

U.S. DEPARTMENT OF JUSTICE
ACCESS TO JUSTICE INITIATIVE

FORECLOSURE MEDIATION:
EMERGING RESEARCH AND EVALUATION PRACTICES

A Report from the March 7, 2011, Workshop at the U.S. Department of Justice

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About the Access to Justice Initiative

The U.S. Department of Justice established the Access to Justice Initiative (ATJ) in March 2010 to address the access-to-justice crisis in the criminal and civil justice system. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. The Initiative's staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.

ATJ is guided by three principles:

- Promoting Accessibility — eliminating barriers that prevent people from understanding and exercising their rights.
- Ensuring Fairness — delivering fair and just outcomes for all parties, including those facing financial and other disadvantages.
- Increasing Efficiency — delivering fair and just outcomes effectively, without waste or duplication.

To translate these principles into action, ATJ pursues strategies to leverage and better allocate justice resources, and works to:

- Advance new statutory, policy, and practice changes that support development of quality indigent defense and civil legal aid delivery systems at the state and federal level;
- Promote less lawyer-intensive and court-intensive solutions to legal problems; and
- Expand research on innovative strategies to close the gap between the need for, and the availability of, quality legal assistance.

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The Recommendations for Federal Action contained in this document are those of the non-federal Workshop participants and do not necessarily represent the views of the authors or the official position or policies of the U.S. Government.

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EXECUTIVE SUMMARY

Federal, state, and local law and policy makers have initiated a broad array of interventions to counter the foreclosure pandemic, including loan modification programs (such as the federal Home Affordable Modification Program (HAMP)), mortgage payment assistance and principal reduction programs, counseling assistance, funds to promote neighborhood stabilization, and regulatory reform. One vehicle that has the potential to coordinate a number of these foreclosure mitigation tools is foreclosure mediation, a forum in which a neutral third-party helps to facilitate an alternative to foreclosure in circumstances where such an outcome is feasible. Jurisdictions around the country are increasingly offering, or even requiring, mediation as a device through which lenders and homeowners can attempt to reach mutually agreeable and beneficial alternatives to foreclosure. The challenge for communities weighing the mediation option has been to assess what works and to identify reliable processes that are effective.

In March 2011, the U.S. Department of Justice's Access to Justice Initiative convened a working group of foreclosure mediation program administrators, researchers, and other stakeholders. The Workshop was designed to achieve two goals: (1) to illuminate best practices for research and evaluation of foreclosure mediation programs and related interventions, and (2) to connect administrators interested in having their programs evaluated with researchers equipped to perform evaluations, as well as funders, advocates, and representatives from government agencies and the lending community. The Workshop also presented an opportunity to hear participants' recommendations for actions the federal government could take to support the development of well-structured foreclosure mediation programs based upon an evidence-based model.

Workshop participants agreed that, first and foremost, a common vocabulary of evaluation is needed for evaluating program success. Common evaluation metrics will help provide a better national picture of the program designs that are most effective, and can also ease the burden of collecting data. Gathering data on the following metrics, though preliminary, are essential:

- Program Characteristics
- Foreclosure Rate
- Participation Rate
- Outcomes
- Sustainability
- Administrative Impact
- Access
- Availability of counseling and legal services

The chart below identifies suggested data points that can be used to measure the above key foreclosure mediation program metrics.

Metrics	Measures	Computations	Data Sources
Program Characteristics	<ul style="list-style-type: none"> Eligibility requirements Opt-in/Opt-out structure Mandatory Participation Paperwork requirements Compliance structure 	Qualitative assessment	<ul style="list-style-type: none"> Applicable statutes and rules Borrower questionnaire Interviews
Foreclosure Rate	<ul style="list-style-type: none"> Total number of foreclosures (owner occupied, single family, etc.) Total number of properties (owner occupied, single family, etc.) in jurisdiction 	Foreclosure rate = total number of foreclosures in jurisdiction/total number of properties in jurisdiction	<ul style="list-style-type: none"> City/county databases
Participation Rate	<ul style="list-style-type: none"> Total number of foreclosures Foreclosures eligible for intervention Total program participants 	<p>Participation Rate 1 = Number participating in program/Foreclosures eligible for intervention</p> <p>Participation Rate 2 = Number participating in program/ Total number foreclosures</p>	<ul style="list-style-type: none"> Court administrative databases
Outcomes	<ul style="list-style-type: none"> Total program participants Total agreements reached Type of agreement <ol style="list-style-type: none"> Lost Home (liquidation) <ul style="list-style-type: none"> Deed in lieu Short sale Graceful exit Retained Home (non-liquidation) <ul style="list-style-type: none"> Loan modification Forbearance plan Partial claim - reinstatement 	<p>Outcomes 1 = agreements reached/total program participants</p> <p>Outcomes 2 = liquidation agreements/ total agreements reached</p> <p>Outcome 3 = non-liquidation agreements/ total agreements reached</p>	<ul style="list-style-type: none"> Court administrative databases Counselor/mediator records Observation and interviews
Sustainability	<ul style="list-style-type: none"> Number of participants who retained home Number of participants who remained in home for defined period of time after case closed 	Sustainability = resolutions for which subsequent foreclosures, sales, mortgages, or other liens have been filed/ total number of resolutions (using at least one year time period from date of initial resolution)	<ul style="list-style-type: none"> City/county databases Court administrative databases Counselor/mediator records Observation and interviews
Administrative Impact	<ul style="list-style-type: none"> Number of times each case “touches” program Number of days cases take until resolution (i.e., agreement or reentry into foreclosure process) Number of days cases take until resolution without mediation 	<p>Administrative Impact 1 = median days cases take until resolution (agreement or reentry into foreclosure process)</p> <p>Administrative impact 2 = median number times each case “touches” program</p> <p>Administrative impact 3 = median days foreclosure process without mediation intervention</p> <p>Administrative impact 4 = administrative impact 1 /administrative impact 3</p>	<ul style="list-style-type: none"> City/county databases Court administrative databases Federal data
Access	<ul style="list-style-type: none"> Total program participants Participants’ race/ethnicity Participants’ income Loan to value ratio Delinquency 	Computations require a reasonably sophisticated set of statistical procedures including statistical controls for variables relevant to access/outcome (e.g., extent to which a loan exceeds the value of the property, degree of delinquency, level of income).	<ul style="list-style-type: none"> City/county databases Court administrative databases Federal data
Representation/ Counseling	<ul style="list-style-type: none"> Total program participants Participants assisted by counselors Participants assisted by lawyers 	<p>Counseling rate = Participants assisted by counselors/total program participants</p> <p>Representation rate = Participants assisted by lawyers/ total program participants</p>	<ul style="list-style-type: none"> Court administrative databases Court administrative databases Counselor/mediator records

Workshop participants also discussed what might be done at the court, city, county, and federal government levels to ease collection of relevant data.

This report documents the themes, solutions, and challenges for research and evaluation identified at the Workshop, recommendations for action, and provides a summary of the productive panel discussions held during the one-day convening.

The report also sets forth the Workshop participants' consensus recommendations urging the federal government to support the research and evaluation of foreclosure mediation programs. Participants felt strongly that a more robust evidence base supported by research should prompt the federal government to take additional steps to support well-structured foreclosure mediation programs. They had several recommendations for ways in which the federal government could facilitate the development and proliferation of foreclosure mediation programs based upon an evidence-based model. Their recommendations for action included:

- Supporting research and evaluation of state and local foreclosure mediation programs through funding and technical assistance.
- Establishing federal guidelines for foreclosure mediation programs, and providing technical assistance to assist state and local programs to meet them.
- Funding, on a matching basis, mediation programs that meet established federal guidelines.
- Establishing a template that contains uniform data points for collection that foreclosure programs can adopt.
- Requiring that federally-backed loans go through mediation before foreclosure can take place.
- Improving escalation processes for federal loan modification programs to allow federal intervention in individual foreclosure mediation cases where necessary to achieve an agreement.
- Encouraging banking regulators to allow states to implement mediation interventions without the threat of intervention by the banking industry.

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INTRODUCTION

The loss of a home to foreclosure can be devastating for a family. In addition to losing what is often their most significant asset, families are uprooted from community support systems and may find themselves with no place to go. The losses extend beyond individual families; foreclosures destabilize entire neighborhoods through declines in surrounding property values, loss of tax revenue, and blight.

For millions of homeowners and their families who are at risk of foreclosure, mediation programs offer an opportunity to evaluate their options and appraise possible alternatives to losing their homes. Well-structured foreclosure mediation programs that are designed to take advantage of available resources at the local, state, and federal levels can be valuable and even essential tools as jurisdictions around the country seek ways to combat the foreclosure crisis.

Although the impact of well-crafted programs appears promising, only a few jurisdictions have engaged in an in-depth study of program outcomes, and to date there has been no comprehensive study comparing outcomes for homeowners in mediation to similarly-situated homeowners who have not had the benefit of mediation. As foreclosure mediation programs expand and mature across the country, research is needed to assess the effectiveness of this particular intervention (both within and across jurisdictions, and including programs' cost-effectiveness for the jurisdiction involved), as well as the real and comparative impact of particular program features (e.g., pre-foreclosure filing mediation versus post, mandatory versus voluntary participation, sanctions for failure by participants to comply with program rules, housing counseling assistance, legal assistance, etc.).

In light of the immediate need for research in the field, the Access to Justice Initiative of the U.S. Department of Justice convened, on March 7, 2011, a workshop to explore best practices for research and evaluation of foreclosure mediation programs and related interventions, and to facilitate connections between administrators interested in the evaluation of their programs and researchers with the expertise to perform such analysis. The Workshop brought together more than 40 researchers, foreclosure mediation program administrators, advocates, and private foundations from around the country to discuss methodologies for assessing the impact of foreclosure mediation programs, the challenges they face, and ideas for advancing the research agenda at the local, state, and federal level. Representatives from the U.S. Department of Justice, the U.S. Department of Housing and Urban Development (HUD), the Federal Reserve Board, Fannie Mae, and NeighborWorks also attended the workshop.

