

SIX PROGRAMS, SIX MODELS:

**AN EVALUATION OF THE FORECLOSURE MEDIATION
PROGRAMS FUNDED BY THE OFFICE OF THE ILLINOIS
ATTORNEY GENERAL**

16TH JUDICIAL CIRCUIT EXTRACT

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RESOLUTION SYSTEMS INSTITUTE



RSI

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RESOLUTION SYSTEMS INSTITUTE

This evaluation was conducted by Resolution Systems Institute. Formed in 1995, Chicago-based Resolution Systems Institute (RSI) is a non-profit organization whose mission is to strengthen justice by enhancing court alternative dispute resolution systems through expertise in program development, research, resources, program administration and training.

Founded on the premise that collecting and disseminating reliable information about court ADR can raise the quality of court ADR, RSI has assisted state and federal courts with the design, administration, monitoring and evaluation of mediation programs, as well as training ADR neutrals. Courts and individuals across the country call on RSI for advice and make use of CourtADR.org, RSI's Court ADR Resource Center.

With a multi-year grant from the Office of Illinois Attorney General Lisa M. Madigan, RSI has fully implemented the advice we have offered for two decades: Seek stakeholder input. Set goals. Design clear systems. Train skilled neutrals. Collect uniform data. Share information with stakeholders. Assess programs with an expert eye. Never stop working to improve court ADR programs.

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16TH JUDICIAL CIRCUIT FORECLOSURE MEDIATION PROGRAM Kane County

Overview

Launch Date	January 2, 2014
Program Size	366 cases entered the program in 2014
Type	Hybrid
Entry Process	HO* completes initial conference with PC* and files court appearance
Intake	By PC before HO submits financial documents and checklist
Pre-Mediation	1-2 HC* sessions (optional) to complete packet , possible legal assistance from Northern Illinois University College of Law clinic
Mediation	Unlimited sessions allowed by rule; generally 1 -2 in practice
Remain in Program during TPP?*	Depends; if TPP reached prior to mediation, case stays in program, if TPP reached during mediation, case stays in program, if HO requests
Timing of Foreclosure Stay	Date of service of process until 28 days after case leaves program, or for 45 days from date of service of process if homeowner does not contact the PC
Homeowner Cost	\$167 court appearance fee; may be waived
Lender Additional Filing Fee	\$50
Mediator Payment	\$100 for first mediation session, \$50 for second; capped at \$150 regardless of number of sessions
Program Staff	1 full-time program coordinator and 1 full-time bilingual paralegal
Program Rule	Article 5.00: Mandatory Residential Foreclosure Mediation Program

DISTINGUISHING FEATURES OF THE PROGRAM

The following features differentiate this program from the others in this evaluation:

- The program is a [hybrid](#) of a [one-step entry](#) program and a [multi-step entry](#) program: [Homeowners](#) are told they must contact the program coordinator, but they also must complete other steps in order to participate
- Homeowners must file an appearance in order to participate

* HC = housing counseling HO = homeowner PC = program coordinator TPP = trial period plan

STATISTICS AT A GLANCE

This is by far the largest program, with 366 homeowners participating in 2014.

Status of Cases Through Dec. 31, 2014	
Foreclosures Filed	1,598
Initial Conference	416
Entered Program	366
Closed	260
Pending	116

The program helps almost 3 of 10 eligible homeowners. About 7% avoid foreclosure.

Program Impact	
	% of Foreclosures
Homeowners Helped	28.5%
Foreclosures Avoided*	6.9%
Homes Retained*	5.4%

*Projected numbers based on closed cases.

Homeowners who enter the program are likely leave without completing it. However, 65% of those homeowners who complete the program avoid foreclosure.

Outcomes of Closed and Completed Cases*			
	#	% of Closed Cases	% of Completed Cases
Agreement: Retention/TPP	55	21.2%	50.0%
Agreement: Relinquishment	16	6.2%	14.5%
No Agreement	39	15.0%	35.5%
Closed: Program Not Completed	146	56.2%	N/A

On average, it takes about 3 ½ months to complete the program.

Average Number of Days	
Filing to Close – All Cases	117
Program Entry to Close	81
Program Entry to Close – Completed Cases	102
Program Entry to Close – Not Completed	64

Mediation participants have had an overwhelmingly positive response to the process.

Mediation Participant Experience		
	Party (n = 188)	Attorney (n = 145)
Satisfied Overall	92%	95%
Satisfied with Outcome	82%	85%
Process was Fair	95%	99%

- Housing counseling is optional; homeowners who decide not to work with a housing counselor do not receive assistance with completion and submission of their [loan modification packet](#) unless they seek legal counsel or work with the NIU clinic
- Housing counseling is not funded by an Attorney General grant
- Law students provide legal information through the Foreclosure Help Desk and Homeowner Workshops, and provide limited-scope representation to a small number of homeowners
- Payment is by session: \$100 for the first and \$50 for the second (mediators are not paid for any further sessions); mediators were required to conduct three mediations pro bono at the beginning of the program

IMPORTANT FINDINGS

The 16th Circuit program serves the most homeowners of all the programs

The program served 366 homeowners, 84% more than the next highest program.

Homeowners who complete this program are very likely to avoid foreclosure

Of those who complete the program, 50% reach agreement to retain their homes and 15% reach an agreement to voluntarily relinquish their homes. This falls in the middle of all programs.

This program has the highest impact on homeowners, with the exception of the one-step entry programs

Almost 29% of all homeowners in [foreclosure](#) are helped in some way. This is 8% more than any multi-step entry program. The difference in program impact is due to both the higher rate of homeowners contacting the program and the fact that everyone who contacts the program receives some assistance with understanding the foreclosure process, their options and the services available to them.

This program has the second highest rate of homeowners leaving the program without completing it; 56% of homeowners who enter the program do not complete it

More than half of participating homeowners (56%) leave the program without completing it. This is the highest rate, with the exception of the 17th Circuit program, which removes some homeowners.

Temporary loan modifications are being converted into permanent modifications

In 28 of the 31 cases for which the information is available, the [temporary loan modification](#) was successfully converted.

People of all races/ethnicities were equally served by the program

There was no significant decline in minority participation as the homeowners progressed through the program.

Program Description and Procedures

WHAT NEED WAS THE PROGRAM CREATED TO MEET?

The court had seen its foreclosure call grow from two mornings a week to five full days. At the same time, the foreclosure judges were seeing unrepresented homeowners who did not know how to navigate the court system and were trying to work with their [lenders](#) to obtain a loan modification, but were not succeeding.

The program was set up to address these issues. The court wanted to help homeowners so that they could have the opportunity to save their homes or [exit them gracefully](#). It also wanted to increase the efficiency of moving foreclosure cases through the system. The mediation process was also supposed to, as stated in the court rule, “reduce the burden of expenses” incurred by the court, lenders, homeowners and taxpayers as a result of foreclosures, and to limit the burden of abandoned and vacant homes on the community.

PROGRAM ADMINISTRATION

This program is administered by Resolution Systems Institute. The program is staffed by a full-time program coordinator, who is an employee of RSI, and a full-time paralegal, who is fluent in Spanish and English and a court employee. The two staff members work in the program office, which is located on the fourth floor of the Kane County Courthouse in Geneva.

Program partners include Northern Illinois University College of Law, whose law clinic students staff the foreclosure desk and represent a few selected homeowners as they move through the program and attend mediation. In December 2014, they started helping homeowners at “pre-screening workshops”, as well (see below for more details on these workshops). The housing counseling program partners are Joseph Corp, Neighborhood Housing Services and Consumer Credit Counseling Services of Northern Illinois, all of which provide free services during the pre-mediation phase. Two legal services agencies also work with the program. Prairie State Legal Services has represented a few homeowners in mediation and attends some of the pre-screening workshops. It was also instrumental in drafting the court rules. Administer Justice provides a foreclosure workshop to all homeowners, which includes an explanation of the mediation program. Along with Prairie State, the organization has been an active stakeholder in the program. An attorney from each organization attends all stakeholder meetings. A panel of 25 private mediators conducts the mediations. The mediators received a five-day foreclosure mediation training from RSI.

ELIGIBLE CASES

Eligibility is automatic for residential foreclosure cases filed in 2014. The court may also order cases into the program that were filed prior to 2014. Eligibility is limited, however, to homeowners who either live at the property or have right of return, and to properties with one to six units.

NOTIFICATION AND OUTREACH

Homeowners are first informed about the foreclosure mediation program when they receive their notice of [summons](#) from their lenders' attorneys. Included is a [First Notice of Mandatory Mediation](#) that tells homeowners they *must* call the mediation program coordinator within 30 days for an initial conference and to file an appearance in order to participate. It also includes the [Homeowner's Checklist and Questionnaire](#), which asks homeowners basic background questions and provides a checklist for them to follow while completing the loan modification packet. They have a second opportunity to learn about the program from a postcard that the program coordinator sends to them two weeks later. The postcard tells them they need to contact the program coordinator by the deadline specified on the postcard and that they need to file an appearance.

