



**Department of Commerce**  
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# Foreclosure Fairness Program

**Presented by:**

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**Brigid Henderson, Dept. of Commerce**

**Barb Lloyd, Mass Ingenuity**

**November 2, 2015**

# Welcome!

- **Welcome and introductions**
- **Thank you, planning committee!**

**Gayle Murdock**

**Jeff Bean**

**Kathy Rice**

**Lynn Yialelis**

**Maralise Hood Quan**

**Sandy Barto**

**Mass Ingenuity**

**Dept. of Commerce**



# Why Are We Here?



## **Foreclosure Fairness Act's Purpose:**

To help homeowners and lenders explore alternatives to foreclosure and reach a resolution when possible.



# Why Are We Here Today?



- ...because feedback from stakeholders shows a desire for a more consistent body of practice
- ...because “topics of interest” have been identified for mediator discussions
- ...because Commerce needs to better understand how to support its approved mediators
- ...to celebrate our accomplishments so far!



# Today's Goals & Desired Outcomes



## Event Goals:

- Mediators deepen their understanding of the FFA statute, federal guidelines, and Commerce's expectations.
- Mediators expand their skills through sharing best/effective practices.
- Commerce better understands the expectations of its mediators and how to assist them.

## Desired Outcome:

- All mediators develop and apply a consistent body of practice in FFA mediations.



# Today's Structure



- **Today's agenda is built around a structured process:**



- May 2015 survey
  - FFA timeline & three-prong approach
  - Case study workgroups
- **Connection to pre-plenary work**




# Ranked Topics of Interest (May 2015 Survey)

Rank 1	Mediator's discretion to determine good faith.
Rank 2	Federal regulatory guidelines: HAMP, CFPB, etc.
Rank 3	FFA intent and requirements; Commerce's guidelines.
Rank 4	NPV inputs and test.
Rank 5	Multiple mediation sessions and continuances.
Rank 6	Session scheduling and/or re-scheduling mediator discretion.
Rank 7	Setting fees: session(s), rescheduling, cancellations.
Rank 8	Facilitating the document and information exchange.
<del>Rank 9</del>	<del>Avoiding borrower eligibility disputes.</del>
Rank 10	Mediator's authority to cancel mediation (per RCW 61.24.163(11)).
Rank 11	Pre-session check-in with the parties, readiness for session.
<del>Rank 12</del>	<del>Joint and shuttle mediation techniques, conducting the session.</del>
Rank 13	Handling complaints against mediators.
<del>Rank 14</del>	<del>Mediator substitutions during the mediation process.</del>
Comments	Beneficiary's authority to settle
Comments	Borrowers who are poorly or not represented

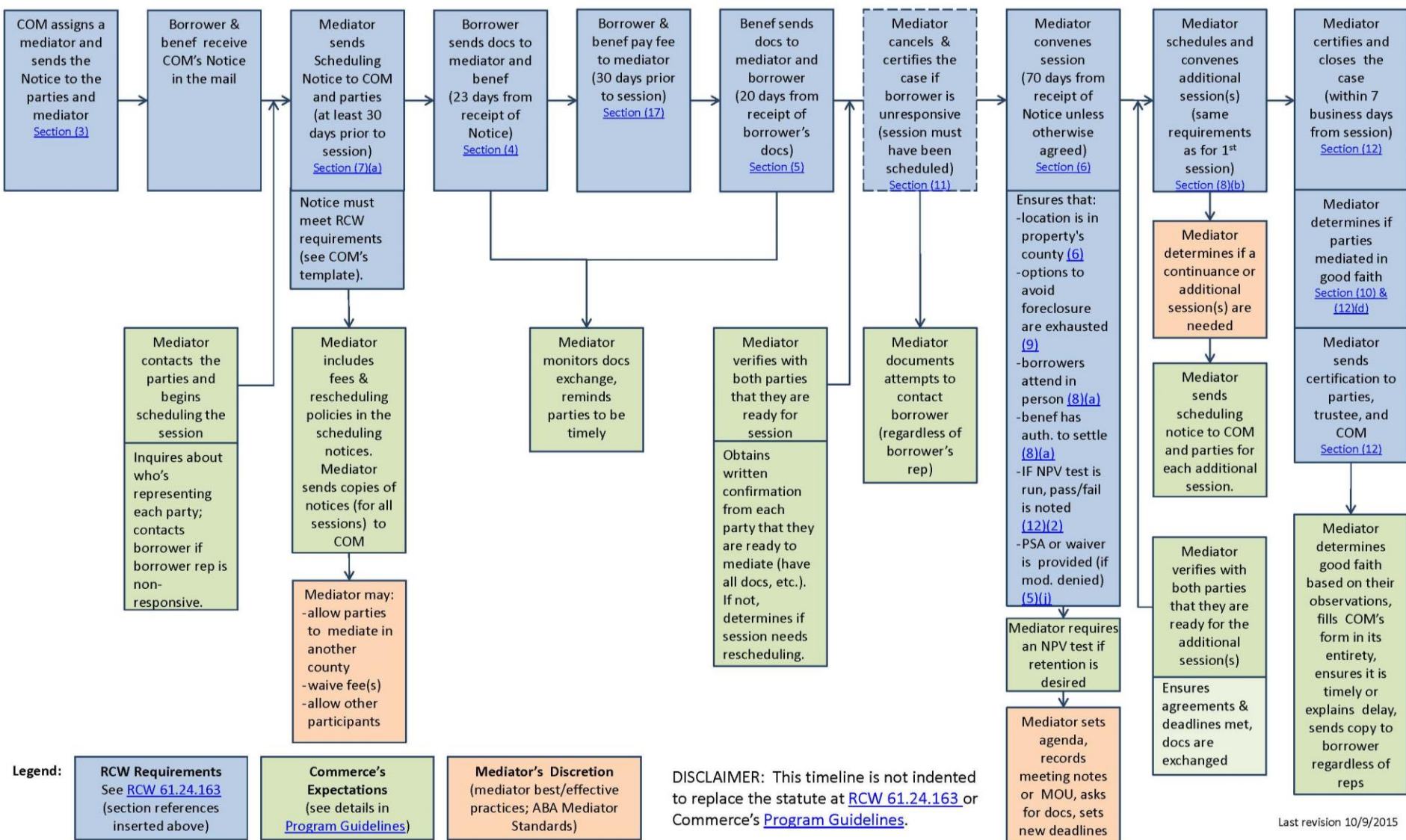
# Today's Structure (continued)



- **Today's agenda is built around a structured process:**
  - May 2015 survey
  -  • FFA timeline & three-prong approach
  - Case study workgroups
- **Connection to pre-plenary work**