This report is intended to (1) summarize the March 7, 2011, Workshop proceedings, (2) compile the existing foreclosure mediation research and resources, and (3) provide an informational resource for existing programs around the country as well as for jurisdictions that are attempting to establish foreclosure mediation programs that fit their needs.

BACKGROUND

A. The Emergence of Foreclosure Mediation Programs

In the face of the foreclosure pandemic, many jurisdictions around the country are offering mediation programs to enhance opportunities for lenders¹ and homeowners to reach mutually agreeable and beneficial alternatives to foreclosure. Based on the early success of foreclosure mediation programs like those in Philadelphia and Connecticut, local and statewide policy makers in a variety of jurisdictions are realizing foreclosure mediation's potential to coordinate many already-existing foreclosure mitigation tools such as loan modification programs (including the federal Home Affordable Modification Program (HAMP)), mortgage payment assistance and principal reduction programs, counseling assistance, funds to promote neighborhood stabilization, and regulatory reform. Currently, more than 30 foreclosure mediation programs have been created in at least 25 states, with several programs in existence for over two years.

Although many programs are still finding their footing, outcomes from several established programs appear impressive, with some boasting over 70 percent settlement rates with approximately 60 percent of homeowners reaching settlements that allow them to remain in their homes. Mediation programs have the potential to decrease the number of defaults resulting in foreclosure, increase the likelihood that mortgage terms can be renegotiated, and facilitate “graceful exits” by negotiating short sales, deeds-in-lieu of foreclosure (where the homeowner deeds the home to the lender in exchange for a release of liabilities under the mortgage), or other alternatives for homeowners who are unable to keep their homes.

On November 19, 2010, foreclosure mediation programs were highlighted at a Middle Class Task Force event at the White House co-hosted by the Office of the Vice President and the Access to Justice Initiative. The event included a panel in which Judge Annette Rizzo from the Philadelphia Court of Common Pleas described the benefits of the mediation program she oversees, HUD General Counsel Helen Kanovsky discussed the promise of foreclosure mediation, and homeowner Phyllis Shimmin recounted how the Cuyahoga County, Ohio foreclosure mediation program saved her family's home after her husband lost his job due to the ongoing recession.

¹ The term “lenders” is used in this report to refer collectively to lenders as well as servicers, who collect and process loan payments during the life of a loan on behalf of lenders.

Several additional mediation-related resources were announced in conjunction with the November 19 event. The Access to Justice Initiative and HUD issued a joint report identifying emerging strategies for effective foreclosure mediation programs such as well-trained housing counselors and pro bono attorneys who can counsel and support homeowners throughout the mediation process.² To assist jurisdictions that are developing or expanding mediation programs, the report describes several features that appear to have a positive impact on program effectiveness, including the initiation of mediation before a foreclosure filing is made.³ The report also lists existing foreclosure mediation programs that are interested in sharing their experiences with other program stakeholders throughout the country.

In addition, HUD announced a new training webinar that highlights strategies and resources for avoiding foreclosure.⁴ The training, which is aimed at a wide variety of audiences including homeowners, housing counselors, pro bono attorneys, and mediators, includes topics such as accessing housing counseling resources, finding state-specific foreclosure prevention resources, avoiding foreclosure rescue scams, and understanding federal foreclosure prevention programs. HUD also provided guidance on the use of Community Development Block Grant and Neighborhood Stabilization Funds for housing counseling, a resource that can increase the effectiveness of foreclosure mediation programs.⁵

In addition to these efforts, NeighborWorks, a national non-profit organization established by Congress and funded by Congressional appropriations, debuted a foreclosure mediation workshop at the NeighborWorks Training Institute in December 2010. NeighborWorks is one of the largest funders of foreclosure-mitigation counseling in the nation, and is the administrator of the National Foreclosure Mitigation Counseling program.

² U.S. Department of Justice, Access to Justice Initiative, U.S. Department of Housing and Urban Development, 2011. *Emerging Strategies for Effective Foreclosure Mediation Programs*, Washington, D.C.: U.S. Department of Justice, Access to Justice Initiative, U.S. Department of Housing and Urban Development. Available at <http://www.justice.gov/atj/effective-mediation-prog-strategies.pdf>.

³ See Carrie Bay, *Fannie Mae Updates Policy on Foreclosure Mediation in Florida*, DSnews.com, Sept. 13, 2010 <http://www.dsnews.com/articles/fannie-mae-updates-policy-on-foreclosure-mediation-in-florida-2010-09-13> (for a description of Fannie Mae's pre-filing foreclosure mediation program).

⁴ Helen Kanovsky, U.S. Department of Housing and Urban Development, Office of Insured Housing, *How to Avoid Foreclosure*, Webinar, 43:45, December 7, 2010, <http://player.theplatform.com/ps/player/pds/fj8kN-D0ot?pid=UjAs5ep7wcfL6hwRfAPsXn58qdUrgAF>.

⁵ Marquez, Mercedes, to All CDBG Grantees and All CPD Field Office Directors. Memorandum regarding Housing Counseling under the Community Development Block Grant (CDBG) and Neighborhood Stabilization Programs (NSP), November 19, 2010, U.S. Department of Housing and Urban Development. Available at http://www.hud.gov/offices/cpd/communitydevelopment/programs/pdf/housing_counseling.pdf.

B. Existing Research

In June 2009, Workshop participants Alon Cohen and Andrew Jakobovics published a report entitled *It's Time we Talked: Mandatory Mediation in the Foreclosure Process* for the Center for American Progress.⁶ The report surveyed emerging programs around the country, although there was little data to report. The report did note that it appeared that mandatory programs like Philadelphia's were seeing much higher participation rates than opt-in programs like Connecticut's.⁷ The report also described early mediation efforts in non-judicial jurisdictions such as California and Nevada. Although there was little data at the time, the 2009 report did recommend federal support of mediation through, inter alia, explicit guidance that Community Development Block Grants could be used to support mediation programs and a requirement of mediation before residences with federally-insured mortgages could be foreclosed upon.

In June 2010, Cohen and Jakobovics published *Now We're Talking: A Look at Current State-Based Foreclosure Mediation Programs and How to Bring Them to Scale*, which was the first comprehensive analysis of the existing data for foreclosure mediation programs around the country.⁸ According to the report, Connecticut, which switched from opt-in to automatic scheduling in July 2009, saw 74 percent of its mediated cases reach settlement (60 percent staying in their homes, and 14 percent negotiating a "graceful exit"). The report contrasted those results with the statewide opt-in program in New Jersey, which had a 50 percent settlement rate for mediation participants, although only roughly 13 percent of eligible homeowners participated in the program. Nevada, a non-judicial state with an opt-in program, had a 21 percent participation rate. Based upon the data from these and other programs around the country, and given the positive results that the programs had demonstrated, Cohen and Jakobovics recommended that (1) opt-in programs become mandatory or automatic scheduling programs, (2) local programs be expanded statewide, and (3) states with no programs study ways to implement mediation.

On June 14, 2011, Workshop Moderator Ira Goldstein of The Reinvestment Fund, a community investment organization in Philadelphia, released a detailed evaluation of the Philadelphia mediation program.⁹ The report, based upon data from the first three years of

⁶ Jakobovics, Andrew and Alon Cohen, *It's Time We Talked: Mandatory Mediation in the Foreclosure Process*, Washington, D.C.: Center for American Progress 2009. Available at http://www.americanprogress.org/issues/2009/06/time_we_talked.html.

⁷ Mediation programs generally follow one of two models for homeowner participation: an opt-in process, where the homeowner is notified of his or her eligibility but must affirmatively request mediation before being entered into the program; or an automatically scheduled, or opt-out, process, where homeowners who receive a notice that foreclosure has begun are automatically scheduled for a mediation session.

⁸ Jakobovics, Andrew and Alon Cohen, *Now We're Talking: A Look at Current State-Based Foreclosure Mediation Programs and How to Bring Them to Scale*, Washington, D.C.: Center for American Progress 2010. Available at http://www.americanprogress.org/issues/2010/06/pdf/foreclosure_mediation.pdf.

⁹ Goldstein, Ira and Colin Weidig, *Philadelphia Residential Mortgage Foreclosure Diversion Program*:

the program, is the most detailed analysis to date of the outcomes that mediation programs have produced. Philadelphia's program, an automatic or mandatory program, had a 70 percent participation rate, and 38 percent of participants who received foreclosure notices after the start of the program reached agreements with their lenders to stay in their homes. Eighty percent of the cases resolved in some fashion with two court appearances or less. In addition to these findings, the report states that 85 percent of homeowners who reached an agreement during the first year of the program remained in their home as of March 2011, and that participation and agreement rates were unaffected by race, ethnicity, or home value.

Toward a Common Vocabulary of Evaluation

A. Identifying basic research questions and related metrics

Participants at the Workshop agreed that researchers must have a common vocabulary of evaluation to assess program success. Common evaluation metrics will help provide a better national picture of which program designs are most effective, and can also ease the burden of collecting data on program administrators. Gathering data on the following preliminary set of metrics is essential.

Program Characteristics

How does the program operate? Is it a pre-filing program, or are mediations only scheduled after a foreclosure notice is filed? Is it mediation, conciliation, or a hybrid? Do homeowners have to opt-in to the program? Is lender participation required? Who is involved in the process? Are attorneys and/or housing counselors provided? What are the program requirements (e.g., good faith participation, paperwork, etc.)? And, what are the repercussions for program participants, if any, if program requirements are not complied with (i.e., what is the program compliance structure)?

Suggested sources of data/information: Applicable statutes, regulations, court rules, and interviews with subject matter experts who may be able to highlight any differences between the policy and how the process actually operates.

Jurisdiction's Foreclosure Dimensions

How big is the foreclosure problem in the relevant jurisdiction? What portion of that problem is the intervention designed to address (i.e., who is eligible for participation in the program and what portion of all homeowners in foreclosure does that constitute)?

The first question can be addressed by taking a tally of the number of people who are subject to the action the intervention is designed to address.

