Foreclosure Fairness Act
2015 Summit

October 27, 2015
Welcome!

- Welcome and introductions
- Summit goals
- Ground rules
- Legislature’s expectation
Legislature’s Expectation

“The department must convene a work group of interested stakeholders to review the state's deed of trust act contained in Title 61 RCW. The work group should include, but not be limited to, representatives from financial institutions, loan servicing and trustee service companies, and advocacy groups representing homeowners and borrowers. **The work group is tasked to review and make recommendations to ensure that the act remains a workable system for financial institutions, loan servicing companies, trustee, homeowners, and borrowers.** A report on the review and recommendations is due to the governor and legislature by December 1, 2015. Up to $20,000 from the foreclosure fairness account may be used to defray the department's costs for convening and providing administrative and technical support to the work group.”

ESSB 6052, Sec. 128 (35), emphasis added
State of the Program

1. Mediation program – Department of Commerce
2. Housing counseling – Housing Finance Commission
3. Consumer protection services – Attorney General Office
4. Legal-aid services – Office of Civil Legal Aid/Northwest Justice Project
5. Public outreach and education – Department of Financial Institutions
Overall Program Statistics

- Program received $19 million in revenue
- Counseling was provided to over 26,000 homeowners
- Commerce received & processed over 8,000 referrals
- 50% of the closed mediations ended with agreement reached
- More and more agreements are reached before a session occurs

Data as of September 30, 2015
Referrals to Mediation Received

8,175 Referrals Received & Processed by Commerce

Data as of September 30, 2015
## Referrals by County

<table>
<thead>
<tr>
<th>Top 10 Counties</th>
<th>Referrals</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>King</td>
<td>3,236</td>
<td>40%</td>
</tr>
<tr>
<td>Snohomish</td>
<td>1,419</td>
<td>17%</td>
</tr>
<tr>
<td>Pierce</td>
<td>1,327</td>
<td>16%</td>
</tr>
<tr>
<td>Spokane</td>
<td>533</td>
<td>7%</td>
</tr>
<tr>
<td>Clark</td>
<td>388</td>
<td>5%</td>
</tr>
<tr>
<td>Kitsap</td>
<td>218</td>
<td>3%</td>
</tr>
<tr>
<td>Thurston</td>
<td>213</td>
<td>3%</td>
</tr>
<tr>
<td>Whatcom</td>
<td>129</td>
<td>2%</td>
</tr>
<tr>
<td>Yakima</td>
<td>105</td>
<td>1.3%</td>
</tr>
<tr>
<td>Skagit</td>
<td>93</td>
<td>1.1%</td>
</tr>
</tbody>
</table>

Data as of September 30, 2015
Mediation Results

Certified/closed: 77%

Pending: 12%
Ineligible: 11%

No Mediation Occurred - OTHER: 18%
No Mediation Occurred - AGREEMENT: 21%
Mediation Occurred - AGREEMENT: 29%
Mediation Occurred - NO AGREEMENT: 32%

Data as of September 30, 2015
Mediation Results Year-Over-Year

Data as of September 30, 2015

- Agreements reached in/after session
- Agreements reached prior session
Customer Feedback
## Feedback from the Beneficiary & Borrower Reps

<table>
<thead>
<tr>
<th>Their satisfaction with...</th>
<th>Very of mostly satisfied</th>
<th>Very or mostly dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>... the program</td>
<td>42%</td>
<td>47%</td>
</tr>
<tr>
<td>... the mediators’ performance</td>
<td>28%</td>
<td>44%</td>
</tr>
<tr>
<td>... mediators’ knowledge and application of the FFA statute</td>
<td>45%</td>
<td>34%</td>
</tr>
<tr>
<td>... mediators’ knowledge and application of Commerce’s guidelines</td>
<td>34%</td>
<td>32%</td>
</tr>
<tr>
<td>... mediators’ knowledge of the federal guidelines</td>
<td>16%</td>
<td>50%</td>
</tr>
<tr>
<td>... mediators’ knowledge of NPV</td>
<td>16%</td>
<td>58%</td>
</tr>
</tbody>
</table>

Date source: “Borrower and Beneficiary Representatives Satisfaction with FFA” survey, Sept. 2015 (49 responses received)—see survey results on the [program website](#).
Mediators’ and DCRs’ Expectations of Commerce