# FFA Timeline & Three-Prong Approach

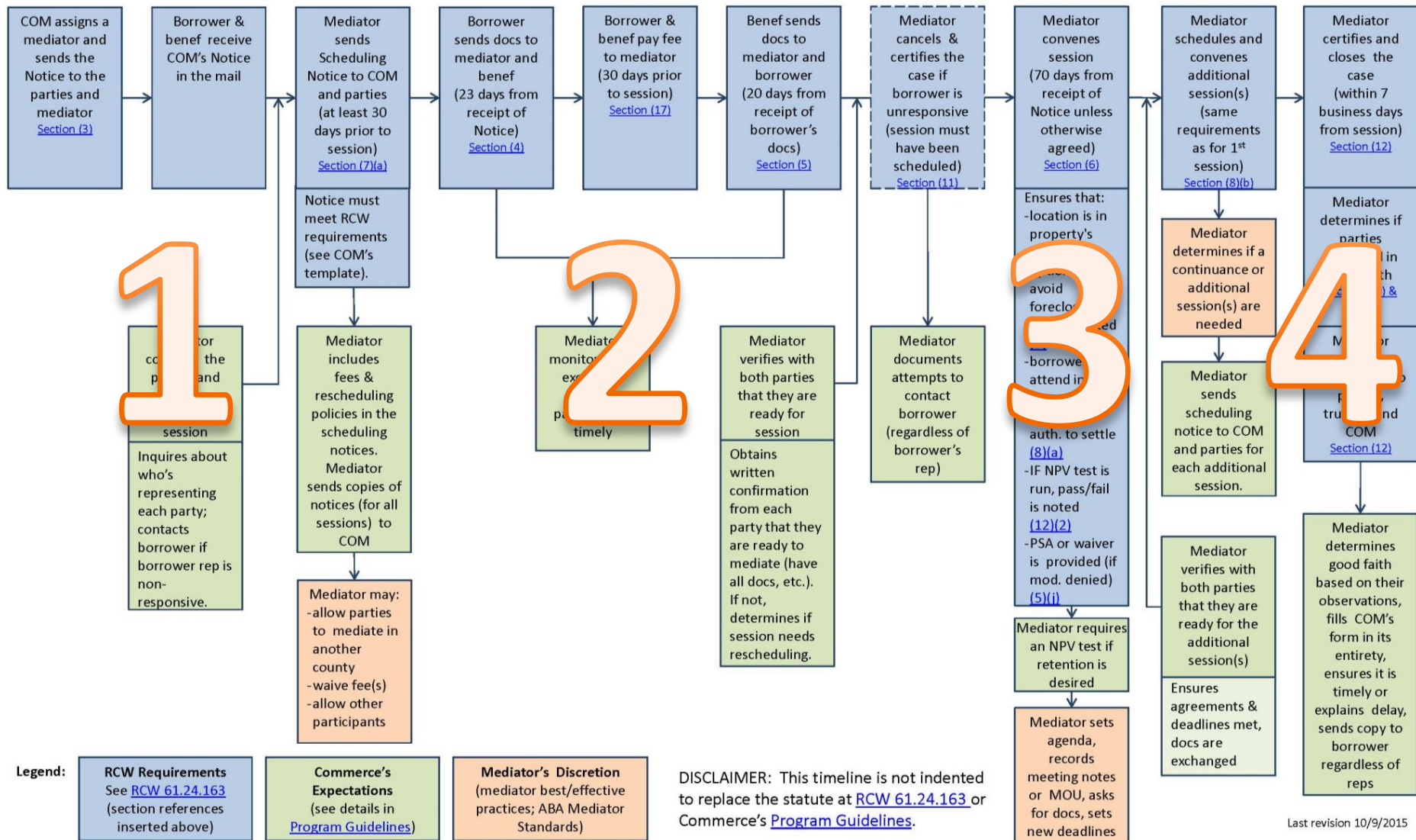


# Today's Structure (continued)

- **Today's agenda is built around a structured process:**
  - May 2015 survey
  - FFA timeline & three-prong approach
  - ➡ • Case study workgroups
- **Connection to pre-plenary work**



# FFA Timeline & Three-Prong Approach



# Today's Structure (continued)

- **Today's agenda is built around a structured process:**
  - May 2015 survey
  - FFA timeline & three-prong approach
  - Case study workgroups
- ➔ • **Connection to pre-plenary work**



# Survey Feedback



A hand holding a black pen is marking a survey form. The form has five rows of checkboxes, each corresponding to a rating: Survey, Excellent, Good, Fair, and Poor. The 'Survey' checkbox is marked with a checkmark.

Survey:	<input checked="" type="checkbox"/>
Excellent:	<input type="checkbox"/>
Good:	<input type="checkbox"/>
Fair:	<input type="checkbox"/>
Poor:	<input type="checkbox"/>

# Surveys Overview



## May 2015:

- Topics of mediator discussion – 193 responded (14%)

## September 2015:

- Borrower and beneficiary representatives satisfaction – 49 responded (15%)
- Mediators' and DRC's satisfaction and expectations – 70 responded (48%)
- Fees and scheduling practices – 45 responded (62%)



# Feedback from the Beneficiary & Borrower Reps

Your clients' satisfaction with...	Very or mostly satisfied	Very or mostly dissatisfied
... the program	42%	47%
... the mediators' performance	28%	44%
... mediators' knowledge and application of the FFA statute	45%	34%
... mediators' knowledge and application of Commerce's guidelines	34%	32%
... mediators' knowledge of the federal guidelines	16%	50%
... mediators' knowledge of NPV	16%	58%

Date source: "Borrower and Beneficiary Representatives Satisfaction with FFA" survey, Sept. 2015 (49 responses received)—see survey results on the [program website](#)



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# Mediators' and DRCs' Expectations of Commerce

Mediators are...		
... clear about Commerce's expectations of them	94% very or mostly clear	1% very or mostly unclear
... satisfied with the assistance and support they receive from Commerce	82% very or mostly satisfied	3% very or mostly dissatisfied
... satisfied with Commerce's program guidelines	90% very or mostly satisfied	3% very or mostly dissatisfied
... following Commerce's program guidelines	91% closely or very closely	1% loosely or very loosely

Comments about additional support from Commerce:

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

Date source: “Mediators' and DRCs' Expectations and Satisfaction” survey, Sept. 2015 (70 responses received)—see survey results on the [program website](#)



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# Fees & Scheduling Practices

- 98% of the mediators send a written notice to the parties for every session scheduled
- But only 82% always send one to Commerce
- 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 (most charge between \$50 and \$200)