The second question turns on the eligibility requirements of the program. For example, a program may require that, in order to participate in mediation, the borrower must be the owner/occupier of the collateral property; must be a resident for at least three years; and/or must have a particular kind of mortgage (e.g., an ARM or other problematic loan product). Once the requirements are identified, a data source reflecting these requirements must be obtained and linked to the foreclosure filings.

Suggested sources of data/information: Records reflecting the number of foreclosure actions filed in court over a given time period (assuming that the intervention is operating in a judicial foreclosure state); records from a county assessor or recorder of deeds; or other private market sources and databases.¹⁰ A review of these data allows for an explication of the (1) universe of the problem; (2) number of people who are eligible for the intervention; and (3) percentage of homeowners eligible pursuant to the program's criteria and rules. In non-judicial states, there are often notice requirements which may become a corollary data source.

Participation

Who does/does not participate in the program? What percentage of all eligible people in foreclosure participate in mediation? The participation rate should be a straightforward computation:

$$\text{Participation Rate} = \frac{\text{\# participating}}{\text{total eligible to participate}}$$

Participation rates can also be computed as a percentage of all foreclosures in the community in order to obtain a broader picture of the program's impact.

$$\text{Participation Rate} = \frac{\text{\# participating}}{\text{total foreclosures}}$$

Additional information regarding the specific characteristics of eligible and participating homeowners may also be of interest. Obtaining this data can be a heavy lift under most circumstances, because individualized characteristics (e.g., household income, number of people in the home, race/ethnicity of homeowner, etc.) generally are not recorded

¹⁰ One option is the RealQuest database, a product of CoreLogic. RealQuest is an online subscription-based database containing detailed property sale and mortgage transaction information. RealQuest has nationwide coverage (although the depth of coverage varies from place to place).

anywhere that is publicly accessible. Accordingly, the best option for obtaining this kind of data may be to use geography as a proxy for individualized characteristics. Stated differently, rather than being able to define homeowner X as a low-income homeowner, the description may be of the race, ethnicity, or income level statistics of areas within which homeowners live.

Suggested sources of data/information: Census's American Community Survey (ACS) data which are now available at relatively small geography points (Census tract and/or block group, depending upon the indicator) on an annual basis. As the program has more personal contact with the homeowner, surveying homeowners with respect to the critical descriptive information is desirable.

Outcomes

Of those homeowners who participate, what outcomes are achieved? Of those homeowners who achieve an agreement, or meeting of the minds, what is the result? The consensus among Workshop participants, supported by anecdotal reports of industry participants in mediation programs, was that there is little standardization of outcomes across programs, and even across different organizations or entities within a given program. It would be advantageous to have consistent definitions of outcomes across the country so that programs can be viewed individually and in the aggregate. Right now it is difficult, as several participants noted, to get "apples-to-apples" comparisons of the many existing programs.¹¹

For example, agreements should be categorized as either a non-liquidation agreement (e.g., loan modification, forbearance, partial claim/reinstatement) where the homeowner remains in the home, or a liquidation agreement (deed in lieu of foreclosure, short sale, etc.) where the homeowner exits the home. Data should also be collected when there is an impasse, no agreement is reached, and the case proceeds to foreclosure.

Suggested sources of data/information: To achieve some level of uniformity, programs should consider relying on (1) the U.S. Department of the Treasury's Office of the Comptroller of the Currency /Office of Thrift Supervision coding schema augmented with codes for non-modification outcomes (e.g., temporary but not permanent stay of auction,

¹¹ Geoff Walsh has written a number of pieces, summarized in his presentation at the Workshop, wherein he makes this precise point. See, e.g.: Walsh, Geoffrey, *State And Local Foreclosure Mediation Programs: Can They Save Homes?*, Boston, MA: National Consumer Law Center 2009. Available at http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/report-state-mediation-programs.pdf, Walsh, Geoffrey, *Foreclosures: State and Local Foreclosure Mediation Programs: Updates and New Developments*, Boston, MA: National Consumer Law Center 2010. Available at http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/report-state-mediation-programs-update.pdf, and Walsh, Geoffrey, *Recent Developments in Foreclosure Mediation*, Boston, MA: National Consumer Law Center 2011. Available at http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/rpt-mediation-2011.pdf.

short-sale); (2) the Department of Treasury’s reporting requirements for HAMP modification augmented for non-modification outcomes; and (3) the template for Philadelphia’s modified court order (see Appendix: Philadelphia Residential Mortgage Foreclosure Diversion Program Sample Court Order). Court records are one possible place to capture information regarding the nature of the resolution (e.g., temporary v. permanent modification, HAMP v. non-HAMP), as Philadelphia is now doing.

Sustainability

Of those people who “save their home,” how sustainable is the arrangement? Do different types of agreements (e.g., forbearance vs. modification) have different levels of sustainability? In order to ascertain sustainability, resolutions need time to “age” and, once aged, a variety of public records may yield relevant information. A reasonable time for assessing post-resolution sustainability may be one year or more, because there is a time lag between an event (e.g., a property sale or auction, recording of a mortgage, filing of a lien) and its appearance in most public records databases.

Suggested sources of data/information: The data sources are several and likely vary from jurisdiction to jurisdiction. With respect to the public records, questions of sustainability are most directly addressed by the filing of a post-resolution foreclosure, sale, or other lien (e.g., tax or utility), which may be found in property records from county recorder offices or private data providers. Once the records are examined, the analysis is a reasonably straightforward calculation involving the percentage of resolutions for which subsequent foreclosures, sales, mortgages, or other liens have been filed. From these data, it is possible to ascertain, or at least approximate, the number of resolutions for which the homeowner is able to remain in her home.

Access

Examiners of foreclosure mediation programs should assess whether there is equitable access to the program. In other words, is there evidence that outcomes are comparable across racial, socio-economic, and other strata? Did different racial/ethnic groups or income level populations access the program equally, and did they achieve similar results? One basic – but inconclusive – approach is to prepare maps of participants and outcomes where participants’ locations are overlaid on maps reflecting the racial/ethnic composition of those areas. A more definitive approach asks the question: Given the unique characteristics of the homeowner (or group of homeowners), did that homeowner (or group of homeowners) achieve access and outcomes equal to another homeowner (or group of homeowners) similar to them? This is a very complex set of questions, the answers to which require a reasonably sophisticated set of statistical procedures, including statistical controls for variables relevant to access/outcome (e.g., extent to which a loan exceeds the value of the property, degree of delinquency, level of income). Nevertheless,

the data sources necessary for these analyses are similar to data sources required for other metrics, including those for outcomes and foreclosure rates.

Administrative Impact

There are several basic questions to measure a foreclosure mediation program's impact on the relevant agency or court and other stakeholders. How many times do cases come in contact with a court or mediator? Over what time period does that set of contacts occur? Is progress being made at each contact? How does the average time period of each case in the program compare to the amount of time foreclosures proceed without the intervention?

One of the commonly heard criticisms of foreclosure mediation programs is that they significantly slow down the foreclosure process. Workshop participants agreed that mediation timelines are, and should be, of significant concern to all stakeholders. Notably, many were not convinced that a common conception that mediation causes delay was accurate. Participants agreed that data to assess how efficiently cases are processed through the system is critical.

Sources of data/information: Court records (in judicial foreclosure jurisdictions) and mediator or homeowner counselor/representative records. In either case, the most basic elements are (1) case identification number, (2) plaintiff/defendant identification, (3) date and time of meeting, (4) parties present at meeting, and (5) result of the session.

Impact of Housing Counselors

In November 2009, the Urban Institute issued a report that measured the impact of housing counselors funded through the National Foreclosure Mitigation Counseling Program, administered by NeighborWorks.¹² The report was co-authored by Workshop participants Neil Mayer, Peter Tatian, and Kenneth Temkin. Although the report did not seek to measure the impact of housing counselors with respect to homeowners in foreclosure mediation programs specifically, the report is nevertheless instructive regarding the impact that counseling has on homeowners' ability to avoid foreclosure by securing loan modifications. The report and the program it evaluated are described in more detail below, under the section summarizing the afternoon panel. In brief, the report concluded that counseling impacts foreclosure mitigation in three primary ways: Homeowners who received NFMC counseling (1) are more likely to get a curing loan modification, (2) are more likely to receive a larger payment reduction under the modification, and (3) are more likely to be able to sustain the modification.

¹² Mayer, Neil, Peter A. Tatian, Kenneth Temkin and Charles A. Calhoun, National Foreclosure Mitigation Counseling Program Evaluation: Preliminary Analysis of Program Effects, Washington, D.C.: The Urban Institute 2009. Available at http://www.urban.org/uploadedpdf/411982_NFMC_program_evaluation.pdf.

There was a strong consensus among Workshop participants that the availability of housing counselors is one of the most important factors, if not the most important, in the ability of homeowners to navigate mediation programs and achieve optimal results. The Urban Institute report constitutes strong evidence that housing counseling should be a focal point in the design and implementation of mediation programs, although further evaluation of the impact of counseling within the context of mediation is needed to demonstrate that housing counselors are critical to the success of a mediation program.

Impact of Legal Assistance

Lawyers can play an important role in foreclosure mediation. Equipped with information about relevant federal and state foreclosure relief programs, they can advocate on behalf of their clients for sustainable loss mitigation packages or “graceful” exits, and are also able to look out for settlement terms that may ultimately be harmful for the homeowner. A lawyer’s ability to review loan documents for violations of consumer protection and other laws can better position the homeowner to negotiate meaningful loan modifications in mediation. In some circumstances, a lawyer may advise her client to withdraw from mediation and claim an affirmative defense to foreclosure through the courts.