County residents may also learn about the program from [brochures](#) left in legislators' offices, the County and Circuit Clerk's offices, the Recorder of Deeds office and most of the township offices. The housing counseling and legal aid offices have brochures, as well. The program also has a [website](#), which includes information about the program, the program's timeline and a [video](#) outlining the process and required documents. In addition, the program coordinator and housing counselors attend open houses and community events, where they talk with homeowners directly. Homeowners may also learn about the program from the court's foreclosure help desk.

ENTRY PROCESS

Once they receive their [service of process](#), the homeowners are required to contact the program coordinator for their initial conference within 30 days and file an appearance in court within 45 days in order to participate in the program. If they fulfill both requirements, their case is not returned to court to resume the foreclosure process.

PROGRAM PROCESS

Initial Conference

When the homeowner contacts the program coordinator, he either schedules or conducts the initial conference. In practice, he almost always conducts it at that time, and almost always by phone. If the homeowner is Spanish-speaking, the initial conference is conducted by the paralegal. On occasion, the initial conference happens in person – generally because the homeowner has been referred by the court's foreclosure help desk or the presiding foreclosure judge to talk to the mediation program. In the initial conference, the program coordinator screens the homeowners for eligibility (ensuring that they signed the mortgage and live at the property) and then asks background questions, including whether they want to keep their home, what their primary reason is for [default](#), and demographic information. He then explains the program and tells them what they need to do to participate.

Pre-Mediation Phase

Document Submission

The next step depends on whether the homeowners have already submitted a loan modification packet to their lender. If they have not submitted a packet, the program coordinator refers them to

one of two HUD-certified housing counseling agencies (either Neighborhood Housing Services or Joseph Corp) to help them do this. Alternatively, he may refer them to the Northern Illinois University Law Clinic for legal assistance, if he thinks they might benefit from their assistance. If the homeowners have already submitted the packet (or if they do not want to work with a housing counselor), he instructs them to send him the Homeowner's Checklist and Questionnaire they received with their notice of summons. In either case, they have 30 days to submit the packet and/or complete the checklist and questionnaire, but they can ask the program coordinator for a 30-day extension. The program coordinator says he is fairly generous with extensions; as long as he sees they are acting in good faith to get the necessary documents together or have a solid reason for needing the extension, he will give it.

If the homeowners opt to work with a housing counselor, the program coordinator refers them to one of the agencies, generally dividing the referrals by homeowner zip code. The homeowners then make an appointment with a counselor at the agency office. The counselor goes over their financial information with them, discusses their options and helps them to complete and submit the packet. The counselor continues working with the homeowners to fulfill any further document requests from the lender.

When the program coordinator refers homeowners to the Northern Illinois University Law Clinic, the homeowners contact the clinic, if they wish and arrange a meeting. Law clinic students, supervised by a faculty member, conduct a screening and decide whether they will represent the homeowners. The faculty member will approve the student taking on the case if it will go to mediation, if it does not involve complex legal issues and if the case presents a good learning opportunity for the student. If the student takes on the case, he/she helps the homeowner to collect their financial documents and to complete the necessary legal documents, such as their [court appearance](#) and their request to sue and defend as indigent so that the appearance fee is waived. The student also prepares the homeowners for mediation by describing what it is and how they can use it to meet their goals. The student then attends the mediation session as the homeowner's advocate. If no agreement is reached in mediation, the student helps the homeowners prepare their [answer](#) to the foreclosure summons and submit it to the court.

Beginning in December 2014, the program started monthly "pre-screening workshops." Four homeowners are scheduled for each workshop, which takes place in the program office. These workshops provide one-stop services to homeowners. During the workshops, the homeowners first have an initial conference with the program coordinator, then meet with a housing counselor from Consumer Credit Counseling Services, which is a HUD-certified housing counseling agency, and with a legal aid attorney from Prairie State Legal Services or a law student and the faculty supervisor from NIU. The intent of the meeting with the housing counselor is to end with a completed loan modification packet. If the homeowner does not have all necessary paperwork, a subsequent session may be necessary. The legal aid attorney or NIU clinic member helps the homeowners to complete their appearance form and provides any needed legal advice. These workshops are limited to those whose income level would qualify them for Prairie State's legal services.

Lender Review

Once the homeowners submit the loan modification packet to the lender and send the Homeowner Checklist and Questionnaire to the program coordinator, the case moves into the lender review stage. At this point, the lender has 45 days to ask the homeowners for further documents and review the packet. At the end of the 45 days, the lender's attorney sends the Plaintiff's Checklist and Questionnaire to the program coordinator. The questionnaire states that the lender is ready for mediation. Most often, this means that the lender has completed its review of the loan modification packet, but in some cases other issues that would benefit from mediation, such as how a pending divorce affects homeowner obligations or how to proceed if the homeowners are in bankruptcy, have arisen.

Mediation Phase

Once the program coordinator receives the Plaintiff's Checklist and Questionnaire, he schedules a mediation session for approximately two weeks later. The sessions take place in the program office, which is in the Kane County Courthouse. Although the rule presumes only one session, in practice two 90-minute sessions are the norm. The purpose of the mediation session is to explore the possibility of [avoiding foreclosure](#). The lender has reviewed the packet and often arrives at mediation with an answer as to whether a modified loan will be offered and, if so, what its terms will be. However, in many cases, the parties arrive for mediation needing to continue to exchange documents. In others, the mediation uncovers additional information that affects the lender's decision about whether to offer a loan modification. In both these cases, the mediation will be continued for a second session.

To reduce the need for two full mediation sessions, the program coordinator began implementing pre-mediation sessions in September 2014. In these sessions, which take place at the courthouse, the lender's attorney, homeowners and mediator talk about what is required to move toward whatever goal the homeowners have. These are most helpful in two situations: when there is a complex ownership question arising from divorce or inheritance, and when there are repeated issues with the [document exchange](#). In the former, the homeowners have a lot of questions that need to be answered, such as what happens if one homeowner wants to modify the loan and the other is not interested. Repeated problems with document exchange generally happen when mortgage ownership changes and the homeowners are working with a new lender.

TERMINATION

Cases are terminated from the program and returned to court to continue the foreclosure process when:

- The homeowners do not contact the program coordinator for an initial conference and file an appearance within 45 days
- The homeowners do not complete the required documentation within 30 days of the initial conference (or 60 days if given an extension)
- The homeowners do not appear for a scheduled mediation session

- The homeowners decide not to pursue any foreclosure avoidance options
- The homeowners and lender do not agree to any option to avoid foreclosure

If the parties agree to a temporary loan modification at mediation, the case does not continue in the program during the trial period; however, the stay remains on the foreclosure process until the end of the trial payment plan. If they agree to a temporary loan modification prior to a mediation, the case remains in the program and the stay on the foreclosure process continues until the trial plan is over. At the end of the trial period, the homeowner has the option of requesting a mediation session, but none did so during the program's first year. Whether or not a mediation session is held, the case returns to court to be dismissed if the temporary loan modification successfully converts to a permanent one. Otherwise, the foreclosure process continues otherwise and the stay is lifted 28 days after the trial period ends to allow the homeowners the time to file an answer.

If the lender and homeowners reach any other agreement, the terms are written up and the case returns to court for dismissal. If no agreement is reached, the case returns to court and the stay on the foreclosure process is lifted 28 days later.

Judge and Program Administration Perspectives

The Chief Judge²³ and the program coordinator were each interviewed by the evaluator to obtain their perspectives on the program.

WHAT IS WORKING WELL?

The Chief Judge noted that the interactions and relationships between the program and its stakeholders, including the lenders' attorneys, were very positive. Further, the program has a solid relationship with housing counseling agencies and legal assistance. The program coordinator also mentioned the cooperation of lenders' attorneys with the program, saying that they have been open to the program and that except for initial problems caused by issues with communication between them and the program, there have been few issues with non-compliance. He noted as well that the housing counselors were doing a good job of helping homeowners complete and submit their packets.

Both the Chief Judge and the program coordinator said that the mediators were improving as they gained experience. Initially, some almost always wanted a second mediation session, even if resolution was not feasible. For example, if the parties were pursuing a [short sale](#), the agreement to do so would not resolve the case because there was no way to know whether the house would sell and if so, when and for how much. Scheduling another mediation session would not answer those questions.

²³ The foreclosure judge had retired before interviews were conducted. Therefore, no sitting foreclosure judge was interviewed. The Chief Judge once sat on the foreclosure call and, therefore, had significant experience in the area.

The Chief Judge also mentioned the quality of the administrative staff. She was very impressed with the level of outreach the program coordinator was conducting and said having a bilingual paralegal available to talk with Spanish-speaking homeowners was very important.

CHALLENGES

According to the program coordinator and the Chief Judge, the biggest challenge has been to increase the number of homeowners who participate in the program. Once the homeowners have contacted the program coordinator as the first step in participating in the program, they then have to file a court appearance and pay a filing fee. This second step to enter the program was found to be too complex and costly for some homeowners to complete. Eleven percent of those who contacted the program coordinator never filed an appearance, and thus, never participated.