# Let's Celebrate Our Accomplishments!



# 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

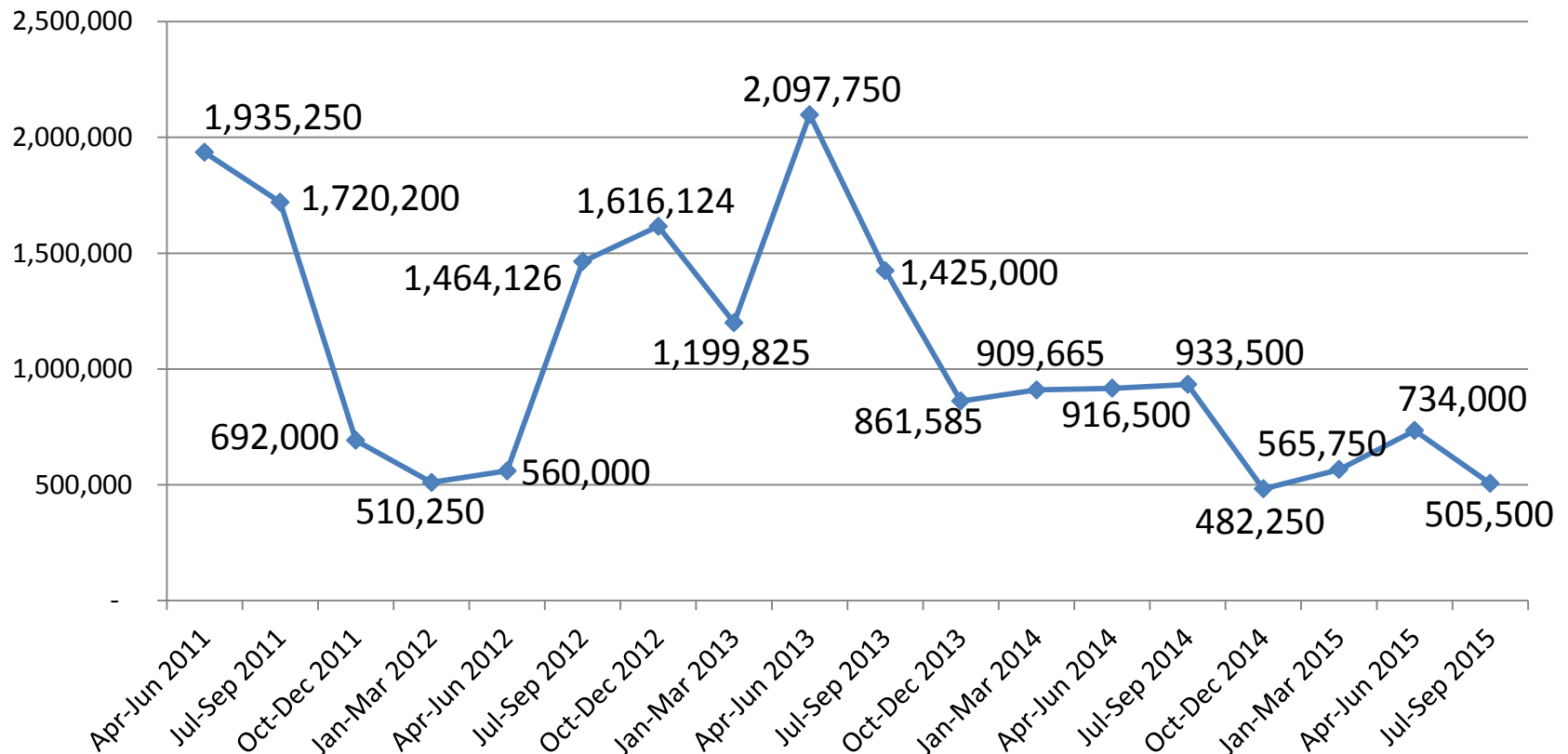
Data as of September 30, 2015



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# Foreclosure Fairness Fund Revenue

**\$19 Million Received**



\* 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**

# Foreclosure Fairness Fund Distribution

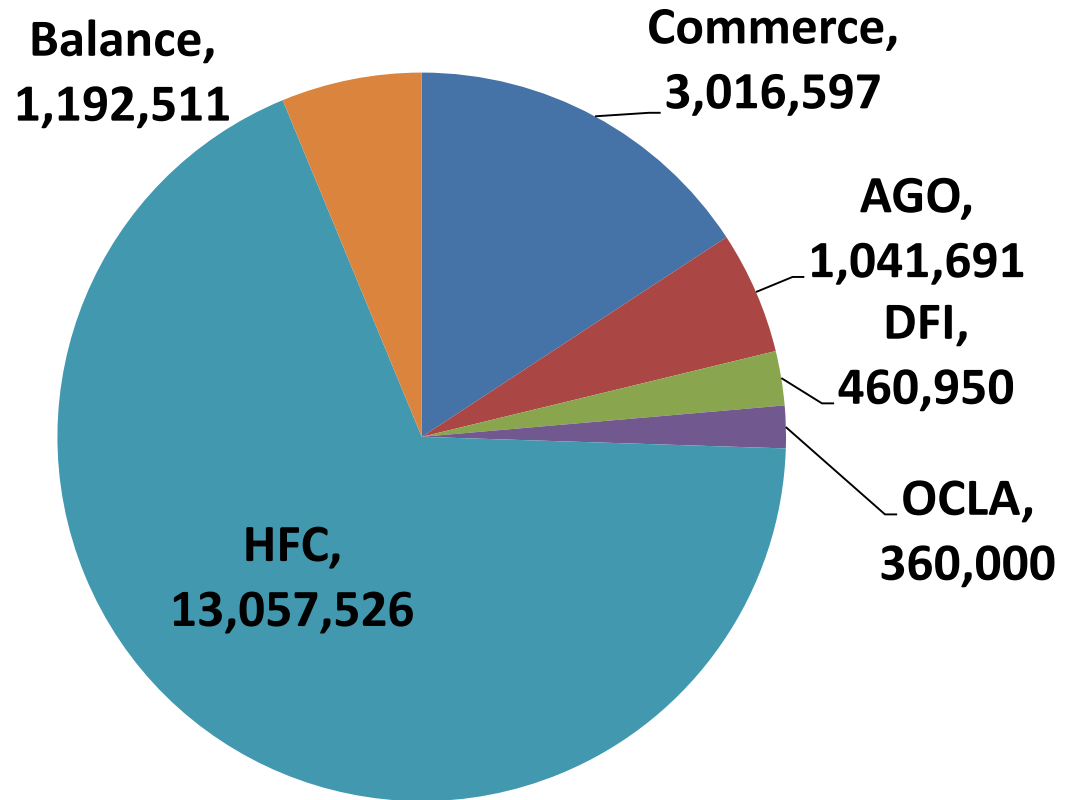
**\$17.6 Million Expended**

**HFC**  
Housing Finance  
Commission

**AGO**  
Attorney General  
Office

**DFI**  
Dept. of Financial  
Institutions

**OCLA**  
Office of Civil Legal  
Aid



\* Expenditures from the Foreclosure Fairness Account are made in compliance with RCW 61.24.172.