Several mediation programs have established relationships with legal aid providers and pro bono attorneys. For example, the Circuit Court of Cook County’s Mortgage Foreclosure Mediation Program provides homeowners who are seeking mediation with a free consultation with a pro bono attorney. The attorney reviews the loan paperwork to make an initial determination whether the homeowner has a legal defense to foreclosure that should be pursued through the courts. Where appropriate, the attorney will help the homeowner prepare a request to the court for appointment of pro bono counsel. If there is no defense to the foreclosure, and the case proceeds to mediation, the homeowner will have the assistance of a pro bono attorney throughout the mediation process. Other jurisdictions, including New York and Philadelphia, have made or are attempting to make attorneys available to eligible homeowners, free of charge, in foreclosure mediation.¹³

¹³ Notably, the New York Court System recently unveiled a plan to provide every homeowner facing foreclosure with an attorney. See Streitfeld, David, “New York Courts Vow Legal Aid in Housing,” N.Y. Times, Feb. 15, 2011 (“It’s such an uneven playing field,” said the state’s chief judge, Jonathan Lippman. A lawyer for every defendant will also serve the courts’ interests, the judge said, by making proceedings more efficient.) As of yet, however, New York has not allocated funds for this effort and a pilot program in two counties is still in development. New York’s response to the foreclosure crisis, a \$25 million dollar Foreclosure Prevention Services Program that funded legal services, housing counseling, outreach and education to homeowners at risk of foreclosure, and helped to coordinate services and pro bono panels for the mediation process, ends December 31, 2011, and has not been renewed despite an ongoing need for services. See Rodriguez, Marisol, “As the Bronx Leads in Foreclosures, Budget Cuts Loom for Critical Legal Services,” Bronx Free Press, Sep. 21, 2011.

Although Workshop participants agreed that, anecdotally, the presence of a lawyer seems to result in more sustainable loan modifications for homeowners, there is a dearth of quantitative information about the impact of lawyers on foreclosure mitigation generally, and their value in foreclosure mediation in particular.¹⁴ While acknowledging some of the challenges of measuring the impact of legal assistance (as lawyers may be involved only with the more complicated cases), there was consensus that more research needs to be done to assess the costs and benefits.

* * *

A chart identifying some preliminary data points for each key foreclosure mediation program metrics described above appears on the following page.

¹⁴ For a discussion of the value of attorneys in foreclosure proceedings generally, see Melanca Clark & Maggie Barron, *Foreclosures: A Crisis in Legal Representation*, New York, NY: Brennan Center for Justice 2009. Available at http://brennan.3cdn.net/a5bf8a685cd0885f72_s8m6bevkv.pdf.

Metrics	Measures	Computations	Data Sources
Program Characteristics	<ul style="list-style-type: none"> Eligibility requirements Opt-in/Opt-out structure Mandatory Participation Paperwork requirements Compliance structure 	Qualitative assessment	<ul style="list-style-type: none"> Applicable statutes and rules Borrower questionnaire Interviews
Foreclosure Rate	<ul style="list-style-type: none"> Total number of foreclosures (owner occupied, single family, etc.) Total number properties (owner occupied, single family, etc.) in jurisdiction 	Foreclosure rate = total number of foreclosures in jurisdiction/total number of properties in jurisdiction	<ul style="list-style-type: none"> City/county databases
Participation Rate	<ul style="list-style-type: none"> Total number of foreclosures Foreclosures eligible for intervention Total program participants 	Participation Rate 1= Number participating in program/Foreclosures eligible for intervention Participation Rate 2 = Number participating in program/ Total number foreclosures	<ul style="list-style-type: none"> Court administrative databases
Outcomes	<ul style="list-style-type: none"> Total program participants Total agreements reached Type of agreement <ol style="list-style-type: none"> Lost Home (liquidation) <ul style="list-style-type: none"> Deed in lieu Short sale Graceful exit Retained Home (non-liquidation) <ul style="list-style-type: none"> Loan modification Forbearance plan Partial claim - reinstatement 	Outcomes 1 = agreements reached/total program participants Outcomes 2 = liquidation agreements/ total agreements reached Outcome 3 = non-liquidation agreements/ total agreements reached	<ul style="list-style-type: none"> Court administrative databases Counselor/mediator records Observation and interviews
Sustainability	<ul style="list-style-type: none"> Number of participants who retained home Number of participants who remained in home for defined period of time after case closed 	Sustainability = resolutions for which subsequent foreclosures, sales, mortgages, or other liens have been filed/ total number of resolutions (using at least one year time period from date of initial resolution)	<ul style="list-style-type: none"> City/county databases Court administrative databases Counselor/mediator records Observation and interviews
Administrative Impact	<ul style="list-style-type: none"> Number of times each case “touches” program Number of days cases take until resolution (i.e., agreement or reentry into foreclosure process) Number of days cases take until resolution without mediation 	Administrative Impact 1 = median days cases take until resolution (agreement or reentry into foreclosure process) Administrative impact 2 = median number times each case “touches” program Administrative impact 3 = median days foreclosure process without mediation intervention Administrative impact 4 = administrative impact 1 /administrative impact 3	<ul style="list-style-type: none"> City/county databases Court administrative databases Federal data
Access	<ul style="list-style-type: none"> Total program participants Participants’ race/ethnicity Participants’ income Loan to value ratio Delinquency 	Computations require a reasonably sophisticated set of statistical procedures including statistical controls for variables relevant to access/outcome (e.g., extent to which a loan exceeds the value of the property, degree of delinquency, level of income).	<ul style="list-style-type: none"> City/county databases Court administrative databases Federal data
Representation/ Counseling	<ul style="list-style-type: none"> Total program participants Participants assisted by counselors Participants assisted by lawyers 	Counseling rate = Participants assisted by counselors/total program participants Representation rate = Participants assisted by lawyers/ total program participants	<ul style="list-style-type: none"> Court administrative databases Court administrative databases Counselor/mediator records

B. Data Sources – Resources & Challenges

As the chart on the previous page makes clear, several data sources may be useful to track and analyze what foreclosure mediation programs accomplish. Existing databases and data collection processes are useful, but generally need adaptation. Moreover, experience and anecdotal reports suggest that no single database will be sufficient; multiple databases from a variety of sources will be necessary. In general, to perform any basic analysis, it is likely that data will need to be collected from: (1) court administrative databases; (2) city/county databases reflective of property ownership and characteristics; (3) counselor and mediator records; and (4) observation and interviews. Secondary federal data sources of general availability (e.g., Census/American Community Survey, Home Mortgage Disclosure Act, to name a few) may also have some limited utility as a means of quantifying the context within which the program operates.¹⁵ As discussed below, there may be confidentiality issues that arise in accessing and assembling data, depending upon the source.

Court Administrative Databases

In judicial foreclosure states, the court's administrative database is the first place to obtain data reflecting homeowner participation, but the data is often limited. Mediation programs in Philadelphia and other jurisdictions within which mediation programs operate suggest four areas where courts could facilitate more robust evaluations: (1) add fields in court orders reflecting the substance of the court contact; (2) add fields of data in court orders that reflect the substance of any conclusion to the case; (3) add fields in court orders noting the presence of homeowner and lender/servicer representation (even if in a limited capacity); and (4) allow better access to the data. Traditionally, civil courts have not collected much information on the substance of case resolution, noting only the "fact" of the case's conclusion rather than the "substance" of that conclusion.¹⁶ Recording these data is essential to understanding the impacts and outcomes of the foreclosure mediation intervention.

City/County Databases

Many cities and counties have recorder or land management offices that contain current and past real property records, which should include information regarding, inter alia, ownership, title, liens, and sales. Cities and counties generally also have tax assessor offices

¹⁵ Use of proprietary secondary data sources (e.g., RealtyTrac for foreclosure filings) should be done with great caution because they are of uneven reliability across the country. That may be an especially daunting problem where a mediation program crosses jurisdictions (e.g., counties) and the proprietary data source does not have equally good data relationships across those counties.

¹⁶ In contrast, many jurisdictions include the substance of court proceedings in criminal court orders (e.g., details of plea agreement or sentence).

where additional information regarding property records may be found. These databases potentially offer a wealth of information regarding the history of a particular address. One significant problem is that the databases in many city and county offices that track this information are antiquated, and thus do not allow for ease of access to information. Local jurisdictions are gradually upgrading their technological infrastructure to permit greater access. In the meantime, increasing numbers of private companies are offering automated access to real property databases.

Counselor and Mediator Records

Counselors, mediators, and attorneys who participate in foreclosure mediation programs generally have the ability to describe the homeowner's circumstances, the nature and level of service provided, and the results of those efforts. Some jurisdictions, such as Nevada, have standardized summary forms that are completed at the conclusion of mediation. That said, the experience of Workshop participants suggests that the data obtainable from these sources has not yet been organized in a way that makes them a viable source of information on the mediation programs. The stated reasons for these data deficits include, but are not limited to, databases that contain free-form text not easily amenable to tabulation or analysis, and a lack of consistency in recording information across (and within) data sources. Confidentiality or privacy concerns may also preclude reporting household level information. Counselors generally use one of two systems for reporting data (CounselorMax or Home Counselor OnLine) and thus standardization of data collection/reporting is possible. Participants at the Workshop underscored the importance of relevant agencies conferring to establish some general rules for case identification and data reporting. (For a discussion of "Confidentiality Concerns," see below.)

Observation and Interviews

A less precise but nevertheless valuable data source involves the observation of mediation programs and interviews with participants. One good example of this work is described in greater detail below – South Brooklyn Legal Services worked with the Center for NYC Neighborhoods to create a survey instrument that law students and volunteer attorneys could utilize while observing mediation proceedings. The survey included quantifiable data such as appearances and outcomes, and was also designed to incorporate a post-settlement conference interview with homeowners regarding their understanding of the process. Over 800 mediation conferences were observed and recorded, yielding valuable insights not only into the outcomes of the proceedings but also into the factors underlying certain outcomes, and resulting in an influential report entitled "Locked Out." (See below for additional information.) Observations and interviews thus are particularly valuable complements to "hard" data that may demonstrate the "what" but not the "why" or "how."