There were three stumbling blocks to filing an appearance: first, homeowners would forget or would think that contacting the program fulfilled the obligation; second, the form was hard for unrepresented homeowners to understand; and third, the \$167 appearance fee was an obstacle for homeowners who were already in financial straits. The first issue was addressed by improving the information that accompanied the summons. This included working with Northwestern University Law School students to create a video that clearly walks through the process of complying with the program. This is now emailed to all program participants. The second was fixed when the Illinois Supreme Court approved a uniform appearance form that is much easier to complete. The appearance fee issue was addressed in two ways. The Chief Judge asked the foreclosure judges to take into consideration the homeowners' participation in mediation when deciding whether to delay or waive the appearance fee, and the staff paralegal now goes to the hearing with the homeowners to help them file the request to waive the fee.

Another challenge program staff identified early on was the difficulty the housing counselors were having with packet submissions. Initially, packets were submitted to the lender via Hope LoanPort, an online service created to simplify housing counselor submissions of their clients' loan modification packets to their lenders. The lenders' attorneys reported that the lender did not let them know that they had received the packet. Further, according to the program coordinator, and confirmed by mediator reports, the lenders often lost the packets and the homeowners had to resubmit it. This lengthened the lender review stage by a week to two weeks, according to the program coordinator. To fix this, the program changed the submission process. Housing counselors now submit the packets to both the lenders and the lenders' attorneys. The attorneys then send the packets directly to the appropriate people at the lenders and, therefore, are better able to track the status of the packets. The program also changed the Plaintiff's Checklist and Questionnaire to ask the lenders' attorneys more direct questions about the status of the packet: Have you received a packet? Where did it come from? Is it complete? Since making the changes, the program coordinator says he is seeing greater success in getting confirmation from the lenders attorneys that they have received the packet, and they are responding more quickly to say that they are ready to start mediation.

The program coordinator also spoke of the confusion homeowners have about his role. In this model, the homeowners first call him and, when he refers them to housing counseling, they call the agency to make an appointment. Some homeowners do not understand that housing counseling is a different service from what the program coordinator does. This can delay their getting services, making it difficult for them to abide by the program's deadline for packet submissions. He is still working on a solution to this issue.

Program Characteristics

The 16th Circuit program had 366 participating homeowners in 2014, making it 84% larger than any other Attorney General-funded program. Its impact is higher, with 416 homeowners being helped in some way.²⁴ These 416 represent 29% of homeowners facing foreclosure in Kane County. More than 90% of homeowners who contact the program do so in response to the notification of the mediation program that accompanies their notice of summons. Few participating homeowners were referred to the program by a judge. All cases were filed after the program launch date. Fewer than 50% of participating homeowners obtained housing counseling services.

SIZE OF PROGRAM

The program serves 84% more homeowners than the next highest program

The program helped 416 homeowners in 2014. It has the second highest number of foreclosure filings.

Annual Numbers	
Foreclosures Filed	1,598
Contacted/Referred	416
Entered Program	366

CASE CHARACTERISTICS

Referral Sources

Few cases that contact the program are referred by the judges

Most homeowners contact the program in response to the mediation notification they receive with their notice of summons.

²⁴ Those who contacted the program coordinator, but did not enter the program, were given information about their options for their home and the services available to them outside of the program.

	Referral Source		
	#	% of Referrals	% of Foreclosures
Notice of Summons	374	90.3%	23.4%
Postcard Sent by Program	31	7.4%	1.9%
Judge	5	1.2%	0.03%
Help Desk	2	0.4%	0.01%
Social Services Agency	2	0.4%	0.01%

WHAT DOES THIS MEAN?

Despite the rule allowing judges to refer cases, they only referred five cases. This means that fewer homeowners are being helped than can potentially benefit from the program.

⇒ **Recommendation:** Judges should refer appropriate cases to the program. The high participation rate and resulting high [retention](#) rate in the 21st Circuit program indicate that homeowners who could potentially benefit from the 16th Circuit's program are not responding to the notification of the program that accompanies their summons. Further, data from the 20th Circuit demonstrate that homeowners referred by judges are likely to save their homes.

When Cases Were Filed

All cases were filed after the program start date. This indicates that the five judge-referred cases were giving the homeowners a second opportunity to participate in the program rather than expanding the program to homeowners not automatically eligible under the court rule.

⇒ **Recommendation:** Judges should refer appropriate cases that were filed before the start date of the program. In the 20th Circuit program, cases filed as many as seven years before entering the program ended with an agreement allowing the homeowners to keep their homes.

Services Provided

The homeowners are not required to receive housing counseling or legal services assistance in this program. Once the lender reviews the loan modification packet, a mediator facilitates negotiations, which may include document exchange during the first session before moving to negotiation.

Housing Counseling

Housing counseling is voluntary in this program. Fewer than half the homeowners receive assistance from housing counselors, although slightly more than 50% are assigned to a housing counseling agency. The difference is caused by homeowners not following up with housing counseling or not appearing for their session. Homeowners who have already submitted a packet to their lenders prior to receiving their foreclosure summons or have an attorney tend to decide not to work with a housing counselor.

Housing Counseling Attendance		
	#	%
Yes	147	47.7%
No	161	52.3%

Legal Representation

Homeowners were represented by private counsel in 64 cases (16%). Seven received free legal services: four were represented by Northern Illinois University Law Clinic students, while Prairie State Legal Services assisted three homeowners.

Program Performance

A foreclosure mediation program's performance is based on a number of factors:

- What proportion of homeowners participates
- How many of those homeowners complete the program by having their packets reviewed and negotiating with their lenders
- How many of those outcomes are positive – either retentions or [relinquishments](#), with an emphasis on homes retained
- How well homeowners are served in other ways, including increasing their understanding of their situations and ensuring they are treated well

PERFORMANCE SNAPSHOT	
Participation	366 homeowners entered the program in 2014
Impact	The program benefits 29% of all homeowners facing foreclosure
Outcomes	28% of participating homeowners avoided foreclosure 65% who completed the program avoided foreclosure Of those who avoided foreclosure, 77% retained their homes
Agreement Rate	Mediation resulted in agreement in 53% of cases
Participant Experience	Homeowners felt respected and treated fairly; the vast majority were satisfied with their experience and the outcome
Time in Program	Cases averaged 101 days to complete mediation

PROGRAM ACTIVITY

Status of Cases

The program helped more homeowners and saved more homes than any other program

The program helped 416 homeowners. Of the 260 whose cases were closed in 2014, 71 avoided foreclosure, with 55 reaching agreement with their lender to keep their home.

Status of Cases Through Dec. 31, 2014	
Foreclosures Filed	1,598
Initial Conference	416
Entered Program	366
Closed	260
Retention	55
Voluntary Relinquishment	16
No Agreement	39
Program Not Completed	146
Pending	106

Sessions Held

Initial Conference

The program coordinator or the program paralegal conducted an individual initial conference for all homeowners who contacted the program. That means that **416 initial conferences were held** in the program's first year. The program coordinator reports that they each take about 30 minutes.

Pre-Mediation

There is no exact information on the number or duration of housing counseling sessions. However, it is known that at least one session was held in each of 147 cases.

Mediation

During the evaluation period, **mediators held 112 mediation sessions for 91 cases**. The mediators spent on average 1.11 hours in each session and spent an average of 0.23 hours preparing for each session.

PROGRAM IMPACT

Program impact is defined for this evaluation as the percentage of eligible homeowners who have been assisted in some way by the program. This includes providing information to homeowners about the foreclosure process and possible options for their home, helping them to submit their loan modification packets, and facilitating negotiations with their lenders.

This is not a straightforward calculation. First, the number of foreclosures includes some in which the homeowners may not be eligible to participate in the program. Therefore, the calculated percentages may be slightly lower than they really are. Second, a number of cases that were filed during the evaluation period are still open and, therefore, do not have an outcome. To deal with this second factor, the percentage of homes retained and voluntarily relinquished is projected based on the percentage of closed cases that ended with a retention or relinquishment.

The 16th Circuit program has benefitted almost one in three homeowners facing foreclosure

The program helped 29% of homeowners facing foreclosure. A projected 7% avoid foreclosure, with 5% keeping their home. These numbers put the program solidly in the middle of all the Attorney General-funded programs. However, hidden in these numbers is the fact that the 16th Circuit program helps 8% more eligible homeowners than the multi-step program with the highest impact.

Impact – All Eligible Foreclosures		
	16 th Circuit	Comparison
Homeowners Helped	28.5%	10.2% - 67.6%
Foreclosure Avoidance*	6.9%	2.5% - 26.5%
Retention*	5.4%	2.1% - 14.2%
Voluntary Relinquishment*	1.6%	0% - 12.3%

*These are projected based on outcomes of cases already closed.

The full 29% of homeowners were given assistance during the initial conference with the program coordinator. At this conference, the program coordinator informs them of resources available to them, talks to them about their options for their homes and explains the foreclosure mediation program. Thus, 29% of homeowners received information that helped them navigate the foreclosure process, whether or not they participated in the program. The program then assisted the homeowners who continued in the process to try to avoid foreclosure by helping them submit their loan modification packets to their lenders and then, by helping them to negotiate with their lender.