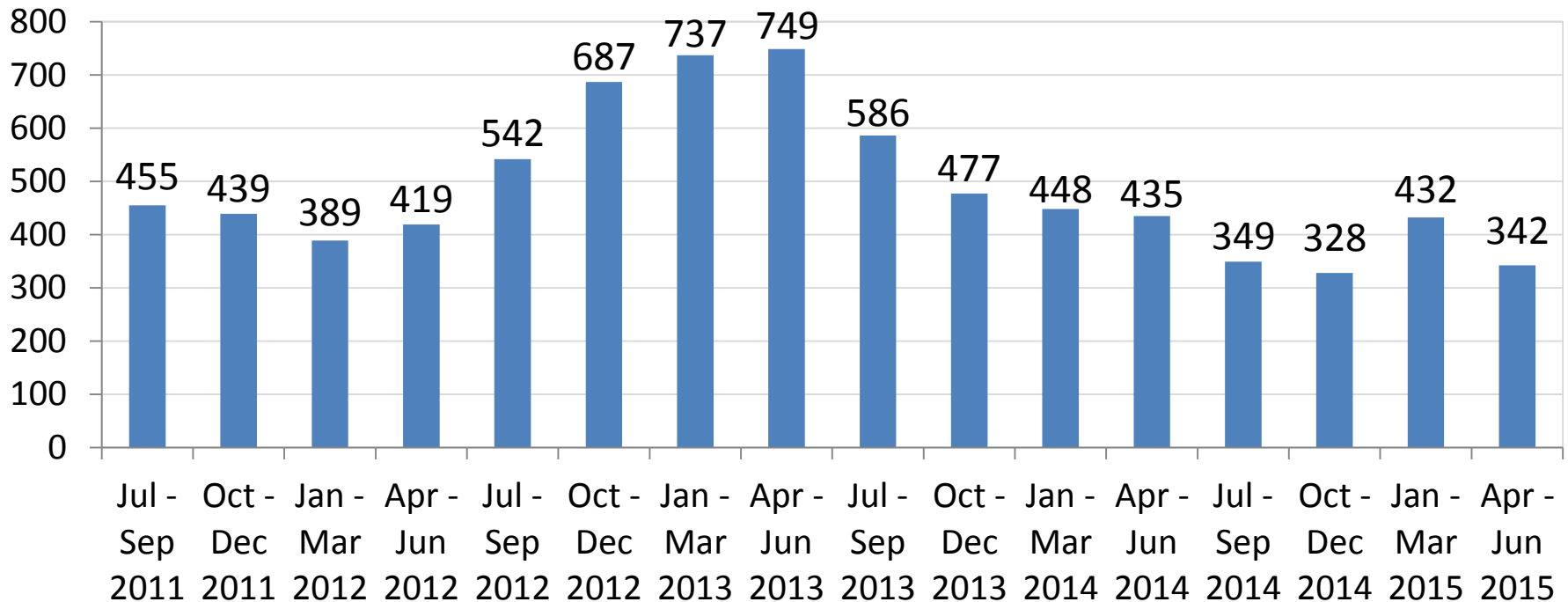
**Data as of September 30, 2015**



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# Referrals to Mediation Received

## 8,175 Referrals Received & Processed by Commerce



Data as of September 30, 2015



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# Referrals by County

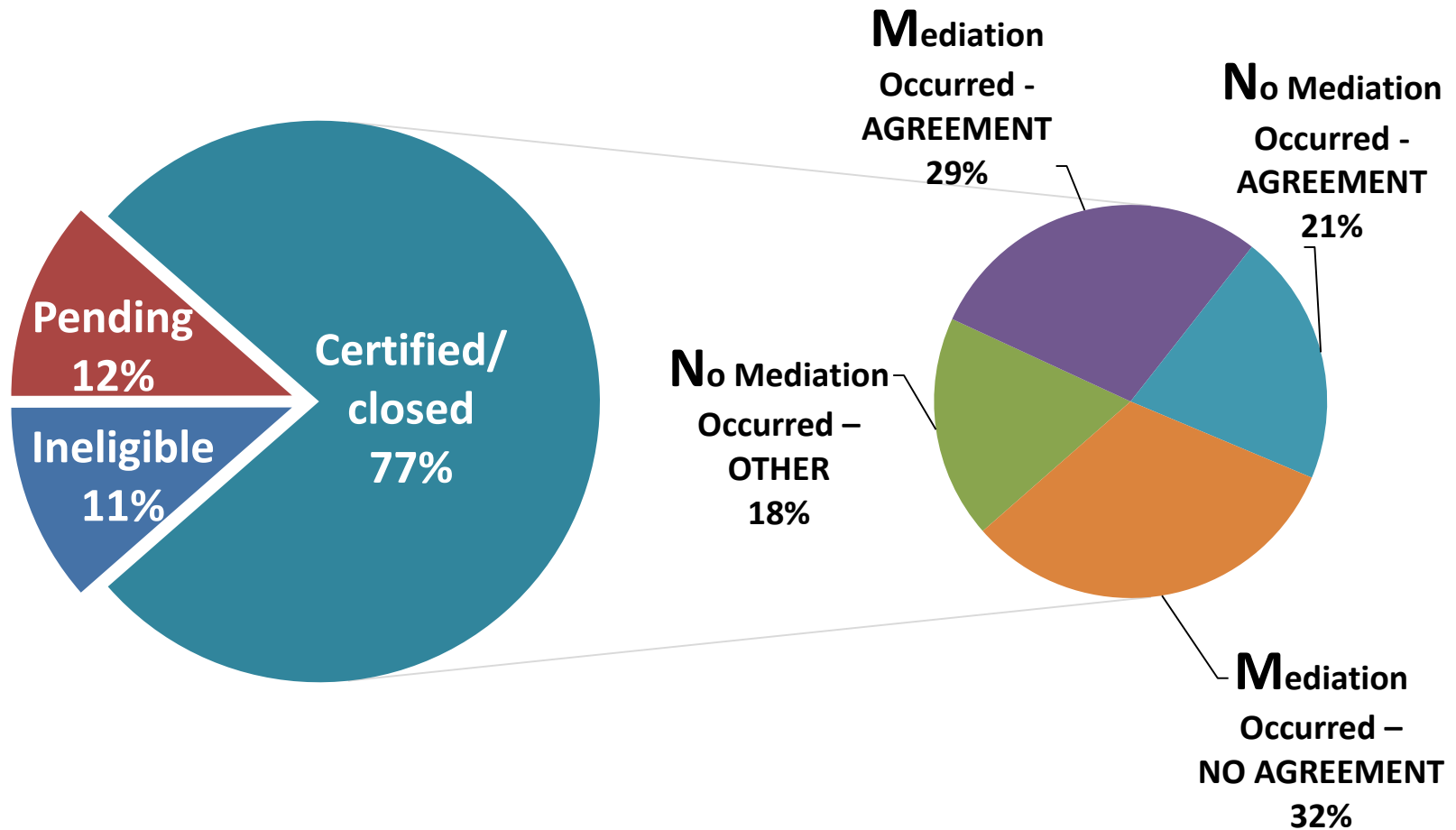
Top 10 Counties	Referrals	Percent of Total
King	3,236	40%
Snohomish	1,419	17%
Pierce	1,327	16%
Spokane	533	7%
Clark	388	5%
Kitsap	218	3%
Thurston	213	3%
Whatcom	129	2%
Yakima	105	1.3%
Skagit	93	1.1%