Federal Data

Federal data can generally be used to establish a context and to act as a comparator for the results obtained in local or statewide mediation programs. Unfortunately, Workshop participants have found that federal data collected on the Home Affordable Modification Program (HAMP) and other related foreclosure intervention efforts have been of limited utility in this endeavor. Data collected by the Treasury Department on the Making Home Affordable (MHA) program lacks specificity (e.g., servicer identification and other critical data items are suppressed) and there is a high level of geographic aggregation, and thus the data generally cannot serve as a reasonable comparator for the area within which the mediation program is operating. Moreover, the Treasury Department reports that it does not verify the MHA data¹⁷ (as compared to the validation that the Federal Financial Institutions Examination Council's and financial regulators undertake with Home Mortgage Disclosure Act (HMDA) reporters), so the MHA database contains the reports of loan servicers that are not validated and may be incomplete. One Workshop participant noted that it may take the efforts of regulators and private attorneys general to ensure lender report accuracy. More useful for the purposes of benchmarking mediation programs would be MHA micro data akin to the HMDA data collection effort, wherein personal identifying information is suppressed but geographic identifiers and loan and loan modification items are reported (e.g., Census tract).

Confidentiality Concerns

One emerging challenge to collecting and analyzing foreclosure mediation data is the issue of confidentiality. Privacy concerns have recently garnered some attention in the media as at least one foreclosure mediation program has cited its confidentiality policy as a bar to disclosing data on program outcomes.¹⁸ Several programs have also reported some reluctance on the part of lenders to disclose the terms of mediation agreements. For those jurisdictions that have adopted a variant of the Uniform Mediation Act, there may be a further wrinkle, as the act allows every party to mediation to refuse to disclose, and to prevent any other party from disclosing, a mediation communication, although the privilege does not cover signed agreements.¹⁹ Wherever possible, programs should create clear guidelines that serve to maintain participant confidentiality, but also permit reasonable disclosures of aggregate data to facilitate program evaluation. Given attorney-

¹⁷ *Making Home Affordable Data File User Guide Version 2.0*, 4, Nov., 2011, available at <http://www.treasury.gov/initiatives/financial-stability/results/Documents/MHA%20Data%20File%20User%20Guide%202011-4-2011.pdf>.

¹⁸ Hildago, Jason, "Nevada's Foreclosure Mediation Program Cites Confidentiality in Refusal to Release Records," *Reno-Gazette Journal*, July 19, 2011. Available at <http://www.rgj.com/article/20110719/BIZ02/107170357/Nevada-s-foreclosure-mediation-program-cites-confidentiality-refusal-release-records>.

¹⁹ National Conference of Commissioners on Uniform State Laws, *Uniform Mediation Act*, Sec. 5.

client privilege, confidentiality issues also arise when attorneys are involved in the mediation process. “Firewalls” between housing counselors and attorneys can create critical information gaps. Limited privacy waivers may be needed to ensure that information can be shared across sources for purposes of program monitoring.

SUMMARY OF WORKSHOP PROCEEDINGS

Panel One - Framing the Issue: Foreclosure Mediation Program Stakeholders Discuss Program Objectives and Research and Evaluation Needs.

Panelists on the morning panel were Geoff Walsh, Attorney, National Consumer Law Center; Roberta Palmer, Program Manager, Connecticut Judicial Branch Foreclosure Mediation Program; and Jennifer Sinton, Deputy Director, South Brooklyn Legal Services Foreclosure Prevention. The panel focused on foreclosure mediation program models, emerging trends, and program objectives, and discussed the need for research and evaluation of program impact as well as the work that has been done to address those needs. The discussion also focused on the various partnerships that mediation programs have created to conduct research and evaluation, views of the stakeholders regarding the benefits and drawbacks of various partnership models, and suggestions for ways in which the federal government can support research and evaluation efforts.

Geoff Walsh, Attorney, National Consumer Law Center

Mr. Walsh noted that, in several jurisdictions, mediation programs have been an outgrowth of existing alternative dispute resolution programs, while in other jurisdictions like New York, the mediation program has been established by legislation. In a few states, like Florida, the Supreme Court has established or provided a set of recommended guidelines for a statewide model,²⁰ whereas in other jurisdictions, like Philadelphia, the local court has adopted a set of procedures at the county level.

There has been an expansion of programs in non-judicial foreclosure states. Nevada was first, and Maryland and Washington have followed. The City of Providence also has a mediation program.

Generally speaking, given the divergence of bargaining power between the lender and an often unrepresented borrower, the best programs have been those where there is a third party facilitator with knowledge of the court and program rules who makes an effort to

²⁰ Immediately before this report was published, the Florida Supreme Court ended the statewide mediation program. See Jeff Ostrowski, *Admitting Failure, Florida Supreme Court Ends Foreclosure Mediation Program*, Palm Beach Post, Dec. 19, 2011, <http://www.palmbeachpost.com/money/foreclosures/admitting-failure-florida-supreme-court-ends-foreclosure-mediation-2041550.html>.

ensure those rules are enforced. Programs that simply require the lender to communicate with the borrower prior to entering foreclosure have been less successful.

Program models are quite varied across the county. One feature that seems to have a significant impact on participation rates, from 10 percent on the low end to 80 percent on the high end, is whether eligible borrowers are automatically enrolled in the program versus having to elect to participate. Another variation is legal representation. In New York's program, 30-40 percent of homeowner participants have legal representation, where in many other states only 5-10 percent of homeowners have legal representation. Mr. Walsh suggested that such factors have an impact on ultimate outcomes of the program.

Another variation involves program requirements. In jurisdictions like Vermont, Maine, and Nevada, mediation program administrators require servicers to demonstrate their loss mitigation analysis either under the HAMP requirements, or the FDIC loan "mod in a box" analysis, and the servicers are not allowed to foreclose until they demonstrate compliance with the applicable requirements. There have not been significant legal challenges to states requiring this type of accountability. Moreover, programs are increasingly requiring good faith participation by homeowners and borrowers.

Mr. Walsh noted recent research on re-default rates for loan modifications. At this point, the re-default rates for HAMP are low, about 10 to 15 percent, down from 50 percent in 2008. The HAMP modification amounts tend to be twice as high as proprietary loan modifications, and re-default rates half as high. Of course, there is a lot of variation from state to state.

Mr. Walsh concluded by noting that fewer programs are actually having technical mediations. Programs working well have court staff overseeing ongoing communication between homeowners and servicers. Particularly where there are consequences for non-compliance, very few actual mediations are required.

Roberta Palmer, Program Manager, Connecticut Judicial Branch Foreclosure Mediation Program

Ms. Palmer shared her experiences as chief administrator of Connecticut's foreclosure mediation program. She explained that Connecticut is the first statewide court based mediation program in the country. The program was established through legislation in July 2008, and Connecticut enjoys the luxury of a unified court system with initial funding provided through a banking fund.

The program was created from the ground up exclusively for foreclosure cases, and had the explicit goal of, wherever possible, keeping homeowners in their homes. All of the program

managers have mediation background in landlord-tenant cases, and so understand that many litigants are self-represented. Program staff are trained specifically to deal with this population, as 60 to 75 percent of all homeowners are self-represented and have trouble communicating with the servicers, which tend to be large national entities. Mediators are mostly attorneys who have extensive training, including on HAMP program requirements.

In its three years of operation, the Connecticut mediation program has learned many lessons. The program began in June 2008 as a voluntary program where homeowners had to opt in, but the structure was changed to an opt-out program in July 2009. Remarkably, the program participation rate rose from 33 percent to over 80 percent without a proportional decrease in successful outcomes for program participants. The other change to the program structure was the retention of cases involving temporary modifications until the modification is made permanent. While this entails keeping cases in mediation for many months, it can help ensure that a homeowner receives a final resolution. No case can go to court until a mediation report is filed.

The program also has incorporated an accountability mechanism which requires that all HAMP denials be explained to the mediation program administrator. Also, while mediation program administrators cannot make a determination whether a party is proceeding in good faith, they can refer the matter to a judge who will make the determination, and there have been instances in which a judge has entered sanctions for lack of good faith.

At this point, explained Ms. Palmer, Connecticut is trying to do more with less, as the funding picture has become considerably uncertain in the current economic climate. It is unclear what future funding will look like and, given the austere budget environment, it is more important than ever that the Connecticut program prove its worth. Ms. Palmer has been compiling monthly settlement rate statistics and posting them on the program website to demonstrate the impact of the program, as they have learned that anecdotal information is not enough. More robust data is needed.

Jennifer Sinton, Deputy Director, South Brooklyn Legal Services Foreclosure Prevention Project

Ms. Sinton described the foreclosure project at South Brooklyn Legal Services, which brings fair housing, foreclosure defense, and non-litigation advocacy for homeowners. For the last few years, SBLS has been very involved in settlement process in New York. On any given day in NYC courts, SBLS attorneys are representing borrowers in these proceedings.

The New York foreclosure settlement conference was established through legislation in September 2008 for 1-4 family, owner-occupied homes in which the borrower held a subprime or non-traditional loan. (The legislation was later amended to expand access to

the program for all 1-4 family, owner-occupied homes.) Conference rules require that parties must appear with authority to settle, or otherwise be available by telephone.

In New York, in contrast to Connecticut, the program was not funded. The county courts were burdened with a new mandate, but no new funding to do it. One result was minimal training. While advocates later came together to provide training, it was not front loaded.

Within a few months of its establishment, it was apparent that the foreclosure settlement conference was not fully functional. In certain counties, it was clear that judges were not familiar with foreclosure mitigation program or eligibility requirements or the foreclosure process generally. In addition, in Ms. Sinton's view, servicers were not responsive, and borrowers were being blamed for the delays.

SBLS felt there was an urgent need to improve the process, and worked together with other advocates to monitor what was happening in the settlement conferences. SBLS, working with the Center for NYC Neighborhoods (CNYCN), and in collaboration with the Neighborhood Economic Development Advocacy Project and other legal service providers, created a simple, low cost survey instrument that could be rolled out quickly. The biggest expense of the project was comprised of the human resources necessary to put it together and do monitoring in court.

After the survey was developed, law students and volunteer attorneys used the survey to perform observations in New York City's foreclosure settlement conferences. The group alerted courts to the observations and asked their permission, even when it might not have been required, as they felt it was important to get the courts' buy-in.

Questions on the survey included:

- Who was present (e.g., homeowner lawyer, counselor, servicer representative, etc.)?
- Was plaintiff represented by counsel from the firm or a "per diem" lawyer hired for the day?
- Identification and index number of parties/property of address.
- Who spoke first, and did the homeowner speak at all?
- Did the court recall what happened at the prior conference?
- Did the court assess affordability?
- Was the HAMP program explained?
- Was the homeowner prepared?
- Did the court engage in moving the settlement conference forward?
- What was the outcome of the proceeding?