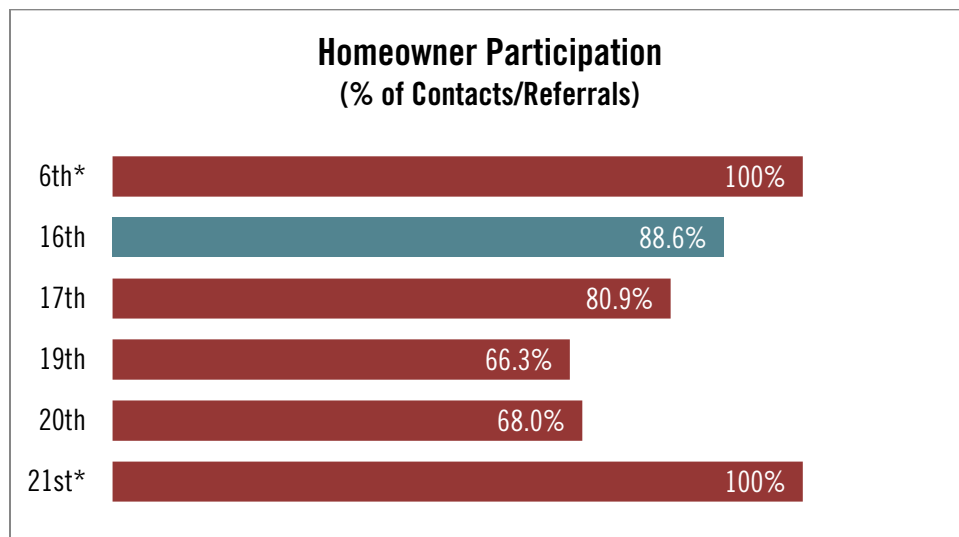
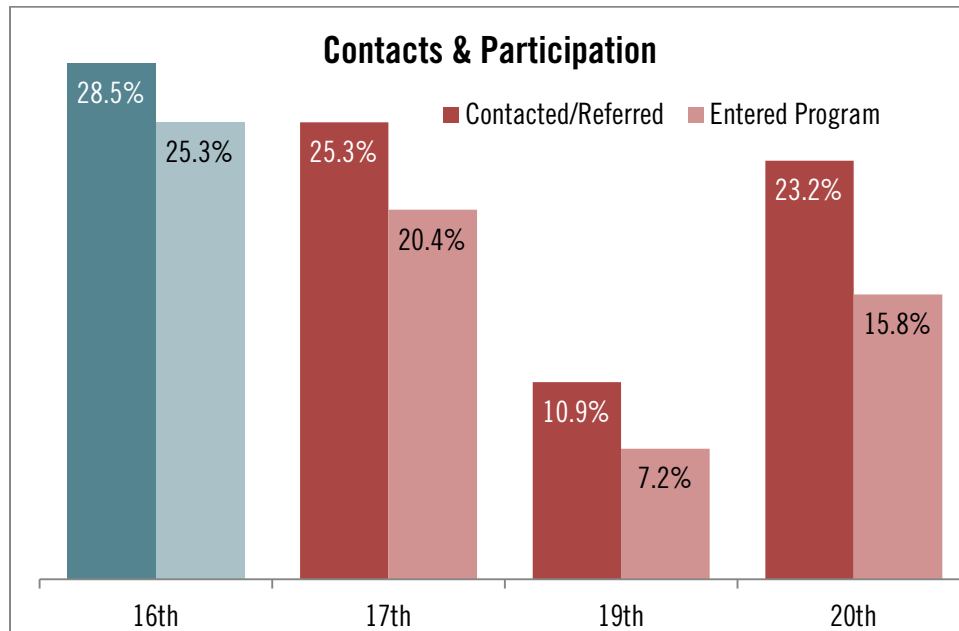
PARTICIPATION

The 16th Circuit program has a higher participation rate than the next highest multi-step entry program

Program participation is one of the most important performance indicators for a foreclosure mediation program. If homeowners are to be helped by the program, they first need to participate in it. Program participation is one of the most important performance indicators for a foreclosure mediation program. If homeowners are to be helped by the program, they first need to participate in it. Note, however, that when considering a program's overall effectiveness in bringing homeowners into the program, it should be acknowledged that a 100% participation rate is neither possible nor desirable. Many homeowners are not interested in or capable of avoiding foreclosure. Those homeowners are better served by the court process.

In the 16th Circuit program, homeowners are considered to participate if they contact the program coordinator and file a court appearance. Thus, homeowners can start the process to enter the program, but not complete it. This means that the program has two tasks in bringing homeowners into the program. The first is encouraging the homeowners to make first contact with the program. The second is getting homeowners to participate once they have contacted the program.

The 16th Circuit program is doing well in both regards, when compared to the multi-step entry programs. At 29%, the percentage of homeowners who contact the program is 3.2% higher than the highest multi-step program. The homeowners who contact the program then complete the steps to enter the program almost 90% of the time. This not only gives it the highest rate of getting homeowners who contact the program to participate, but also led to a 25% participation rate which is 4.9% higher than the program with the next highest rate.



*Contact and entry happen at the same time in the 6th and 21st Circuit programs.

WHAT DOES THIS MEAN?

The court designed the program to maximize participation by telling homeowners in their notification of mediation that they *must* call the program coordinator and by orienting the

homeowners to the program prior to entering it. This helps them make the decision about whether to enter the program and understand what they need to do to participate.

This process appears to be making a difference in two ways – first, by getting more homeowners to contact the program in the first place, and second, by having more homeowners enter the program after contacting it. The first is due in large part to telling homeowners they are required to contact the program coordinator. The second is likely due, in part, to the relatively low barriers to entry, as well as the homeowners being given a one-on-one orientation to the program before they enter. This develops a relationship between the program and the homeowners, and also gives them more information that allows them to make a more informed decision about whether the program could be helpful to them. However, a number of other variables can also affect participation rates, including outreach efforts, the distance homeowners need to travel to obtain services and possibly the economic outlook in the county. Therefore, the model's effect on participation cannot be quantified in this evaluation.

OUTCOMES

What happens when homeowners enter the program?

The homeowners who enter the program will end with one of four outcomes:

- Leave the program before completing negotiations with their lender
- Reach an agreement to retain their home
- Reach an agreement to relinquish their home without a foreclosure judgment
- End negotiations without an agreement

As with participation, the program cannot, and should not, expect 100% of homeowners entering the program to complete it with an agreement to avoid foreclosure. Some homeowners will not qualify for any available option, some may find that they cannot afford options that are offered, and some may decide their best option is to leave the program and go through the foreclosure process. So, the effectiveness of the program at producing desirable outcomes is determined more by how it measures against other programs than against a particular ideal percentage.

In the 16th Circuit program, more than half of the homeowners left the program early, either by voluntarily withdrawing or not completing a step in the program process. When homeowners completed the program, 50% kept their homes, and another 15% reached agreement to voluntarily relinquish them. While most of these outcomes came during mediation, about 35% of homeowners who reached agreement with their lenders were able to do so during the pre-mediation phase.

Closed Cases

More than a quarter of homeowners who entered the program were able to avoid foreclosure

Of the 260 cases that closed, 71 avoided foreclosure. Of those, 55, or 21%, reached agreement to keep their homes. However, more than half left the program without completing it.

Outcomes of Closed Cases (n=260)*		
	#	% of Closed Cases
Agreement: Retention/TPP	55	21.2%
Agreement: Relinquishment	16	6.2%
No Agreement	39	15.2%
Closed: Program Not Completed	146	56.8%

*The outcomes for four cases were marked "other."

WHAT DOES THIS MEAN?

The percentage of homeowners who did not complete the program is higher than any other program, other than the 17th Circuit program. This has led the program to have the lowest percentage of foreclosure avoidance for participating homeowners.

Completed Cases

Almost 2/3 of homeowners who completed the program avoided foreclosure

Half of the homeowners who did complete the program were able to keep their homes. Another 15% were able to gracefully exit their home.

Completed Cases	
	% of Completed Cases
Agreement: Retention/TPP	50%
Agreement: Relinquishment	14.5%
No Agreement	35.5%

WHAT DOES THIS MEAN?

Homeowners who did complete the program had both a good chance of avoiding foreclosure and of keeping their home. The percentage of homeowners who avoided foreclosure during the program's first year is third highest among the Attorney General-funded programs.

Types of Retentions

Most homeowners who keep their home receive a temporary loan modification. Of the 55 retentions, 50 are loan modifications, most of which start as temporary loan modifications. The temporary loan modifications later usually turn into permanent modifications.

Retention Outcomes (n=55)		
	#	% of Retentions
Temporary Loan Modification*	22	49.2%
Permanent Loan Modification	28	42.6%
Reinstatement	4	6.6%
Forbearance	1	1.6%

*These are modifications that have not completed their trial period or for which the program does not have information on whether they converted to permanent modifications.

Almost all temporary loan modifications are converted to permanent ones

The program has information on 31 loan modifications. Of those, 28, or 90.3%, were converted to permanent modification. The status of conversion is unknown for another three cases.

