that will ensure the continuous operations of the program given the decreasing level of program revenue.

Earlier amendments to the Foreclosure Fairness Act ([SHB 2614](#) and [SSB 5988](#), 2011-2012) have also improved the ability for mediators to conduct productive mediations and made the process more efficient and transparent. In particular, these amendments improved the timing and order of the documents exchange to make it work more effectively for both the borrower and the beneficiary. The modified process allowed the beneficiary to use the information provided by the borrower to complete their review prior to the mediation.

In addition, the 2012 amendments provided civil immunity to mediators to prevent them from withdrawing from the program. Changing the borrowers’ eligibility requirements has also proven to be beneficial. Prior to this change, many borrowers were missing the opportunity to meet & confer with their beneficiary and going straight to mediation. Now borrowers are waiting until they receive a Notice of Default to be referred to mediation. This is more in line with the design of the Deed of Trust Act legislation ([RCW 61.24](#)).