Notably, the survey did not just look at results, but also at the process. Survey takers did a post-settlement conference interview with homeowners about their understanding of settlement conferences and process. At the end of the project, over 800 conferences were

observed over a two-month period in the summer of 2009. In October 2009, CNYCN published a report on the findings entitled “Locked Out” and highlighted the fact that lenders were not coming to court prepared, lender attorneys were often not familiar with the case, and it was hard to get a knowledgeable person from the lender on the telephone.²¹ The report also revealed that judges were not particularly effective in moving cases forward, and that existing program rules were not being enforced.

“Locked Out” led to changes in the settlement conference authorizing legislation, including the addition of an express good faith requirement, more clear documentation requirements for lenders, and clarification that the foreclosure process is stayed pending the resolution of the conference procedure. The legislation also specified that the Office of Court Administration should collect data to evaluate the conference proceedings.

Overall, the new legislation made the courts and the process more accountable. In addition, SBLS and other advocates are working with the Office of Court Administration and the county courts to further improve the process. That said, the process is still slow – it is not uncommon for SBLS to work on a case for one or two years. Ms. Sinton believes that servicers can still be unresponsive, and SBLS has been filing motions for tolling of interest or dismissal of foreclosure in response to servicer misconduct, undue delay, and bad faith. In short, there is still a long way to go, and the resources of the court and advocates have been drained. Finally, as is generally the case, the lack of sufficient resources has frustrated efforts to provide the necessary assistance to the parties and courts, and thus has hurt program efficiency.

Discussion

Several themes emerged in the conversation following the first panel. Selected highlights are below:

- Timeliness and efficiency are critical. One observer noted it typically takes six mediation sessions to reach resolution in Connecticut, when really it should just take two. An extended process is not helpful to either side. It also narrows options as it is very difficult to deal with a 16 month arrearage if the case has stuck around that long. Concerns about time do, however, need to be based on data. In Florida, for example, common wisdom was that mediation added significant delay to the foreclosure process. Florida has a 120 day mediation process. However, the Collins Center for Public Policy, which administers the state’s foreclosure mediation

²¹ Masters, Amanda, Michael Hickey, Tracie McMillan and Amanda Insinga, *Locked Out: Little Relief for NYC Homeowners in the Foreclosure Settlement Process*, New York, NY: The Center for New York City Neighborhoods 2009. Available at http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ny_locked_out_report.pdf.

program, found that, a year out from the mediation process, plaintiffs' counsel had not requested summary judgment in 75 percent of cases referred back to court for foreclosure. Accordingly, it appears that the mediation program itself is not to blame for the long delays that precede foreclosure sales.

- One participant also noted that, in comparing programs by the average number of mediation sessions, it is important to ensure an “apple to apple” comparison. Although most programs will continue a mediation session if the lender is unprepared (notably, few programs allow for subsequent mediation when the homeowner is unprepared), some programs, like Connecticut's, will count the session even where one party is unprepared, while others will describe such an occurrence as a “non-appearance” and will not count the session. The Maryland program allows 60 days to resolve the case through mediation. If there is no resolution, the case goes back to court and sale can be scheduled. There are no sanctions for non-participation or lack of good faith.
- In Cook County, Illinois, there is a funnel process for participation that proceeds through multiple steps. The first step is outreach, including door knockers. All borrowers must go through the housing counseling process, and there is also a review to determine whether there are any legal defenses.
- The best indication as to whether mediation is taking too much time is the comparison between the length of the mediation process and the overall average length of the foreclosure process. In Cook County, for example, foreclosures take between a year and a year and a half to proceed, so an intervening process that takes several months should not be said to have caused significant delay.
- The HAMP program is moving toward transparency, and mediation programs should follow suit for their calculation of both HAMP modifications and proprietary modifications.
- The success of mediation programs comes down to accountability. Mediators find it extremely difficult to move things forward when a servicer is non-compliant. The escalation process is not working because there is no real threat of federal intervention.
- In many areas, properties going through foreclosure end up vacant and abandoned. Banks end up selling homes in foreclosure at a much lower cost than they are able to do in a loan modification context. It would be good to have right of first refusal for homeowners at these auction sales. There is a real need to think of occupancy of these properties as a social good, because foreclosures have a negative spill-over effect with additional costs. For that reason, policy makers should discuss

foreclosure mediation within the framework of understanding it as a tool that helps stabilize neighborhoods.

- It is an issue of cost savings. There is a presumption that mediation costs public monies, and that alternatives do not. That is a misunderstanding. Public costs (e.g., sheriff costs, court costs, loss of tax revenue, blight, etc.) must be included in tallying the cost of foreclosure.
- Participants agreed that it is important to subject foreclosure mediation programs to a cost/benefit analysis. The Center for American Progress did an analysis of the savings that could accrue from modifications, using a conservative estimate of a 25 percent reduction rate, based on a median home price of \$150,000.²² The study showed savings of \$37,000 for every house not foreclosed on, which does not include savings in external costs.
- One participant noted that the question of whether mediation programs are working is not the same as whether the programs are “worth it.” Programs may make economic sense at a very low threshold if loan modifications on average save \$37,000 as compared to going through with a foreclosure.
- Opt-out programs are reaching more people. While opt-in programs generally see 25 percent participation, opt-out programs can see that number for non-participation.
- Outreach is crucial. The use of door knockers in Philadelphia has been tremendously successful. New York also is doing aggressive individualized outreach through the courts.

Panel Two - Researchers Discuss Challenges and Lessons Learned from Evaluation of Foreclosure Mediation Programs and Related Foreclosure Prevention Interventions.

Panelists on the afternoon panel were Ira Goldstein, Director of Policy and Information Services at The Reinvestment Fund (and the Workshop’s facilitator); Kathryn Wertheim Hexter, Director of the Center for Community Planning and Development at Cleveland State University; and Peter Tatian, Senior Research Associate at the Urban Institute. Mr. Tatian was joined in his presentation by Neil Mayer and Ken Temkin, who teamed with Mr. Tatian to conduct research regarding the effect that housing counselors have had in homeowners’ ability to avoid foreclosure. The subsequent roundtable discussion was intended to explore research methodologies, data sources and data collection techniques, related challenges, and lessons learned from research. The discussion also focused on

²² Cohen, Alon, Foreclosure Mediation Going Forward: States Need to Expand Their Programs if the Federal Government Steps Back, Washington, D.C.: Center for American Progress 2011. Available at http://www.americanprogress.org/issues/2011/04/foreclosure_mediation.html.

prioritization of types of data collection and evaluation in view of resource limitations, and the relative benefits and drawbacks of the various methodological models.

Ira Goldstein, Director, Policy & Information Services, The Reinvestment Fund

Mr. Goldstein began the panel by describing his efforts to evaluate the mortgage foreclosure diversion program in Philadelphia.²³ Mr. Goldstein stated at the outset that his research is informed by the maxim that “the perfect is the enemy of the good.” He sought to answer some basic questions about the Philadelphia program through his research: (1) What is this size of the foreclosure problem, and what portion of the problem can the program address? (2) What are sets of outcomes that may derive from the program? (3) Is there an effect on case processing and efficiency in the court system? (4) How sustainable are outcomes? (5) Does the program increase access to the justice system, in that it reaches homeowners regardless of their race, socio-economic status, etc.?

Mr. Goldstein gave a brief description of the diversion program, from the initial outreach to distressed homeowners to the referral to the hotline run by a legal services organization that matches homeowners with housing counseling agencies (and, in rare situations, to legal aid providers). Some homeowners bypass the counseling services and go through system on their own (with or without lawyer).

The evaluation relies upon a variety of data sources, but primarily uses the foreclosure filing itself, tax records, court orders and the on-line court filing system, property information obtained from the RealQuest database, two on-line databases into which counselors enter homeowner information, and, finally, interviews with homeowners at the close of their case. Mr. Goldstein also obtains secondary data sources like Census figures in order to establish measuring sticks against which to measure outcomes.

With respect to the questions that Mr. Goldstein set out to answer, the data are promising. The program reaches 80-85 percent of residential foreclosure cases (it is limited to homeowner-occupied homes). Although measuring objective “success” is difficult, the last court orders in the impacted cases demonstrate that for eligible homeowners automatically entered into the diversion program, an agreement between the plaintiff and the defendant is reached in 35 percent of cases. Further, 85 percent of the cases are resolved in two appearances or less. In addition, the outcomes have, for the most part, been sustainable – for homeowners who reached agreements before June 2009, an “overwhelming majority” of them are still in their homes. Finally, the outcomes (including agreements, failures to appear, and subsequent sales) are similar across neighborhoods with varying housing

²³ On June 14, 2011, Mr. Goldstein released the report documenting his research. That report is in the Resource List, and is briefly described in the Background section of this report.

prices and racial and ethnic make-ups, meaning that the results appear to be relatively unaffected by the homeowners' race and socio-economic status.

Mr. Goldstein then described the challenges of his evaluation efforts. First, it has been difficult to study the substance of the agreements, in part because the data is in paper form and difficult to compile. The court has made some modifications to its court orders to make data compilation easier, but it is still labor intensive. Mr. Goldstein has also been unable to measure the impact of counseling or legal representation; with respect to the latter, because only 5 percent of cases have formal court appearances, the sample group is relatively small.

Kathryn Hexter, Director, Center for Community Planning and Development,
Cleveland State University

Ms. Hexter discussed her evaluation efforts in Cuyahoga County, Ohio. She is evaluating mediation as part of her study of the overall foreclosure prevention program, which is generally a counseling-based program. Cuyahoga County adopted its foreclosure mediation program in May 2008, and in April 2010 it started a pilot program that placed housing counselors in the courtroom for mediation sessions.