The high rate of loan modification conversions means that the terms agreed to were effective in that the homeowners could feasibly comply with them. The conversion rate also gives a more accurate picture of the number of homes saved, because, if the temporary modifications are not made permanent, the foreclosure process continues.

Types of Voluntary Relinquishments

About 30% of homeowners wanting to leave their homes were able to exit gracefully

Of the 34 homeowners who entered the program with the goal of relinquishing their home and whose cases were closed, ten reached an agreement to relinquish their home with either a [short sale](#) or a [deed in lieu](#) of foreclosure. Four did not reach an agreement, and 14 voluntarily withdrew. Four others did not complete the program for unknown reasons. In all, ten of the 16 homeowners who reached agreement to gracefully exit entered the program with that goal.

Outcomes for homeowners wanting to exit gracefully (n= 34)	
Short Sale	8
Deed in Lieu	2
No Agreement	4
Voluntary Withdrawal	14
Program Not Completed: Reason Unknown	4

WHAT DOES THIS MEAN?

The 16th Circuit program is the only program with a large number of homeowners who are known to have entered the program with the goal of exiting their home gracefully. The outcomes of these cases show that foreclosure mediation can help these homeowners.

Program Completion

The homeowners complete the program if they have submitted a loan modification packet, the lender has reviewed the packet and the homeowner has an opportunity to weigh the options based on the

lender's decision about what to offer the homeowners. The homeowners not completing their documentation is the reason for the vast majority of cases that exit the program early.

4 in 10 homeowners did not complete their packets within the required timeframe

Of the homeowners whose cases closed, 41.1% did not complete their packet and were returned to court. This represents almost three-quarters of all homeowners who leave the program early. This is a higher rate than any other program for which data are available.

Reasons Homeowners Leave Program (n = 146)*		
	#	% of Non-Completes
Did Not Complete Documentation	107	73.2%
Withdrew	28	19.2%
Did Not Appear for Session	10	6.8%
Unknown	14	9.5%

*The categories do not add up to 100% because there can be more than one reason per case.

WHAT DOES THIS MEAN?

The reason for the high rate of document non-completion is unclear. At some point, the homeowners may have decided to let the foreclosure process go forward, but they did not communicate that decision to the program. The relatively easy entry process may mean that more less-motivated homeowners started the process than in other programs. In essence, the more easily homeowners enter, the more apt they are to leave the program without completing it.

Alternatively, they could have had difficulty putting the documents together or could have just given up. In this program, those homeowners who do not participate in housing counseling do not get help completing their packet or working through the document exchange process. While many homeowners who do not receive housing counseling have legal representation or have already submitted their packet, it is possible that some require more assistance.

A third possibility is that the role of housing counseling agencies in this program is not as clear as it is in others. The agencies are not fully integrated into the program, which could affect communication between program staff and the agencies, leading to less effective service. It also affects how homeowners understand what they need to do to proceed through the program. In other programs, the first point of contact is a housing counselor. In this program, it is the program coordinator. This means that some of the homeowners do not understand that they need to contact the housing counseling agency in order to get help with completing their packet.

⇒ **Recommendation:** The program should examine the reason so many homeowners do not complete their documentation in the required timeframe.

Outcomes by Program Phase

More than 1/3 of homeowners who were able to avoid foreclosure did so in the pre-mediation phase. The other 2/3 reached agreement to avoid foreclosure in mediation. Nevertheless, the most likely outcome in pre-mediation was for the homeowners to exit the program without completing it. Once they reached mediation, homeowners almost always completed the process.

Homeowners were most likely to exit the program before being referred to mediation

Slightly more than half of homeowners who entered pre-mediation did not complete this phase. Another 39% were referred to mediation. Almost 10% of homeowners reached agreement with their lenders during the pre-mediation phase.

Pre-Mediation Outcomes (n = 267)		
Referred to Mediation	105	39.3%
Referred to Legal Services – Left Program	1	0.4%
In Trial Period Plan	14	5.2%
Agreement: Retention	7	2.6%
Agreement: Relinquishment	4	1.5%
No Agreement	1	0.4%
Closed: Program Not Completed	135	50.6%

WHAT DOES THIS MEAN?

Some homeowners are able to avoid foreclosure even before going to mediation, but most need mediation to do so. As with all programs, most homeowners who drop out of the program do so during the pre-mediation phase.

53% of mediations ended with an agreement

Of those who completed mediation, 53% reached an agreement to avoid foreclosure. In 32% of completed mediations, the homeowners reached an agreement with their lender that allowed them to keep their home. However, because some homeowners did not appear for their mediation session, or otherwise did not comply with program requirements, fewer than half of homeowners who were referred to mediation avoided foreclosure.

Mediation Outcomes (n = 93)*		
In Trial Period Plan	27	29.7%
Agreement: Retention	3	3.3%
Agreement: Relinquishment	12	13.2%
No Agreement	38	41.8%
Closed: Program Not Completed	11	12.1%

*Two outcomes were marked “other.”

WHAT DOES THIS MEAN?

The program has a lower agreement rate than the 17th and 19th Circuit programs, the two other programs that have held a significant number of formal mediations. However, the agreement rate is in the mid-range for programs nationally, where agreement rates range from 21% to 82%.²⁵

Effect of attending housing counseling on outcomes**Receiving housing counseling assistance did not have a statically significant effect on outcomes**

Homeowners who received housing counseling assistance were no more or less likely to complete the program or avoid foreclosure. Additionally, results from the two housing counseling agencies that provided service to homeowners participating in the program were similar to one another.

Program Completion Rate: Housing Counseling v None						
	Total Closed		Completed		Not Completed	
	#	%	#	%	#	%
Attended Housing Counseling	88*		39	44.3%	46	52.2%
Did Not Attend	112**		60	53.6%	50	44.6%

*Three were marked "other," and it is unclear whether the program was completed or not.

**Two were marked "other," and it is unclear whether the program was completed or not.

Outcomes of Completed Cases: Housing Counseling v None			
	Agreement: Retention/TTP	Agreement: Relinquishment	No Agreement
Attended Housing Counseling	51.3%	10.3%	38.5%
Did not Attend	46.7%	16.7%	36.7%

WHAT DOES THIS MEAN?

Unlike in the 20th Circuit program, the data show no clear difference between the outcomes of those who went to housing counseling and those who did not. This could be due to the two groups in the 16th Circuit not being random; their makeup is very different from one another. For example, about 30% of homeowners who did not receive housing counseling were represented by private attorneys, while homeowners receiving housing counseling were unrepresented. Further, few homeowners who were looking to relinquish their homes sought housing counseling. In addition, those who received housing counseling may have been held to a higher standard of documentation when completing their packets, which would have made it harder for homeowners to comply with program deadlines. This could have led to a lower completion rate for that group.

²⁵ For national statistics, see: Jennifer Shack and Heather Scheiwe Kulp. [FORECLOSURE MEDIATION BY THE NUMBERS](#). Resolution Systems Institute (September 2012).

Outcomes by Housing Counseling Agency

During the evaluation period, two housing counseling agencies provided service to homeowners participating in the program. Their outcomes are statistically the same.

Outcomes of Case by Housing Counseling Agency				
	Retention	Relinquishment	No Agreement	Did Not Complete
Joseph Corp	9	4	9	20
Neighborhood Housing Service	8	0	7	23

Time in Program

There are no delays in the foreclosure mediation process

Those homeowners who completed negotiations with the lenders did so on average in 3 ½ months. If they left before completing negotiations, they left the program on average at about two months.

Average days...		How calculated...
From filing to close	117	From filing to program exit
From program entry to program exit	91	From date homeowners contact program coordinator for initial conference to program exit
From program entry to program exit – completed	102	From date homeowners contact program coordinator to program exit – cases that ended with an agreement or no agreement
From program entry to program exit – not completed	64	From date homeowners contact program coordinator to program exit – cases in which the homeowners withdrew or did not comply with program requirements
In pre-mediation phase	65	From date homeowners contact program coordinator to date scheduled for mediation or program exit
In mediation phase	45	From date scheduled for mediation to program exit

WHAT DOES THIS MEAN?

The court and some stakeholders were concerned that the program would delay the foreclosure proceedings unnecessarily. The data show that those cases that completed the program did so in about 3.4 months. Those that returned to court without completing the program took on average two months to do so. The average for all cases is 91 days. This is similar to other programs in this study, but much shorter than some programs outside of Illinois.²⁶ The data

²⁶ For example, in Connecticut, the average time in program is 484 days. See, Gloria Jean Gong and Carl Brinton, [CONNECTICUT JUDICIAL BRANCH FORECLOSURE MEDIATION PROGRAM](#) (October 2014). In Maine, the time in program averaged between 131 and 173 days. See, Laura S. Pearlman, [FORECLOSURE DIVERSION PROGRAM: REPORT TO THE JOINT STANDING COMMITTEE ON INSURANCE AND FINANCIAL AFFAIRS AND THE JOINT STANDING COMMITTEE ON JUDICIARY](#), Maine Administrative Office of the Courts (February 13, 2014).

also show that the cases were moving through the system within the timeframes envisioned by the court.