Data as of September 30, 2015



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# Mediation Results

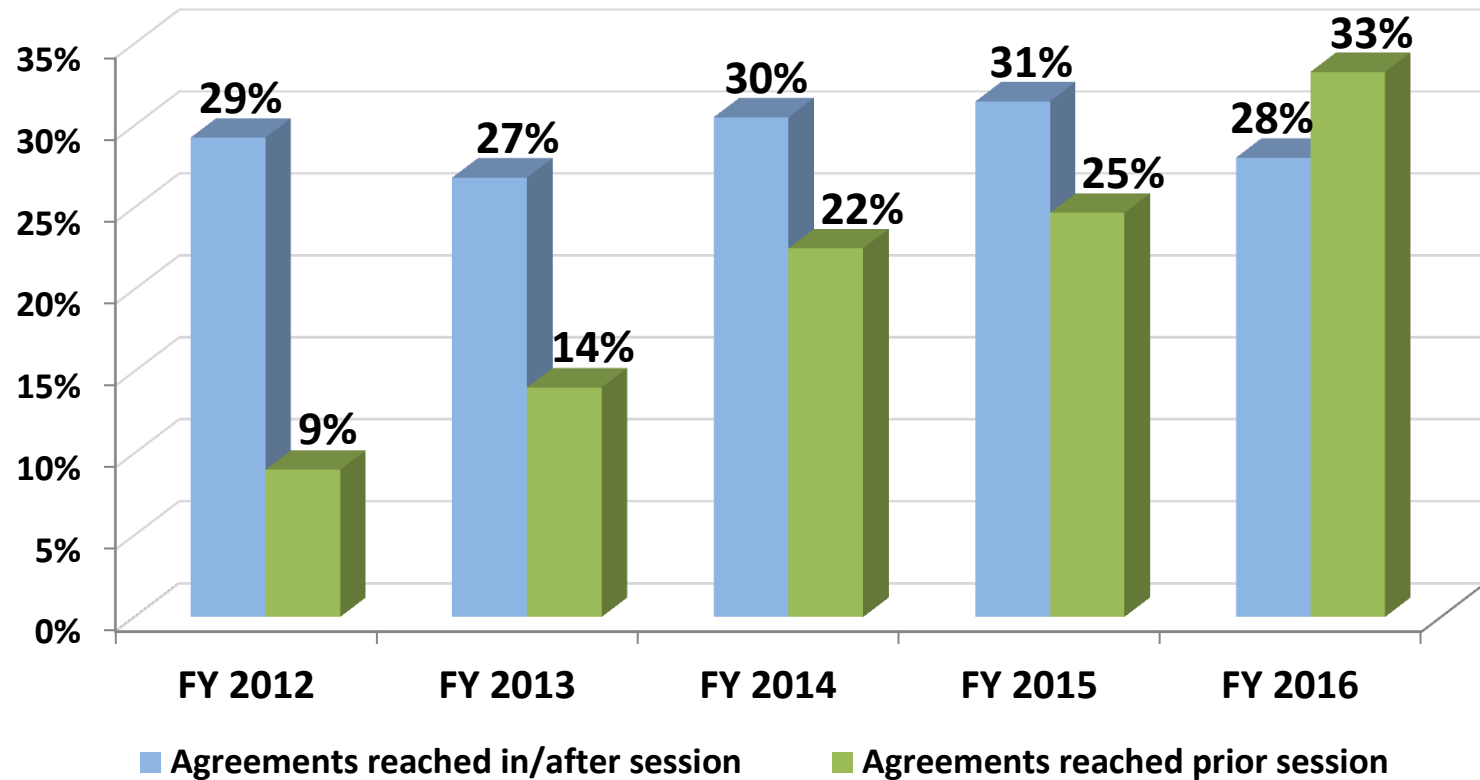


Data as of September 30, 2015



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# Mediation Results Year-Over-Year



Data as of September 30, 2015



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# Today's Agenda

- ☑ 8:00-9:00 Registration and Breakfast
- ☑ 9:00-10:00 Welcome, Introductions, Event Goals, Statistics
- 10:00-10:45 **Session 1:** Assignment through Scheduling
- 10:45-11:00 Break
- 11:00-12:15 **Session 1 Conclusion and Session 2:** Document Exchange through Pre-Session Check-in
- 12:15-12:45 Break & Grab Lunch
- 12:45-2:15 **Session 2 Conclusion and Session 3:** Mediation Sessions
- 2:15-2:30 Break
- 2:30-4:30 **Session 3 Conclusions and Session 4:** Certification and Beyond
- 4:30-5:00 Event Wrap-up



# Case Studies Overview

- Four case studies in four sessions
- Your workgroup is your table
- Written case studies will be handed out at the start of the session
- Instructions will come with the first case
- Case will have a scenario, as a group you discuss
  - What's required by statute?
  - What's expected by Commerce?
  - What are effective/best practices as a mediator?
  - What is the impact on good faith?
- Large group wrap up back in ballroom after break



# Case Studies Process



## For each session:

- Assign roles
- Read the case
- Answer the questions
- Record Q1 and Q2 on your handout individually
- Record Q3 and Q4 outputs on *flipcharts*
- Take a break or lunch
- As a large group, wrap up back in the ballroom



# Where to Work?

- Breakout rooms for work sessions:
  - Tables 1, 3, 6, 13 are in the Ballroom
  - Tables 2, 7, 8, 12 in Spruce
  - Tables 4, 9, 10 in Cedar
  - Tables 5, 11 in Fir
- Read the instructions first
- Use the flipchart for recording
- Bring your flipcharts answering questions 3 and 4 back into the ballroom after each session
- Learn from each other and have fun!



# Ground Rules



- Stay focused on case topics
- Encourage everyone to participate
- Keep an eye on the time
- Agree to talk openly and listen for others' perspectives
- Be inspired by others' viewpoints

***Group dynamics can be challenging, so please use your mediation skills!***



# Session 1: Assignment through Scheduling

- **Topics covered:**
  - #6 Session scheduling and rescheduling
  - #7 Fees and related policies
- **Case study write-up is in your packet**
- **Questions? Find one of us!**
- **Timing:**
  - Workgroup            10:00-10:45
  - Break                    10:45-11:00
  - Return here            11:00

***Go forth and discuss!***



# Case Study Wrap Up – Session 1

## Required by Statute

- Session scheduled within 70 days unless otherwise agreed.  
(RCW61.24.163(6))
- Scheduling Notice sent to Commerce and parties at least 30 days prior. Notice must meet RCW requirements.  
(RCW 61.24.163(7)(b))
- Fee set by statute or Commerce; divided equally between parties. (RCW 61.24.163(17))

## Also

- Commerce assigns mediator and sends Referral within 10 days.  
(RCW 61.24.163(3)(a) and (b))



# Case Study Wrap Up – Session 1

## Expected by Commerce

- Copies of all notices (for all sessions) sent to Commerce and the parties.
- Fee and rescheduling policies disclosed in Scheduling Notices.
- Reschedule requests are mutual and in writing.
- Rescheduling fees and practices are reasonable and consistent.

## Also

- Parties contacted and scheduling begins.
- Borrower contacted if non-responsive borrower representative.
- Representation options provided to un- or poorly represented borrowers.



# Case Study Wrap Up – Session 1



## Mediator Discretion, Best/Effective Practices

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Case Study Wrap Up – Session 1



## Impact on determination of good faith participation

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Session 2: Document Exchange through Check-In

- **Topics covered:**
  - #8 Facilitating the document exchange
  - #10 Mediator's authority to cancel
  - #11 Pre-session check-in, readiness
  - Borrowers poorly or not represented
- **Questions? Find one of us!**
- **Timing:**
  - Workgroup 11:30-12:15
  - Lunch 12:15-12:45
  - Return here 12:45



# Case Study Wrap Up – Session 2

## Required by Statute

- Borrower submits documents within 23 days from Notice receipt. (RCW 61.24.163(4))
- Beneficiary submits documents within 20 days from receipt of borrower's documents. (RCW 61.24.163(5))
- Beneficiary submits NPV inputs. (RCW 61.24.163(5)(g))
- Mediator “may cancel” a *scheduled* mediation if borrower is unresponsive. (RCW 61.24.163(11))

## Also

- Mediator may schedule phone conferences **to ensure a productive session.** (RCW 61.24.163(7)(a))



# Case Study Wrap Up – Session 2

## Expected by Commerce

- Contact parties 1-2 weeks in advance to ensure readiness.
- Facilitate the document exchange, clarify requirements, and set deadlines if disputes arise or process stalls.
- Document attempts to contact BOTH borrower and representative before cancelling a mediation.

## Also

- Submit certification to all parties & Commerce when mediation is cancelled.
- Provide borrower representation options to un- or poorly represented borrowers.