<table>
<thead>
<tr>
<th>Mediators are...</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>... clear about Commerce’s expectations of them</td>
<td>94% very or mostly clear</td>
<td>1% very or mostly unclear</td>
</tr>
<tr>
<td>... satisfied with the assistance and support they receive from Commerce</td>
<td>82% very or mostly satisfied</td>
<td>3% very or mostly dissatisfied</td>
</tr>
<tr>
<td>... satisfied with Commerce’s program guidelines</td>
<td>90% very or mostly satisfied</td>
<td>3% very of mostly dissatisfied</td>
</tr>
<tr>
<td>... following Commerce’s program guidelines</td>
<td>91% closely or very closely</td>
<td>1% loosely or very loosely</td>
</tr>
</tbody>
</table>

Comments re. additional support from Commerce:
• Most feel well supported and need no additional assistance
• A few “try to stay away from Commerce as much as possible”
• Some indicated they would like more guidance or training
• Some would like to see an improved certification form

Date source: “Mediators’ and DRCs’ Expectations and Satisfaction” survey, Sept. 2015 (70 responses received)—see survey results on the [program website](http://www.commerce.gov)
State of the Program

1. Mediation program – Department of Commerce
2. Housing counseling – Housing Finance Commission
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5. Public outreach and education – Department of Financial Institutions
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FFA Outreach/Media Coverage

- Brochures in 11 languages
- Radio spots
  - English & Spanish
- Television spots
- New Day Northwest
- Print media
  - English & Spanish
- Online Geo Targeting
- Facebook
- Pandora
- Twitter
- Theater PSAs
- Direct Mail/ValPak
- In-Person at estimated 100 events each year

- Direct mail packets with letter of explanation of the FFA program and FFA brochures in each language to:
  - Churches - 436
  - Schools - 295
  - Food banks
  - Libraries – 400+
  - County assessors – 39
  - Economic Development Boards – 34
  - Rotary Clubs – 35
  - United Ways – 22
  - Chambers of Commerce – 146
  - Local Area Planning Partnerships - 29

**FFA Funds Spent to date on Outreach**

- 2011-2013 Biennium $125,325.01
- 2013-15 Biennium $306,169.15
- 2015-17 Biennium $29,455.56

**Washington State Department of Financial Institutions**

“Regulating financial services to protect and educate the public and promote economic vitality.”
Branded FFA Outreach

Washington State Department of Financial Institutions
“Regulating financial services to protect and educate the public and promote economic vitality.”

Facing Foreclosure?
DON’T WAIT until it’s too late
Get Help NOW!

FREE Foreclosure Prevention Counseling
1-877-894-HOME(4663)

Information & Resources
www.homeownership.wa.gov

The toll-free number for the statewide civil legal aid hotline is 1-800-606-4819.

Department of Commerce
Innovation is in our nature.
www.commerce.wa.gov/foreclosures
FFA Outreach/Media Coverage

Washington State Department of Financial Institutions
“Regulating financial services to protect and educate the public and promote economic vitality.”
WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS

“Regulating financial services to protect and educate the public and promote economic vitality.”
FFA Outreach/Media Coverage
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- Radio
- TV
- Print Media
- Online – Geo Target
- Facebook
- Pandora
- Twitter
- Theater PSAs
- Direct Mail - ValPak
- In Person

New Day NW

Direct Mail Packets

Washington State Department of Financial Institutions
“Regulating financial services to protect and educate the public and promote economic vitality.”
FFA Outreach/Media Coverage

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WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS

"Regulating financial services to protect and educate the public and promote economic vitality."
FFA Outreach/Media Coverage

Washington State Department of Financial Institutions
“Regulating financial services to protect and educate the public and promote economic vitality.”
Access to Mediation – Lili Sotelo

- Referral process
- Exemption from participation in mediation
Break

Please return to your seats in 10 minutes
Mediation Issues

1. Document exchange process
2. Mediation timeline
3. Pre-session check-in with the parties
4. Mediator’s perspective, issues, recommendations
Document Exchange Process

- **Hope Loan Port**
- Oregon’s Mediation Program Manager ([Part 1](#) & [Part 2](#))
Mediation Timeline

• FFA intended 70 days from mediator assignment to certification

• Program data shows (6,089 certified cases):
  • Case lengths range from 6 to 1,278 days
  • Average: 257 days per case
  • Median: 212 days per case

• Is the 70-day timeline contemplated in statute too short?
Pre-Session Check-in with the Parties

Statute:

“The mediator may schedule phone conferences, consultations with the parties individually, and other communications to ensure that the parties have all the necessary information and documents to engage in a productive mediation.”