Participant Experience

Pre-Mediation Session Questionnaires

The housing counselors did not distribute post-session questionnaires to the homeowners, so there is no information on their experience with housing counseling.

Mediation Session Questionnaires²⁷

Most participants had a positive experience with mediation. Most felt they could talk about their issues and concerns, all felt the mediator understood what was important to them, and most were satisfied with their experience and felt they were treated fairly and with respect. However, lenders and lender attorneys were slightly more likely to feel that they were able to talk about what was important to them, to be satisfied with their experience and the outcome of their mediation, and to believe the mediation process was very fair.

Procedural Justice

The court wanted homeowners, in particular, to have a positive experience in the program. That is, it wanted a process in which homeowners felt they were treated with dignity and that they had some control over what was happening to them.

For this evaluation, this was measured by whether the homeowners experienced procedural justice. Procedural justice is considered to be one of the most important aspects of a party's experience with the justice system.²⁸ Its presence or lack thereof has a significant impact on parties' satisfaction with the justice system and their perception of its fairness. Research has found that the most important characteristics of procedural justice are voice (the sense that one's voice has been heard in the process) and respect (the sense that one's feelings, ideas, and positions have been treated with respect in the process).²⁹

²⁷ Survey Method & Response Rate:

The mediators handed the questionnaires to participants at the end of each mediation session and then left the room while the participants completed them. Since lender representatives were on the phone, lender attorneys asked them the questions and completed the questionnaires for them. When participants responded more than once because they attended more than one session, the earlier responses were removed in order to reduce bias.

In all, 74 homeowners in 50 cases completed the questionnaires. This means that homeowners responded in 61% of the 82 mediated cases. Lender representatives responded in 40 cases, which is a 49% response rate. Lender attorneys responded in 50 cases, matching the homeowners' 61% response rate. Twenty-three homeowner attorneys responded.

²⁸ Alan E. Lind, "In the Eye of the Beholder: Tort Litigants' Evaluations of their Experiences in the Civil Justice System," *LAW & SOCIETY REVIEW*, 24: 953-996 (1990).

²⁹ *Id.*

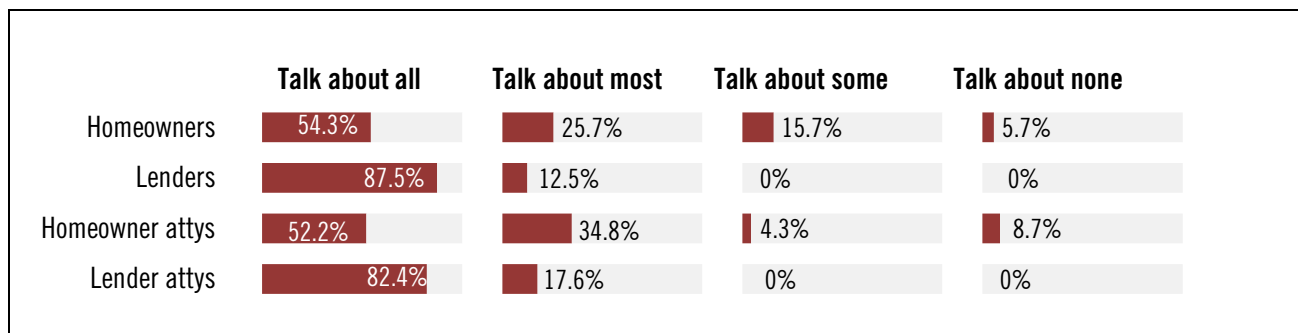
In the questionnaires, voice was measured as the homeowners’ feeling that they were able to talk about what was most important to them and how much they felt the mediator understood what was important to them. The questionnaires also asked whether the homeowners felt they were treated with respect by the mediator. As another measure of whether they felt they experienced procedural justice, the questionnaires asked fairness questions.

Homeowners felt they had an experience of procedural justice

Most homeowners felt they had voice in that they were able to talk about their issues and concerns, and that they felt the mediator understood what was important to them. All but one felt respected and all but two felt they were treated fairly. Most felt they were treated with very much respect and very fairly.

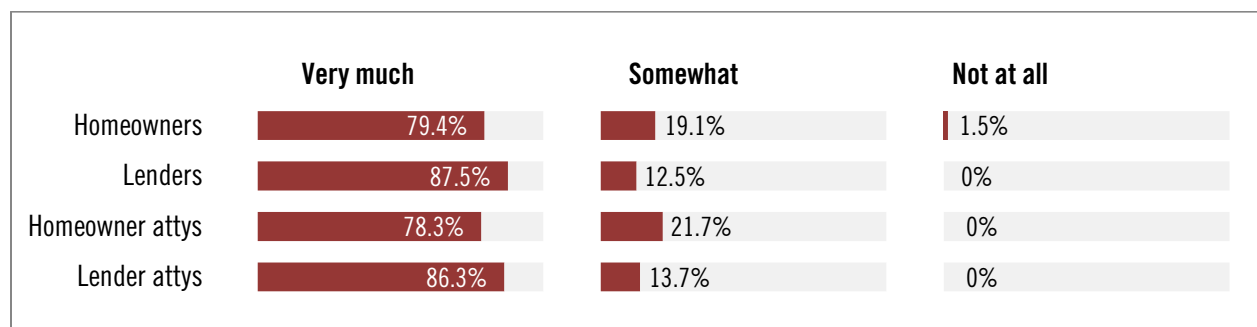
Were you able to talk about the issues and concerns that were most important to you/your side?

Slightly more than half of the homeowners and homeowner attorneys felt they were able to talk about everything that was most important to them. Another 26% of homeowners felt they were able to talk about almost everything that was important to them.



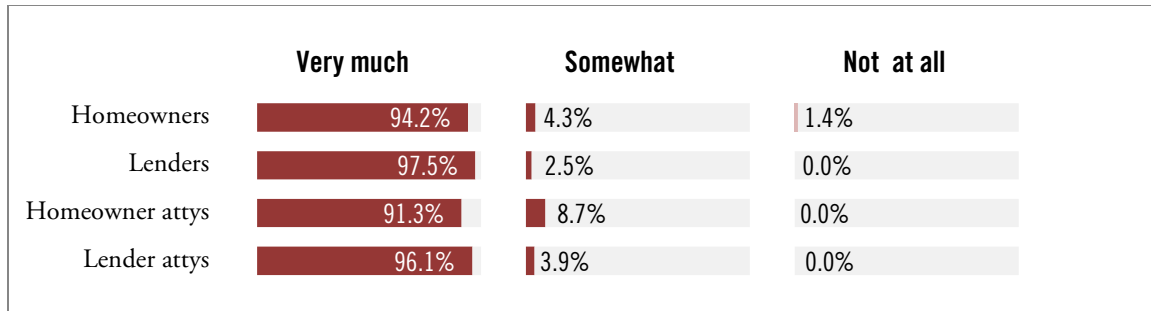
How much did the mediator understand what was important to you/your side?

All but one person said the mediator at least somewhat understood their side.



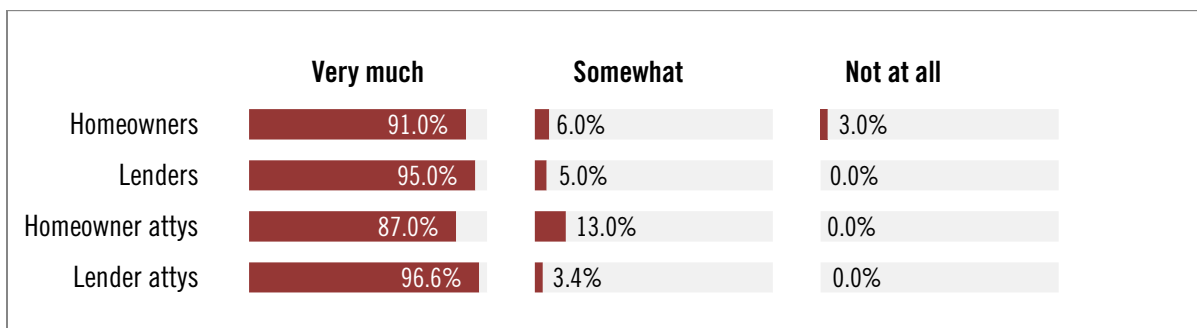
Did the mediator treat you with respect?

All but one participant felt they were treated with respect. Almost all felt they were “very much” treated with respect.



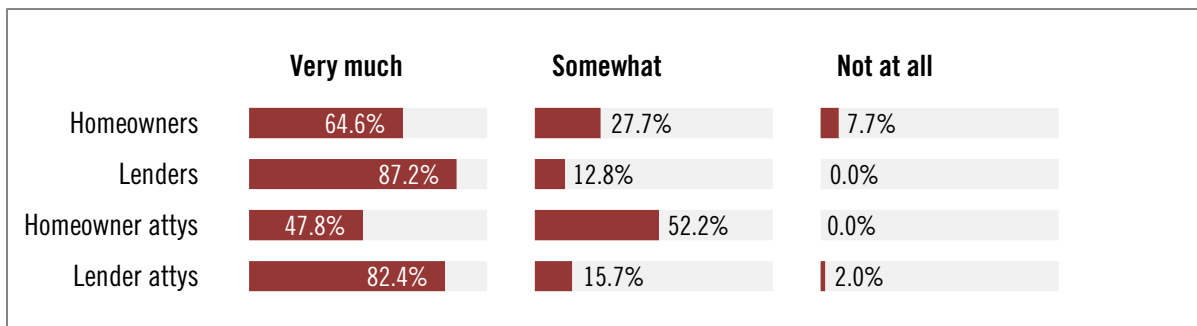
Did the mediator treat you/your side fairly?