# Case Study Wrap Up – Session 2

## Mediator Discretion, Best/Effective Practices

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Case Study Wrap Up – Session 2



## Scenario elements impacting Determination of Good Faith

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Session 3: Mediation Sessions

- **Topics covered:**
  - #2 Federal guidelines
  - #4 NPV inputs and test
  - #5 Continuances and additional sessions
  - Beneficiary's authority to settle
  - Borrowers poorly or not represented
- **Questions? Find one of us!**
- **Timing:**
  - Workgroup 1:15-2:15
  - Break 2:15-2:30
  - Return here 2:30



# Case Study Wrap Up – Session 3

## Required by Statute

- Beneficiary has authority to settle. (RCW 61.24.163(8)(a))
- Denial provided in sufficient detail for a reasonable person to understand. (RCW 61.24.163(5)(h))
- Session may be continued once after the mediation session commences. (RCW 61.24.163(8)(b))

## Also

- Session scheduled within 70 days unless otherwise agreed. (RCW 61.24.163(6))



# Case Study Wrap Up – Session 3

## Required by Statute – Also, continued

- Mediation convened in county where property located unless otherwise agreed. (RCW 61.24.163(6))
- All options to avoid foreclosure are exhausted. (RCW 61.24.163(9))
- Borrower(s) attend session in person. (RCW 61.24.163(8)(a))
- NPV test pass/fail is determined if run. (RCW 61.24.163(9)(c))
- Pooling and Servicing Agreement (PSA), other investor restriction, or waiver is provided. (RCW 61.24.163(5)(j))
- Scheduling and convening of additional session(s) follow the same requirements of the 1<sup>st</sup> session.



# Case Study Wrap Up – Session 3

## Expected by Commerce

- Mediator asks for NPV test if retention is desired, determines if pass/fail.
- If mediation continued, a date must be scheduled.
- Representation options provided to un- or poorly represented borrowers.

## Also

- Scheduling Notice sent to Commerce and parties for each additional session.
- Verify party readiness for each additional session.
- Ensure agreements and deadlines are met and documents are exchanged.
- Ensure Power of Attorney (POA) produced if borrower(s) unable or unwilling to attend session(s) in person.



# Case Study Wrap Up – Session 3



## Mediator Discretion, Best/Effective Practices

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Case Study Wrap Up – Session 3



## Scenario elements that impact Determination of Good Faith

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Commerce Presentation



- **Certification Form**
- **Mediator Complaints**



# Certifications

Form Last Revised 2/6/2015

[Click to Print Report](#)

[Click to Edit Report](#)

## Foreclosure Mediation Report/Certification

This form must be completed and signed by the mediator and sent to Department of Commerce, the borrower(s), beneficiary, and trustee within 7 business days after the conclusion of the mediation ([RCW 61.24.163](#) (12)).

**MEDIATORS:** Please fill out this form entirely. You must list ALL persons who attended the session(s) (in person, by phone, or by video-conference) and make a selection in their "Participation" and "Authority" boxes, as applicable. If you need more space to report additional persons (attending the first mediation session or any continuances), please attach a separate sheet and include all of their information as presented on this form. On the second page, select only ONE of the three outcomes, then check the applicable box(es) listed under the outcome you selected. You must describe the circumstances when "specify" or "specify reason" are indicated or when selecting an "Other" box. You must answer the three NPV questions and attach the NPV test, as applicable. Use the "Comments" box for any necessary clarifications or relevant comments about the mediation. Attach a separate sheet if you need more space.

**SUBMITTING THIS FORM:** Do NOT submit this form by using the "Submit Form" button from your tool-bar (purple button if you are using Adobe Reader). You MUST use the yellow "Click to Print Report" button at the top of this page before submitting it. You may use the yellow "Click to Print Report" and "Click to Edit Report" buttons to switch between **edit** and **print** modes, as needed. Please note that only hand-signed certifications will be considered and retained.

**Option 1:** Print (yellow "Click to Print Report" button), sign, scan, and then email the certification to [ForeclosureMediation@commerce.wa.gov](mailto:ForeclosureMediation@commerce.wa.gov).

**Option 2:** Click on the "Signature" line (page 2), insert a scanned hand-signature file (jpg, tif, gif), click the yellow "Click to Print Report" button, save the file on your computer, and then email it to [ForeclosureMediation@commerce.wa.gov](mailto:ForeclosureMediation@commerce.wa.gov).

**Option 3:** If you do not have scanning capabilities for the certification or your signature, print (yellow "Click to Print Report" button), sign, and mail the certification to Department of Commerce, ATTN: Foreclosure Fairness Program, PO Box 42525, Olympia WA 98504-2525.

Date Time Location	1st Session	2nd Session	3rd Session	Session(s) Occurred	<input type="text"/>	Mediator's Name	<input type="text"/>
				No. of Sessions Convened	<input type="text"/>	Mediator's Phone	<input type="text"/>
				Is this an amended certification?	<input type="text"/>	Mediator's Email	<input type="text"/>
						Co-Mediator's Name	<input type="text"/>

### Borrower(s) and Representative(s) See [RCW 61.24.163](#) (12)(b)

Role	Borrower				<input type="text"/>	<input type="text"/>	<input type="text"/>
Name	Subject Property	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
City	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
State, Zip	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Parcel#	<input type="text"/>						
Lot#	<input type="text"/>						
Phone	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Email	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Participation	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>



# Sessions & Mediator Information

Check the [program website](#) for the most recent version.

Form Last Revised 2/6/2015

Use these buttons to [switch](#) between Print and Edit modes. Type only in Edit mode. Print and/or distribute the report **ONLY** from the Print mode.

[Click to Print Report](#)

[Click to Edit Report](#)

## Foreclosure Mediation Report/Certification

This form must be completed and signed by the mediator and sent to Department of Commerce, the borrower(s), beneficiary, and trustee within 7 business days after the conclusion of the mediation ([RCW 61.24.163](#) (12)).

**MEDIATORS:** Please fill out this form entirely. You must list ALL persons who attended the session(s) (in person, by phone, or by video-conference) and make a selection in their "Participation" and "Authority" boxes, as applicable. If you need more space to report additional persons (attending the first mediation session or any continuances), please attach a separate sheet and include all of their information as presented on this form. On the second page, select only ONE of the three outcomes, then check the applicable box(es) listed under the outcome you selected. You must describe the circumstances when "specify" or "specify reason" are indicated or when selecting an "Other" box. Use the "Comments" box for any necessary clarifications or relevant comments.

**SUBMITTING THIS FORM:** Do NOT submit this form. You MUST use the yellow "Click to Print Report" button. Edit Report" buttons to switch between **edit** and **print**.

**Option 1:** Print (yellow "Click to Print Report" button), sign, and mail to Department of Commerce, ATTN: Foreclosure Fairness Program, PO Box 42525, Olympia, WA 98504-2525.

**Option 2:** Click on the "Signature" line (page 2), insert a signature, and then email it to ForeclosureMediation@commerce.wa.gov.

**Option 3:** If you do not have scanning capabilities for the certification or your signature, print (yellow "Click to Print Report" button), sign, and mail to Department of Commerce, ATTN: Foreclosure Fairness Program, PO Box 42525, Olympia, WA 98504-2525.

Please don't leave these blank!

- Ensure the info entered here is [not in conflict](#) with the rest of the certification. For example, select No in the first box if the Outcome on pg. 2 is No Session Occurred.
- Enter the number of sessions [held](#) in "No. of Sessions Convened." This information is particularly helpful when you held more than 3 sessions, or no session at all.