RCW 61.24.163 (7)(a), emphasis added

Expected by Commerce:

Mediators must check-in with the parties 1-2 weeks prior to each session to ensure a productive session.
Mediators’ Perspective, Issues, Recommendations

- Observations, discussion with the mediators
Program Sustainability and Funding

1. Current funding status
2. Program size and priorities
3. Appropriate levels of funding
4. Funding sources
5. Banking industry’s perspective, exemption from paying FFA fees
6. Mediator fees
Funds received in a quarter are for Notices of Default issued in the previous quarter. Reports and payments are due to Commerce 45 days after the end of each quarter (RCW 61.24.174).

Data as of September 30, 2015
<table>
<thead>
<tr>
<th></th>
<th>Bien 11-13</th>
<th>Bien 13-15</th>
<th>FY 12</th>
<th>FY 13</th>
<th>FY 14</th>
<th>FY 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jul-Sep</td>
<td>$3,184,326</td>
<td>$2,358,500</td>
<td>$1,720,200</td>
<td>$1,464,126</td>
<td>$1,425,000</td>
<td>$933,500</td>
</tr>
<tr>
<td>Oct-Dec</td>
<td>$2,308,124</td>
<td>$1,343,835</td>
<td>$692,000</td>
<td>$1,616,124</td>
<td>$861,585</td>
<td>$482,250</td>
</tr>
<tr>
<td>Jan-Mar</td>
<td>$1,710,075</td>
<td>$1,475,415</td>
<td>$510,250</td>
<td>$1,199,825</td>
<td>$909,665</td>
<td>$565,750</td>
</tr>
<tr>
<td>Apr-Jun</td>
<td>$2,657,750</td>
<td>$1,650,500</td>
<td>$560,000</td>
<td>$2,097,750</td>
<td>$916,500</td>
<td>$734,000</td>
</tr>
<tr>
<td>Total</td>
<td>$9,860,275</td>
<td>$6,828,250</td>
<td>$3,482,450</td>
<td>$6,377,825</td>
<td>$4,112,750</td>
<td>$2,715,500</td>
</tr>
</tbody>
</table>
Foreclosure Fairness Fund Distribution

$17.6 Million Expended

HFC, 13,057,526
AGO, 1,041,691
DFI, 460,950
OCLA, 360,000
Commerce, 3,016,597
Balance, 1,192,511

Expenditures from the Foreclosure Fairness Account are made in compliance with RCW 61.24.172.
Data as of September 30, 2015
Forecasted Future State of the Program

Forecasting suggests that the new industry “normal” will be approx. **10,000 NOD’s** issued per year.

It’s been estimated that approx. **20-30% of the NOD’s are exempt** from paying the $250 FFA fee.

Assuming 8,000 NOD’s are required to pay fees each fiscal year, the future program funding could level out around **$4 million per biennium**.
# Foreclosure Fairness Funding Allocation

## Statutory requirements (RCW 61.24.172)

<table>
<thead>
<tr>
<th>Agency</th>
<th>Allocation Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Finance Commission</td>
<td>No less than 71%, except to pay for AGO &amp; Commerce</td>
</tr>
<tr>
<td>Dept. of Commerce</td>
<td>Up to 18% or $1,400,000 per biennium, whichever is greater</td>
</tr>
<tr>
<td>Attorney General Office</td>
<td>Up to 6% or $655,000 per biennium, whichever is greater</td>
</tr>
<tr>
<td>Dept. of Financial Institutions</td>
<td>Up to 3%</td>
</tr>
<tr>
<td>Office of Civil Legal Aid</td>
<td>Up to 2%</td>
</tr>
</tbody>
</table>
## Foreclosure Fairness Expenditures

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
<th>Actual %</th>
<th>RCW %</th>
</tr>
</thead>
<tbody>
<tr>
<td>HFC</td>
<td>$1,817,039</td>
<td>45.4%</td>
<td>71.0%</td>
</tr>
<tr>
<td>COM</td>
<td>$1,400,000</td>
<td>35.0%</td>
<td>18.0%</td>
</tr>
<tr>
<td>AGO</td>
<td>$655,000</td>
<td>16.4%</td>
<td>6.0%</td>
</tr>
<tr>
<td>DFI</td>
<td>$76,776</td>
<td>1.9%</td>
<td>3.0%</td>
</tr>
<tr>
<td>OCLA</td>
<td>$51,184</td>
<td>1.3%</td>
<td>2.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,000,000</strong></td>
<td><strong>100.0%</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>
## Foreclosure Fairness Expenditures