For the past several years, Cuyahoga County has had 13,000 to 14,000 foreclosure filings each year, and in 2008 suburban filings started to outpace filings in Cleveland. Mediation is an opt-in program, and approximately 30 percent of homeowners facing foreclosure enter the program. Once mediation is ordered, participation is mandatory, so if a plaintiff does not send somebody with settlement authority to a mediation session, the case is dismissed without prejudice. (The servicer may be represented by an attorney at pre-mediation, but the servicer must be present at mediation.)

Ms. Hexter stated that her data sources are not as good as Mr. Goldstein's in Philadelphia, because she is relying upon the data that the county court gives to the state. About 85 percent of people who request and attend a pre-mediation session get referred to formal mediation (with about 15 percent being found "unsuitable"). The program originally allowed investor-owned properties, but it no longer does. About 61 percent of cases that go to mediation are settled, although she is unable to get behind the agreements so she does not know what "settled" means, other than that the plaintiff and the defendant agreed on some outcome. The cases that go to mediation last an average of 124 days in the program.

Ms. Hexter has seen some themes developing. More people are opting in as the mediation program develops, and program administrator estimates that about 25 percent who enter mediation are in re-default status from pre-HAMP modifications. More cases are also resulting in pay-offs – approximately 2 percent of the mediation cases resulted in pay-offs

during the first year, but 10 percent did in the last year. Mediation is also beginning to produce some principal reductions, although she is not seeing many HAMP modifications. Ms. Hexter also is seeing more mediators strongly encouraging homeowners to seek counseling help because it improves the process. In addition, Ohio recently received Hardest Hit Fund money, so some homeowners are hesitant to enter an agreement if they think that there is a possibility that they will get relief from that program.

With respect to the counselors-on-site pilot program, from April to December 2010, only 257 clients saw the counselors. Approximately 18 percent of homeowners who attended pre-mediation met with a counselor, and 40 percent of them scheduled a follow-up meeting. Legal aid attorneys attended a small number of the pre-mediation sessions.

Ms. Hexter stated that her evaluation would be improved by learning the substance of the agreements, because knowing outcomes will help the program administrators know who needs mediation the most and, for example, who can get the same benefit only with a counselor. She also wants to compare mediation outcomes with outcomes for those who receive counseling only (although most people going to counseling are in mediation). She also would like to know who seeks mediation and who seeks counseling. (She suspects that suburbanites are more likely to go straight to court, while people from lower socio-economic strata are more apt to seek counseling first, a suspicion that is supported at least partially by statistics from the counseling agencies regarding their clients.) She also would like to study the impact of mediation on the court system to determine whether it increases efficiency.

Peter Tatian, Senior Research Associate, The Urban Institute

Mr. Tatian concluded the prepared panel remarks; he was joined by Mr. Temkin and Mr. Mayer. Their research focuses on whether the National Foreclosure Mitigation Counseling (NFMC) Program is having an impact on homeowners. The short answer is, "Yes."

NFMC is administered by NeighborWorks and has provided over \$450 million to counseling agencies in four rounds of funding. More than 1 million homeowners have received counseling under NFMC. The Urban Institute evaluated the first two rounds of funding (in 2008 and 2009), and its analysis focused on three questions: (1) Does NFMC help homeowners in foreclosure get out of the foreclosure process? (2) Does NFMC have an impact on the kind of modification that homeowners receive? (3) What is the impact of counseling on the sustainability of modifications?

The study looked at two primary sources of data: (1) production data collected by counseling agencies and submitted to NeighborWorks (although there were limitations because counselors had to report data quickly on results, and it was difficult to follow up with clients); and (2) servicer data on mortgage characteristics and monthly performance

(approximately 60-70 percent of mortgages in the country are in the database), and they used supplemental data from the Census, unemployment data from the Bureau of Labor Statistics, housing price indices, etc. From these sources, the researchers established two data samples for analysis: (1) the total sample of NFMC-counseled loans that they could match to the servicer database, which amounted to about 180,000 loans; and (2) a comparison group of loans from the database with similar characteristics to the NFMC-counseled loans but that were not counseled (a total of about 150,000).

With respect to the first question (whether counseling assists homeowners receive modifications), counseling has a significant positive impact on the ability of homeowners facing foreclosure to receive a loan modification. Homeowners are 1.696 times more likely to cure foreclosure with a loan modification when they receive NFMC counseling. The study also measured the impact of various levels of counseling – for example, whether the homeowner meets with a counselor in order to develop a plan to secure a modification but does not seek assistance in implementing the plan, versus more involvement with the counselor through the process of actually receiving the modification. The report concludes that the odds of securing a modification increase as the involvement of the counselor increases.

On question number two (the quality of the modification), counseling also has a positive impact. On average, the monthly payment reduction was \$267 greater with NFMC counseling than without, which corresponds to approximately 12 percent of the total monthly payment.

Finally, question three: What is the likelihood that homeowners can sustain their modifications, and does counseling have an impact? The researchers measured the same group of homeowners – those who received modifications in 2008 – to determine who remained current in December 2009. In short, homeowners who received their modifications with the assistance of counselors performed better under their modifications than those who did not: 64 percent of counseled modifications remained current, compared to 51 percent of uncounseled modifications. Thus, counseling has a positive effect on performance, although there is still a substantial number of homeowners who cannot sustain their modifications. Researchers believe that this results from counselors being able to help homeowners budget and understand the terms of their new loans, although they cannot be sure.

So, counseling does three things with respect to loans: homeowners who received NFMC counseling (1) are more likely to get a curing loan modification, (2) receive a larger payment reduction under the modification, and (3) are more likely to be able to sustain the modification.

In conclusion, Mr. Tatian underscored the importance of having (1) a reliable data source to track loan performance over a period of time, and (2) a control group against which to measure the success of whatever intervention is being measured (and the ability to discount other variables in looking at the performance).

Discussion

The follow-up discussion focused on several themes related to the panelists' presentations.

- Participants discussed the need to control for variables other than the intervention whose impact is being studied. For example, do HAMP modifications perform better than non-HAMP modifications? What about the impact of sub-prime loans on the ability to sustain a subsequent modification? In at least one jurisdiction, it appears that race, ethnicity, and size of the mortgage actually have little-to-no impact on the ability of homeowners to secure and sustain modifications, particularly when compared to the impact of counseling, but there may be other factors that have a relatively greater impact.
- What about measuring the impact of counseling against the cost of the NFMC program? Participants believed that the dollar-figure impact on homeowners benefited by the program (in modifications achieved, reduced payments, etc.) far outweighs the program costs. They pointed to studies showing that foreclosures cost communities tens of thousands of dollars in diminished property values for surrounding homes and decreased tax revenues, so the overall impact of interventions that save homes should far exceed the total cost of the program. However, there was agreement among panelists and participants that more research is needed to demonstrate that the benefits of NFMC exceed the substantial cost to taxpayers.
- There was a broad discussion regarding where counselors make the most difference. Do counselors make the most impact in gathering documentation, in knowing the disparate information that various servicers need, in securing a single point of contact, or in some combination of all of these? Several participants suggested that counselors make the modification process work, where homeowners on their own may give up when confronted with a lack of cooperation or responsiveness.
- Several workshop participants described the difficulty in getting information on the substance of agreements reached in mediation. Philadelphia gets information from court orders, which have recently been modified to include information regarding

the type of agreement (e.g., HAMP modification, short sale, etc.). But, it is difficult to weigh the desire to get more information with the need for efficiency.

- Others raised the issue of the unauthorized practice of law and whether counselors providing assistance in the context of mediation can raise problems in this regard. There was consensus that one protection against this potential problem is the availability of lawyers to address legal issues that are not appropriate or advisable to be addressed in a mediation or conciliation context.
- In looking at a national picture, one participant noted the challenge of identifying uniform measures. Are different programs counting the same thing? What is the proper unit of analysis (e.g., house or homeowner, owner occupied, etc.)? Common definitions are needed in order to achieve comparable analyses. Perhaps one solution is a standard court form on which agreed-upon data points can be collected.

Summary of Keynote Remarks by Department of Housing and Urban Development Assistant Secretary for Policy Development and Research, Raphael Bostic

Assistant Secretary Bostic welcomed Workshop participants, and began his remarks by noting how delighted he was to have the Department of Justice working on these issues alongside HUD, and how important it is to combine the collective expertise of federal agencies with that of the public and private sectors.

The Assistant Secretary noted that the strong program and energy of the convening is a testament to the importance of the topic of foreclosure mediation. There is a need to broadly engage stakeholders to raise the profile of the issue to get to a workable policy outcome.

Assistant Secretary Bostic placed foreclosure mitigation tools in context by describing the arc of the housing crisis, which has caused over \$6 trillion dollars in equity to be lost, and has been particularly devastating for lower income minority communities. While the housing crisis began with predatory lending, it continued on the wave of a bad economy. The now multi-dimensional crisis impacts what a reasonable response to the crisis should look like. From a macro perspective, the nation will be unable to get to a healthy housing market and economy without addressing the foreclosure crisis.

Regardless of how the United States arrived at the crisis, the Assistant Secretary noted, millions of homeowners are at threat of losing their homes. Foreclosure is a bad outcome for all parties. It causes obvious disruption in the lives of homeowners, who often suffer the shame and stigma of the loss of their home. For lenders, managing foreclosure properties is

costly, and recovery rates are low. Foreclosure mediation is a pathway to preferable alternatives. In some jurisdictions, more than half of homeowners participating in mediation are able to keep their homes. Short sales and deeds in lieu of foreclosure are also particularly important. Although they are relatively rare when homeowner and lender negotiate on their own, they are often a preferred outcome for both parties.

Assistant Secretary Bostic queried the audience: “If mediation is such a good idea, why haven’t more jurisdictions taken up the mantle?” Noting that only five jurisdictions have mandatory mediation programs, Assistant Secretary Bostic posed several questions for the group to consider: “What are barriers to implementation and program participation, and is the conventional wisdom that mediation takes a long time and is costly supported by the evidence?”

Assistant Secretary Bostic described the challenge for policy makers as being how best to translate good ideas into “on the ground” reality. His hope was that the convening would help distill “what we know,” and put that information into a clear focus and frame so as to make clear what steps are needed at the state, local, and federal level. In short, the need is for replicable, reliable processes that everyone can understand.