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Only the mediator assigned by Commerce should appear here, except in cases of emergency substitutions (see [Program Guidelines](#)).

	1st Session	2nd Session	3rd Session	Session(s) Occurred		Mediator's Name	
Date				No. of Sessions Convened		Mediator's Phone	
Time				Is this an amended certification?		Mediator's Email	
Location						Co-Mediator's Name	

Date, time, and location (city) are required by [RCW](#) (statute), unless no session occurred.

Enter only sessions that occurred. If no sessions occurred, leave these blank. If more than 3 sessions occurred, select the number of sessions to the right, and use the Comments box on pg. 2 or attach an additional sheet and include the same info as in these cells.

Select Yes if this is an amended certification, and No if this is the first issuance.

Enter N/A if no co-mediator participated.



# Mediation Outcomes

Select **ONLY ONE** of the three Outcomes—click on a tab. The outcomes are mutually exclusive.

**OUTCOME** - Select **only one** of the three tabbed choices, then check the applicable box(es) listed.

Session(s) Occurred - <b>Agreement Reached</b>	Session(s) Occurred - <b>No Agreement Reached</b>	No Mediation Session Occurred
<input type="checkbox"/> Reinstatement		
<input type="checkbox"/> Repayment		
<input type="checkbox"/> Extension		
<input type="checkbox"/> Adjustable Rate Changed to Fixed Rate	% Change:	
<input type="checkbox"/> Amortization Extended		
<input type="checkbox"/> Interest Rate Reduction	% Change:	
<input type="checkbox"/> Principal Reduction	Amount: \$	
<input type="checkbox"/> Monthly Principal Payment Reduced	Amount: \$	
<input type="checkbox"/> Monthly Interest Payment Reduced	Amount: \$	
<input type="checkbox"/> Refinance		
<input type="checkbox"/> Other Loan Restructure/Modification (new loan terms were not provided to mediator)		
<input type="checkbox"/> Forbearance of Principal	Write-off: \$	
<input type="checkbox"/> Forbearance of Interest	Write-off: \$	
<input type="checkbox"/> Forbearance of Fees and Penalties	Write-off: \$	
<input type="checkbox"/> Forbearance - Other	Write-off: \$	
<input type="checkbox"/> Deed in Lieu of Foreclosure		
<input type="checkbox"/> Short Sale - Debt/Interest Zeroed		
<input type="checkbox"/> Voluntary Surrender		
<input type="checkbox"/> Cash for Keys		
<input type="checkbox"/> Other <u>Non-Retention</u> Agreement (specify - max. 100 characters):		

Clear

If you need to switch outcomes **AFTER** you made checkbox selections, first click the **Clear** button (found on each tab). It will clear all selections made under that Outcome and allow you to select a different Outcome.

# NPV, Signature, and Date

The 3 NPV questions are derived from [RCW](#) requirements (see specific [RCW](#) links circled below). Do not leave any blanks or room for guessing. Mediators MUST carefully read and answer ALL 3 questions. More details about NPV can be found in the [Program Guidelines](#).

Carefully read the instructions in Question 2—you may need to attach the NPV test OR explain in Comments why one was not done.

## NET PRESENT VALUE (NPV)

☐  
☐

1. Were NPV inputs provided by the beneficiary? (NPV inputs are required; see [RCW 61.24.163](#) (5)(g) and (9)(c))

2. Was an NPV test/analysis completed?

If YES and the above outcome is "No Agreement Reached," attach the test (or its description) along with the NPV inputs, identify who prepared it, and provide the test result expressed in a dollar amount. (See [RCW 61.24.163](#) (12)(e))

If NO and the above outcome is "No Agreement Reached," include below an explanation as to why there was no NPV test done. If agreement was reached or no session occurred, there is no need to attach or describe the NPV test.

☐

3. If YES on question 2, did the NPV of the modified loan exceed the anticipated net recovery at foreclosure? (See [RCW 61.24.163](#) (14)(c))

## COMMENTS (max. 1,000 characters)

An answer to Question 3 is required by [RCW](#) when no agreement is reached. DO NOT leave blank. Select N/A if no NPV test was done, and explain in Comments.

Use this Comments box for any relevant information, such as loan modification details, missing NPV test, clarifying inconsistencies on your certification, explaining the gap between the last session and the signature date below, etc.

I

(Full Name of Approved Mediator)

do hereby attest and certify that all the information in this Mediation Report/Certification is true and correct.

Only the mediator assigned by Commerce can certify the mediation. Refer to the [Program Guidelines](#) if mediators substitutions occurred.

Signature

Date

Only the mediator assigned by Commerce can sign the certification. Refer to the [Program Guidelines](#) if mediators substitutions occurred. Read the **red font** instructions (pg. 1 of the certification) if you wish to use a scanned signature.

[RCW](#) requires the mediator to certify within 7 business days of the conclusion of the session. If there is a longer gap between the last session and the signature date, explain the gap in the Comments box above.



# Printing & Distributing

Do NOT use the **purple** "Submit Form" button. The purple toolbar is a feature of the Adobe software; it cannot be "removed" from the certification. Instead, follow the instructions in **red font** and click the **yellow** "Click to Print Report" button below.

File Edit Go to Favorites Help

1 / 2 130%

Please fill out the following form. When finished, click Submit Form to return the completed form.

Highlight Existing Fields Submit Form

Form Last Revised 2/6/2015

**Click to Print Report**

**Click to Edit Report**

## Foreclosure Mediation Report/Certification

**This form must be completed and signed by the mediator and sent to Department of Commerce, the borrower(s), beneficiary, and trustee within 7 business days after the conclusion of the mediation ([RCW 61.24.163 \(12\)](#)).**

**MEDIATORS:** Please fill out this form entirely. You must list ALL persons who attended the session(s) (in person, by phone, or by video-conference) and make a selection in their "Participation" and "Authority" boxes, as applicable. If you need more space to report additional persons (attending the first mediation session or any continuances), please attach a separate sheet and include all of their information as presented on this form. On the second page, select only ONE of the three outcomes, then check the applicable box(es) listed under the outcome you selected. You must describe the circumstances when "specify" or "specify reason" are indicated or when selecting an "Other" box. You must answer the three NPV questions and attach the NPV test, as applicable. Use the "Comments" box for any necessary clarifications or relevant comments about the mediation. Attach a separate sheet if you need more space.

**SUBMITTING THIS FORM:** Do NOT submit this form by using the "Submit Form" button from your tool-bar (purple button if you are using Adobe Reader). You MUST use the yellow "Click to Print Report" button at the top of this page before submitting it. You may use the yellow "Click to Print Report" and "Click to Edit Report" buttons to switch between **edit** and **print** modes, as needed. Please note that only hand-signed certifications will be considered and retained.

Option 1: Print (yellow "Click to Print Report" button), sign, scan, and then email the certification to [ForeclosureMediation@commerce.wa.gov](mailto:ForeclosureMediation@commerce.wa.gov).

Option 2: Click on the "Signature" line (page 2), insert a scanned hand-signature file (jpg, tif, gif), click the yellow "Click to Print Report" button, save the file on your computer, and then email it to [ForeclosureMediation@commerce.wa.gov](mailto:ForeclosureMediation@commerce.wa.gov).

Option 3: If you do not have scanning capabilities for the certification or your signature, print (yellow "Click to Print Report" button), sign, and mail the certification to Department of Commerce, ATTN: Foreclosure Fairness Program, PO Box 42525, Olympia WA 98504-2525.