All but two participants felt they were treated fairly. Most felt they were treated very fairly.



Was the mediation process fair?

Homeowners were more likely to believe they were treated fairly than to believe the process was fair. Nonetheless, almost all believed the process was at least somewhat fair.



The homeowners’ comments indicate that their sense of procedural fairness often was colored by the actions of the lender. Almost all who commented negatively about their lender selected “somewhat” or “not at all” for their response to whether the process was fair. Comments included:

- “There was not a mediation. [Lender] had decided options for us before we arrived.”
- “Dictatorship – no mediation took place – complete inflexibility on the part of [Lender]”.

- “No habo un dialogo solo el banco dio sus opciones y sus reglas.” [There was no dialogue – the lender only gave its options and its rules.]
- “Lender came unable to make changes to offer. All or nothing kind of options only. I would have appreciated some movement possible to resolve things here and now instead of lengthy appeal process without verified guarantees.”
- “It was not a mediation and was falsely marketed. It was a one way take it or leave it meeting.”

WHAT DOES THIS MEAN?

The mediators are providing a procedurally just process to all parties. Importantly, they are providing a voice to homeowners and treating them with respect, which the judges said was missing with the homeowners’ interactions with their lenders. Nonetheless, some homeowners have left the mediation feeling they were not treated fairly by their lender. They appeared to have had expectations of being able to negotiate more freely than might have been possible given the lenders’ constraints.

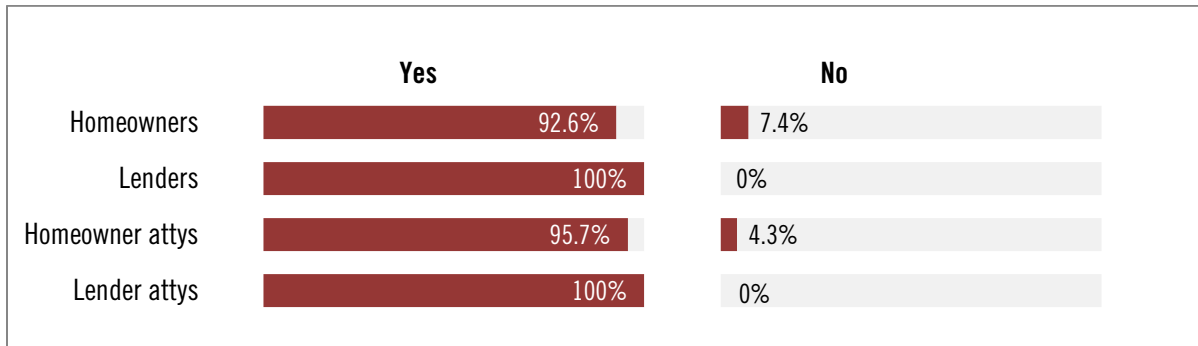
⇒ **Recommendation:** The homeowners’ comments indicate there may be a need to manage homeowner expectations. In foreclosure mediation, the lenders are often constrained in their negotiations by investor regulations and the homeowner’s financial situation. If homeowners are entering the mediation believing they will be negotiating more than is possible, they will be disappointed with their experience. Generally, the housing counselor or the homeowner attorney performs this function. Since a significant number of homeowners in this program do not meet with housing counselors, the program should figure out how those homeowners can best learn about what to expect in mediation. The program should also ensure that program partners are setting those expectations correctly.

Mediator Skills

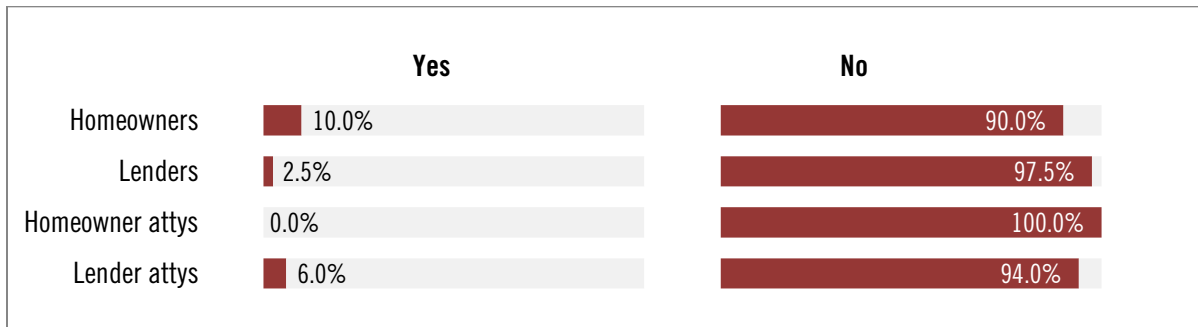
The mediators are seen as helpful and not coercive

Effective mediation requires a mediator who walks a fine line between being actively involved in assisting the parties without pushing them into a result they do not want. The results show that the parties felt these mediators walked that line.

Was the mediator active enough in helping you to work out the issues in the dispute?



Did the mediator push you too hard to get you to settle?



Would you use this mediator again?

This question is asked as another measure of the mediator’s ability. Since homeowners do not have the experience necessary to answer this question knowledgeably, only the attorneys were asked this question. The majority of attorneys said would definitely use their mediator again; however, a significant number had reservations about doing so.

	Use Mediator Again					
	Yes		Possibly		No	
	#	%	#	%	#	%
Homeowner Attys	21	91.3%	2	8.7%	0	0%
Lender Attys	40	78.4%	9	17.7%	2	3.9%

In response to why they would use the mediator again, the attorneys recognized a mediator’s skill and neutrality:

- “She listened to both sides without picking sides or playing favorites.”
- “Laid out problem/issue and was neutral”
- “She was very good at identifying issues and keeping the conversation on point.”
- “He was very nice and fair to both parties. He helped organize the mediation.”

The two lender attorneys who indicated they definitely would not use the mediator for their case again said:

- “Pushed hard on issues that were not relevant to discussion, asked questions that were not relevant, and asked numerous times for explanation on something that was legal advice when I explained I couldn't give legal advice, he said it wasn't.”
- “I thought he was insensitive as to the personal problems of the defendant (other side). He offered inappropriate legal advice.”

WHAT DOES THIS MEAN?

The participants felt, in most cases, that the mediator was actively helpful in resolving the dispute while not pushing too hard to get them to settle (a sign that they are violating self-determination, one of the main principles of mediation). In most cases, the attorneys would use the mediator again, although lender attorneys were not as positive in their assessment of the mediators.

⇒ **Recommendation:** The attorneys, and in particular the lender attorneys, have significant experience with mediators, which makes them reliable judges of a mediator's skill.³⁰ That the lender attorneys had reservations about the mediator in 11 of 51 cases merits examination. Further, the uneven skill of the mediators in the 16th Circuit was brought up individually by the program coordinator, the Chief Judge and the lender attorneys who were interviewed about their experience with all the programs.

The program has taken steps to address this issue. These steps include the program coordinator debriefing the mediators after each session, the program providing a supplemental skills training to the mediators and the court and program developing procedures for mediator improvement and dismissal. The program should continue to monitor and address any issues with the mediators.