Assistant Secretary Bostic concluded his remarks by acknowledging that formulating an appropriate framework for mediation is a challenging but important task, and one at which we cannot afford to fail. The stakes are high. The Assistant Secretary remained hopeful that the workshop would help set us on the path of articulating what next steps should be to achieve better outcomes.

RECOMMENDATIONS FOR FEDERAL ACTION

Workshop participants felt strongly that a more robust evidence base supported by research should prompt the federal government to take additional steps to support well-structured foreclosure mediation programs. They had several recommendations for ways in which the federal government could facilitate the development and proliferation of foreclosure mediation programs based upon an evidence-based model.²⁴

Recommendations for action included:

- Supporting research and evaluation of state and local foreclosure mediation programs through funding and technical assistance.
- Establishing federal guidelines for foreclosure mediation programs, and providing technical assistance to assist state and local programs to meet them.
- Funding, perhaps on a matching basis, mediation programs that meet established federal guidelines.
- Establishing a template that contains uniform data points for collection that foreclosure programs can adopt.
- Requiring that federally-backed loans go through mediation before foreclosure can take place.
- Improving escalation processes for federal loan modification programs, to allow intervention in individual foreclosure mediation cases where necessary to achieve an agreement.
- Encouraging banking regulators to allow states to implement mediation interventions without the threat of intervention by the banking industry.

²⁴ The Recommendations for Federal Action contained in this document are those of the non-federal workshop participants and do not necessarily represent the views of the authors or the official position or policies of the U.S. Government.

CONCLUSION

The Workshop convening documented the available models, resources, and challenges relating to the evaluation of foreclosure mediation programs, and also produced an important list of recommendations for the federal government on how it can support mediation. Each of these efforts highlighted what emerged as a strong consensus among Workshop participants: Foreclosure mediation is an important intervention that, if well-conceived and carefully implemented, can have overwhelmingly positive impacts on homeowners, lenders and investors, and communities.

Several themes emerged from the Workshop:

- As foreclosure mediation programs proliferate and their structures become more varied, research and evaluation are critical to determine which models and program characteristics produce the best outcomes, and which are less successful.
- Although some research has been conducted, more rigorous and regular evaluation of foreclosure mediation programs is needed.
- In order to conduct the kind of research and evaluation that is needed, there must first be consensus regarding which data points and categories of data must be collected, so that programs are measuring the same things and comparison is possible.
- The research and evaluation will require resources, but some of the creative collaborations represented in the Workshop, such as those between programs and academic institutions, foundations, legal aid organizations, think tanks, and government partners, can lead to efficient use of resources and quality evaluation.
- The federal government should take an active role, both in helping to develop program and evaluation guidelines and in providing resources for mediation programs and research.

Workshop participants acknowledged the many challenges that exist in developing quality foreclosure mediation programs through rigorous evaluation, including the need to convince the public and policymakers of the need for resources for mediation, but participants stressed that the intervention is such a critical tool in the nation's effort to address the foreclosure crisis that the challenges must be met.

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RESOURCE LIST

Center for New York City Neighborhoods (2009). **Locked Out: Little Relief for Homeowners in the Foreclosure Settlement Process.**

<http://cnycn.nonprofitsoapbox.com/storage/cnycn/documents/cnycn%20ny%20settlement%20conference%20report%20final%20copy%2010%2009.pdf>

Clifford, R. (2011). **State Foreclosure Prevention Efforts in New England: Mediation and Assistance.** Federal Reserve Bank of Boston, New England Public Policy Center.

<http://www.bos.frb.org/economic/neppc/researchreports/2011/neppcrr1103.pdf>

Cohen, A. (2011). **Talking it Up: How the Federal Government Can Implement Automatic Foreclosure Mediation to Help Homeowners, Lenders, Investors and Tax Payers.** Center for American Progress.

http://www.americanprogress.org/issues/2011/01/pdf/foreclosure_mediation.pdf

Cohen, A. (2010). **Walk the Talk.** Center for American Progress.

http://www.americanprogress.org/issues/2010/11/pdf/walk_the_talk.pdf

Cohen, A. and A. Jakabovics (2010). **Now We're Talking.** Center for American Progress

http://www.americanprogress.org/issues/2010/06/pdf/foreclosure_mediation.pdf

Goldstein, Ira and Colin Weidig (2011). **Philadelphia Residential Mortgage Foreclosure Diversion Program: Initial Report of Findings.** The Reinvestment Fund.

http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf

Hexter, K.W. & M. Schnoke (2010). **Responding to Foreclosures in Cuyahoga County, Interim Evaluation Report January 1, 2009 Through December 31, 2009.** Cleveland State University, Maxine Levin college of Urban Affairs, The Center for Community Planning and Development

http://urban.csuohio.edu/publications/center/center_for_community_planning_and_development/Responding_to_Foreclosures_in_Cuyahoga_County_2009.pdf

Additional reports of the Center for Community Planning and Development available at:

http://urban.csuohio.edu/publications/center/center_for_community_planning_and_development/

Mayer, N., P. Tatian, K. Temkin, and C. Calhoun (2010). **National Foreclosure Mitigation Counseling Program Evaluation: Preliminary Analysis of Program Effects, September 2010 Update.** Urban Institute.

<http://www.nw.org/network/nfmcp/documents/2010.12.14FINALModelingReport.pdf>

Mayer, N., P. Tatian, K. Temkin, and C. Calhoun (2011). **National Foreclosure Mitigation Counseling Program Evaluation: Final Report Rounds 1 & 2.** Urban Institute

http://www.nw.org/network/foreclosure/nfmcp/documents/NFMCEval_Rounds1-2_Final.pdf

Pea, A. 2010. **Report of the Chief Administrator of the Courts. State of New York Unified Court System.**

<http://www.nycourts.gov/publications/pdfs/foreclosurereportnov2010.pdf>

Richter F., L. Nelson and Y. Seo (2010). **A Look Behind the Numbers Mortgage Delinquencies in Ohio: Are Loan Modifications Stemming the Tide?** Federal Reserve Bank of Cleveland.

http://www.clevelandfed.org/Community_Development/publications/ALBTN/V3_1/index.cfm

State of Nevada Foreclosure Mediation Program Mediation Statement and Agreement.

<http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/functionstartdown/7745/>

U.S. Dept. of Housing and Urban Development & U.S. Dept. of Justice (2010). **Emerging Strategies For Effective Mediation Programs.**

<http://www.justice.gov/atj/effective-mediation-prog-strategies.pdf>

Walsh, G. (2011). **Recent Developments in Foreclosure Mediation.** National Consumer Law Center.

http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/rpt-meditation-2011.pdf

Walsh, G. (2009). **State and Local Foreclosure Mediation Programs, Can They Save Homes?** National Consumer Law Center.

http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/report-state-meditation-programs.pdf

APPENDIX

- A. Agenda
- B. List of Participants
- C. Panelist Biographies
- D. Philadelphia Residential Mortgage Foreclosure Diversion Program Sample Court Order
- E. South Brooklyn Legal Services New York Settlement Conference Survey Questionnaire



Foreclosure Mediation Programs

A Workshop to Discuss Emerging Research and Evaluation Practices

March 7, 2011

Sponsored by U.S. Department of Justice's Access to Justice Initiative

AGENDA

Monday, March 7, 2011

9:45 – 10:00 Registration and Networking

10:00 – 10:15 Welcome and Workshop Goals and Outcomes

- Deborah Leff, Deputy Counselor for Access to Justice, U.S. Department of Justice
- Melanca Clark, Senior Counsel, Access to Justice, U.S. Department of Justice
- Daniel Olmos, Senior Counsel, Access to Justice, U.S. Department of Justice
- Ira Goldstein, The Reinvestment Fund, Workshop Facilitator

10:15 – 12:00 Framing the Issue: Foreclosure Mediation Program Stakeholders Discuss Program Objectives and Research and Evaluation Needs.

10:15 – 11:00 *Presentations*

- Roberta Palmer, Program Manager, Connecticut Judicial Branch Foreclosure Mediation Program
- Jennifer Sinton, Deputy Director, South Brooklyn Legal Services Foreclosure Prevention Project
- Geoff Walsh, Attorney, National Consumer Law Center

11:00 – 12:00 *Facilitated Roundtable Discussion*

This panel will discuss foreclosure mediation program models, emerging trends and program objectives, and will discuss the need for research and evaluation of program impact and what work has been done to address those needs. Discussion will also focus on the various partnerships that mediation programs have created to conduct research and evaluation, views of the stakeholders regarding the benefits and drawbacks of various partnership models, and suggestions for ways in which the federal government can support research and evaluation efforts.



Foreclosure Mediation Programs

A Workshop to Discuss Emerging Research and Evaluation Practices
March 7, 2011

Sponsored by U.S. Department of Justice's Access to Justice Initiative


12:00 – 1:00 Working Lunch

Margaret Richardson, Counselor to Attorney General for Executive Branch Relations
Keynote Speaker: Dr. Raphael Bostic, Assistant Secretary for Policy Development and Research at the U.S. Department of Housing and Urban Development

1:00 – 2:45 Researchers Discuss Challenges and Lessons Learned from Evaluation of Foreclosure Mediation Programs and Related Foreclosure Prevention Interventions.

1:00 – 1:45 Presentations

 Ira Goldstein, Director, Policy & Information Services, The Reinvestment Fund

 Kathryn Wertheim Hexter, Director, Center for Community Planning and Development, Cleveland State University

 Peter Tatian, Senior Research Associate, The Urban Institute

1:45 – 2:45 Facilitated Roundtable Discussion

This panel will explore research methodologies, data sources, and data collection techniques, related challenges, and lessons learned from research. The discussion will also focus on prioritization of types of data collection and evaluation in view of resource limitations, and the relative benefits and drawbacks of the various methodological models.

2:45 – 3:00 Break

3:00 – 3:45 Facilitator-Led Discussion of the Highlights from the Day

In this facilitated round-table, participants will have a chance to comment on the day's highlights and discuss next steps.

Adjourn