Date	1st Session	2nd Session	3rd Session	Session(s) Occurred	Mediator's Name	Mediator's Phone

# Printing & Distributing (continued)

These three columns appear **ONLY** in Print mode (when you select the "Click to Print Button"). If you don't see these three columns, DO NOT print and DO NOT distribute the form. You need to use the **yellow** "Click Print Report" button on pg. 1.

**Click to Print Report**

**Click to Edit Report**

## Session(s) Occurred - Agreement Reached

<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Repayment
<input type="checkbox"/>	Extension
<input type="checkbox"/>	Adj Rate Changed to Fixed Rate
	% Change:
<input type="checkbox"/>	Amortization Extended
<input type="checkbox"/>	Interest Rate Reduction
	% Change:
<input type="checkbox"/>	Principal Reduction
	Amount: \$
<input type="checkbox"/>	Monthly Principal Payment Reduced
	Amount: \$
<input type="checkbox"/>	Monthly Interest Payment Reduced
	Amount: \$
<input type="checkbox"/>	Refinance
<input type="checkbox"/>	Other Loan Restructure/Modification (new loan terms were not provided to mediator)
<input type="checkbox"/>	Forbearance of Principal
	Write-off: \$
<input type="checkbox"/>	Forbearance of Interest
	Write-off: \$
<input type="checkbox"/>	Forbearance of Fees and Penalties
	Write-off: \$
<input type="checkbox"/>	Forbearance - Other
	Write-off: \$
<input type="checkbox"/>	Deed in Lieu of Foreclosure
<input type="checkbox"/>	Short Sale - Debt/Interest Zeroed
<input type="checkbox"/>	Voluntary Surrender
<input type="checkbox"/>	Cash for Keys
<input type="checkbox"/>	Other Non-Retention Agreement (specify - max. 100 characters):

## MEDIATION OUTCOME

### Session(s) Occurred - No Agreement Reached

<input type="checkbox"/>	Borrower Unable to Meet Restructure Offer
<input type="checkbox"/>	Borrower Unwilling to Accept Restructure Offer
<input type="checkbox"/>	Parties Mediated in Good Faith, No Agreement Reached (specify - max. 100 characters):

#### Borrower Not In Good Faith (see [RCW 61.24.163](#) (15)):

<input type="checkbox"/>	Borrower Failed to Provide Timely and/or Accurate Documents
<input type="checkbox"/>	Borrower Failed to Timely Participate in Mediation
<input type="checkbox"/>	Borrower's Representative Not Authorized to Make Binding Decisions
<input type="checkbox"/>	Borrower Failed to Pay Mediation Fee
<input type="checkbox"/>	Other (specify - max. 100 characters):

#### Beneficiary Not In Good Faith (see [RCW 61.24.163](#) (14) and (16)):

<input type="checkbox"/>	Beneficiary Failed to Provide Timely and/or Accurate Documents
<input type="checkbox"/>	Beneficiary Failed to Timely Participate in Mediation
<input type="checkbox"/>	Beneficiary's Representative Not Authorized to Make Binding Decisions
<input type="checkbox"/>	Beneficiary Failed to Pay Mediation Fee
<input type="checkbox"/>	Beneficiary Requested Borrower to Waive Future Claims
<input type="checkbox"/>	Other (specify - max. 100 characters):

### No Mediation Session Occurred

<input checked="" type="checkbox"/>	HOME-RETENTION Agreement Reached Prior to Mediation Session (specify - max. 100 characters):
-------------------------------------	--

Borrower accepted loan modification agreement prior to session.

<input type="checkbox"/>	NON-RETENTION Agreement Reached Prior to Mediation Session (specify - max. 100 characters):
--------------------------	---

<input type="checkbox"/>	Borrower Withdrew from Mediation (specify reason - max. 100 characters):
--------------------------	--

<input type="checkbox"/>	Mediation Cancelled by Mediator per <a href="#">RCW 61.24.163</a> (11)
--------------------------	--

#### Borrower Not In Good Faith (see [RCW 61.24.163](#) (15)):

<input type="checkbox"/>	Borrower Failed to Provide Timely and/or Accurate Documents
<input type="checkbox"/>	Borrower Failed to Timely Participate in Mediation
<input type="checkbox"/>	Borrower Failed to Pay Mediation Fee
<input type="checkbox"/>	Other (specify - max. 100 characters):

#### Beneficiary Not In Good Faith (see [RCW 61.24.163](#) (14) and (16)):

<input type="checkbox"/>	Beneficiary Failed to Provide Timely and/or Accurate Documents
<input type="checkbox"/>	Beneficiary Failed to Timely Participate in Mediation
<input type="checkbox"/>	Beneficiary Failed to Pay Mediation Fee
<input type="checkbox"/>	Other (specify - max. 100 characters):

<input type="checkbox"/>	Other than the Above (specify - max. 100 characters):
--------------------------	---

# Mediator Complaints

## 192 Tracked Complaints

### Complainant

Borrower/Representative	56%
Beneficiary/Representative	38%
Both parties	4%
Other	2%

### Type of complaint

Conduct only	22%
Certification only	18%
Other (please specify)	18%
Bias only	7%
Combination(s) of 2 or more of the above*	35%

### At what point in the mediation process

During	75%
Shortly after certification	25%

*\*Data revised 11/5/2015*



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

# Mediator Complaints

- Commerce has authority to maintain a list of approved mediators and discretion to remove mediators. (RCW 61.24.169(1) and (3))
- Complaint Process:
  - During mediation process
  - Shortly after certification
- Complaints about certifications
- “Avoiding” complaints



# Session 4: Certification and Beyond

- **Topics covered:**
  - #1 Good faith determination
  - #13 Complaints
- **Questions? Find one of us!**
- **Timing:**
  - Workgroup 3:30-4:15
  - Return here 4:15



# Case Study Wrap Up – Session 4

## Required by Statute

- Certification sent to Commerce and trustee, with copies to the parties, within 7 business days after the conclusion of the session. (RCW 61.24.163(12))
- Certification must include:
  - whether a resolution was reached
  - pass/fail if NPV was run (if no agreement)
  - location, date, time of sessions
  - all participants
  - beneficiary's authority to settle
  - determination of good faith participation(RCW 61.24.163(12))



# Case Study Wrap Up – Session 4



## Expected by Commerce

- Certification submitted per the statutory deadline or provide explanation of the delay in the Comments section.
- Mediator must send a copy of the certification to Commerce, the trustee, the borrower (regardless of representation), and the beneficiary.

## Also

- Certification is completed in its entirety.
- Use of Comments box for any clarifications, relevant information.
- Leave no room for guessing.



# Case Study Wrap Up – Session 4



## Mediator Discretion, Best/Effective Practices

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Case Study Wrap Up – Session 4



How would you certify this case?

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Case Study Wrap Up – Session 4



**How would you respond to the complaint?**

***NOTE: Themes from the group flipcharts will be captured in the Summary Notes and posted on the FFP website.***



# Event Wrap-up



- Thank you!
- Next steps
  - Evaluation
  - Commerce slides
  - Output from today
  - Future administrative changes
- Continuing education credits
- Index card highlight



Are You Inspired?



*“Ite Inflammate  
Omnia” –*

“Go forth and set the world on fire.”



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