### Expenditures

<table>
<thead>
<tr>
<th></th>
<th>Bien 11-13</th>
<th>Bien 13-15</th>
<th>FY 12</th>
<th>FY 13</th>
<th>FY 14</th>
<th>FY 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>HFC</td>
<td>$6,466,011</td>
<td>$6,321,547</td>
<td>$2,479,401</td>
<td>$3,986,610</td>
<td>$3,363,570</td>
<td>$2,957,977</td>
</tr>
<tr>
<td>COM</td>
<td>$1,428,901</td>
<td>$1,406,294</td>
<td>$670,809</td>
<td>$758,092</td>
<td>$818,414</td>
<td>$587,879</td>
</tr>
<tr>
<td>AGO</td>
<td>$470,635</td>
<td>$540,210</td>
<td>$221,763</td>
<td>$248,872</td>
<td>$301,469</td>
<td>$238,741</td>
</tr>
<tr>
<td>DFI</td>
<td>$125,325</td>
<td>$306,169</td>
<td>$118,189</td>
<td>$7,136</td>
<td>$163,207</td>
<td>$142,962</td>
</tr>
<tr>
<td>OCLA</td>
<td>$198,932</td>
<td>$161,068</td>
<td>$110,000</td>
<td>$88,932</td>
<td>$101,068</td>
<td>$60,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$8,689,805</td>
<td>$8,735,287</td>
<td>$3,600,163</td>
<td>$5,089,642</td>
<td>$4,747,728</td>
<td>$3,987,560</td>
</tr>
</tbody>
</table>

### % Of Total Spending

<table>
<thead>
<tr>
<th></th>
<th>Bien 11-13</th>
<th>Bien 13-15</th>
<th>FY 12</th>
<th>FY 13</th>
<th>FY 14</th>
<th>FY 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>HFC</td>
<td>74.4%</td>
<td>72.4%</td>
<td>68.9%</td>
<td>78.3%</td>
<td>70.8%</td>
<td>74.2%</td>
</tr>
<tr>
<td>COM</td>
<td>16.4%</td>
<td>16.1%</td>
<td>18.6%</td>
<td>14.9%</td>
<td>17.2%</td>
<td>14.7%</td>
</tr>
<tr>
<td>AGO</td>
<td>5.4%</td>
<td>6.2%</td>
<td>6.2%</td>
<td>4.9%</td>
<td>6.3%</td>
<td>6.0%</td>
</tr>
<tr>
<td>DFI</td>
<td>1.4%</td>
<td>3.5%</td>
<td>3.3%</td>
<td>0.1%</td>
<td>3.4%</td>
<td>3.6%</td>
</tr>
<tr>
<td>OCLA</td>
<td>2.3%</td>
<td>1.8%</td>
<td>3.1%</td>
<td>1.7%</td>
<td>2.1%</td>
<td>1.5%</td>
</tr>
</tbody>
</table>
Program Sustainability and Funding Discussion

1. **Adjust the program to fit the revenue:**
   - What is the appropriate program size?
   - What are the priorities of the program?
   - What are the essential functions of the program?
   - Are changes needed to the allocation methodology?

2. **Increase the revenue to ensure FFA services continue:**
   - Are there other funding sources?
   - Could there be changes to the current fee structure?
   - Should the fee requirements be universal?
Mediators were surveyed in Sep. 2015:

- 70% said the current fees structure is rarely or never enough to cover their costs and compensate for their time
- 43% spend 5-8 hours per session, and 36% spend 9+ hours per session, on average
- 65% had an average of 1-2 sessions per case
- 88% think there should be an increase in session fee (most popular amount was $600)
- Most charge a rescheduling fee (the majority between $50 and $200)

Date source: “Foreclosure Fairness Act Mediator Fees” survey, Sept. 2015 (45 responses received)—see survey results on the program website
Mediator Fees – Discussion

1. Should there be a mediator fee increase?
2. What should the amount be?
3. Should there be the same fee for any subsequent sessions?
4. Should we standardize the re-scheduling practices?
Break

Please return to your seats in 10 minutes
Beyond Foreclosure and the Trustee Sale

Discussion with Rep. Tina Orwell and Briahna Murray, Gordon Thomas Honeywell Governmental Affairs
Conclusion

- Other topics
- Q&A
- Next steps
- Closing remarks
For More Information

Foreclosure Fairness Program

www.commerce.wa.gov/foreclosures

ForeclosureMediation@commerce.wa.gov

(360) 725-3040