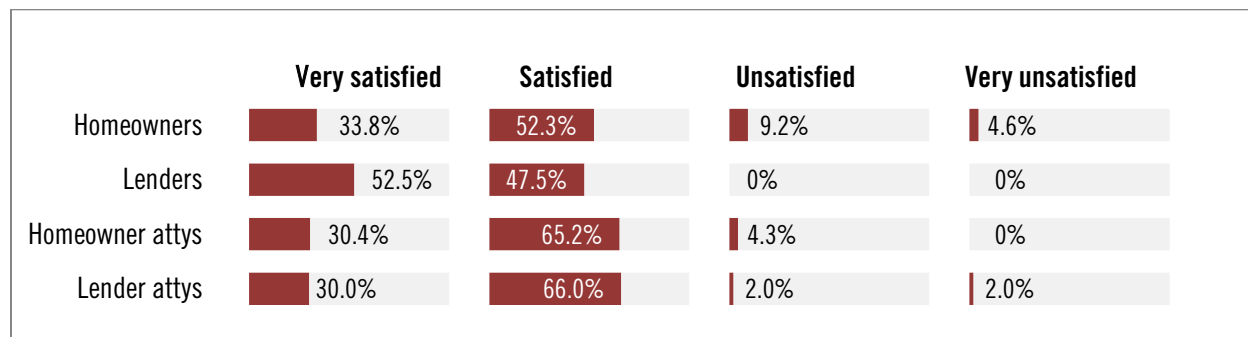
Satisfaction

Almost all participants were satisfied with their experience in mediation

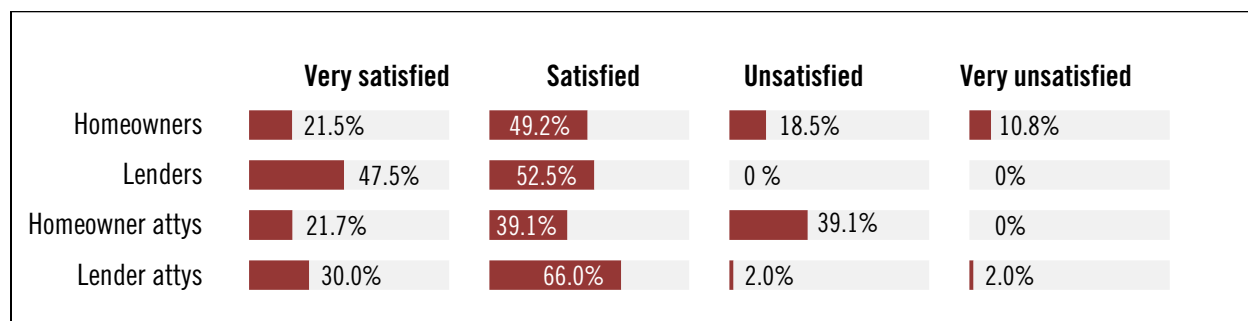
The majority (55%) were “satisfied” with their experience, while 35% were “very satisfied.” Fewer were satisfied with the outcome of mediation. Lenders had the highest level of satisfaction.

³⁰ Research has demonstrated this is the case. See Roselle Wissler and Robert W. Rack, “[Assessing Mediator Performance: The Usefulness of Participant Questionnaires](#)” JOURNAL OF DISPUTE RESOLUTION, p. 229 (2004).

How satisfied are you with your overall experience in the mediation session?



How satisfied are you with the outcome of the mediation?



WHAT DOES THIS MEAN?

Overall, the homeowners were satisfied with their experience. As expected, they were less satisfied with the outcome. Satisfaction with the outcome in mediation is often tied to whether the parties come to agreement. Given the 53% agreement rate in mediation, the fact that 70% of homeowners were satisfied with the outcome indicates that some homeowners saw value in the process beyond keeping their home or obtaining an agreement.

Participant Comments

Participants, in general, praised the forum and the mediators, and complained about the other side when writing comments.

Homeowners

Only a few homeowners commented about their experience. Those who did mention what they liked about it said the following:

- “Complete understanding and fairness.”
- “Opportunity to talk.”
- “Gave us clear understanding of options.”
- “A lot better forum to discuss options back and forth.”

- “Very friendly, helpful, and focused.”
- “I liked the mediator’s involvement.”
- “Very informal setting – not so scary.”
- “Exchange of information.”

Homeowners who mentioned what they did not like most often mentioned the lack of compromise, as noted above. The others were focused on the behavior of the lender or lender attorney.

- “[Lender] attorney was a bit rude (in my opinion) to our attorney.”
- “Hostility from [lender attorney] for attending the final mediation. As the homeowners, we followed through with the entire mediation. Should not be treated with hostility for asking for opposing party to follow through. It is her job.”
- “Uninformed, unprepared plaintiff – for the second time.”
- “The fact that [lender] was emailing our attorney to get info and the email kept coming back – could they not pick up a phone to verify the email? Anything I didn’t like was all on [lender] – not the mediation.”
- “[Lender] was unprepared.”

Lenders

Very few lenders commented on their experience. One appreciated the mediator’s impartiality. For the three who commented on what they did not like, it was the length of the process that bothered them. One did not like how long it took to get through pre-mediation. Another complained about not receiving the homeowner’s loan modification packet through Hope LoanPort. The third did not like having to return for a third session to wrap everything up because the homeowner did not cancel it.

Homeowner Attorneys

Most homeowner attorneys who commented on what made the mediation effective focused on the ability to communicate:

- One said it was “respectful.”
- “It was helpful to have a representative from all parties and a common goal.”
- “Parties with authority participating in mediation process.”
- “Organization, opportunity to discuss issues.”
- “Concise breakdown of issues.”
- “The bank came to the table with a loan modification offer.”

In response to the question about what could be improved, three homeowner attorneys wanted the lenders to be more flexible:

- “If the banks representative had more power, more knowledge, and access to more information.”

- “The bank being more willing to negotiate on terms of a modification.”
- “Need individuals from lender who seriously are looking to mediate their issues, interest of lender policies.”

Two wanted information to be available sooner:

- “All information already submitted and potential resolution within horizon.”
- “Prior knowledge of the specific issues.”

Lender Attorneys

Lender attorneys pointed to the mediators and the quality of the discussion as what made the mediation effective:

- “Enough time to discuss all the issues.”
- “Both parties were able to express their concerns and what the options were.”
- “The mediator kept the parties on track.”
- “The mediators were very neutral and listened to both sides.”
- “Everyone was professional.”

When talking about what could be improved, the lender attorneys focused on issues with the opposing party:

- “Better pre-screening, the borrower didn’t understand a lot of the terms/options available. If he had met with a housing counselor beforehand it probably would have saved a lot of time and better prepared him to make a decision.”
- “Had the borrower submitted the documents needed, the bank could have, perhaps, offered DIL [“Deed in lieu”] or Short Sale Options.”
- “Opposing counsel was angry, but the mediation itself was fine.”

Participant Characteristics

Given that the foreclosure crisis has hit Black/African-Americans and Latinos particularly hard,³¹ it is a concern that the racial and ethnic makeup of those who participate in and complete the programs be similar to the racial and ethnic makeup of the county they serve.³² Further, there is a general interest in knowing whom the programs are serving.

³¹ Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, [FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS](#). Center for Responsible Lending (June 18, 2010).

Hall, Matthew, Kyle Crowder, Amy Springer. “Neighborhood Foreclosures, Racial/Ethnic Transitions, and Residential Divisions,” *AMERICAN SOCIOLOGICAL REVIEW* (April 2015).

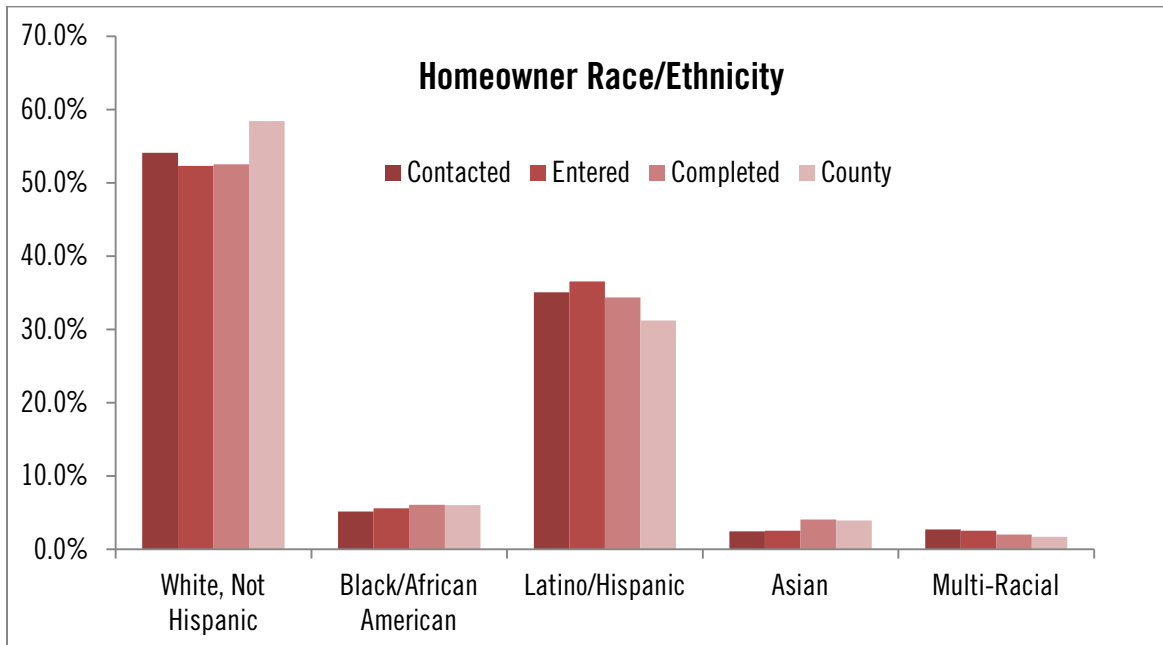
³² Because there is no accurate data on individual homeowners facing foreclosure in Kane County, the racial and ethnic makeup of the county is used instead of the racial and ethnic makeup of those facing foreclosure.

RACIAL/ETHNIC MAKEUP OF PARTICIPANTS³³

The program is serving all races and ethnicities equally

Latinos participated at a slightly higher rate than are represented in the county, and Non-Hispanic Whites participated at a lower rate. Neither difference is significant. Of greater importance to the running of the program, there was no significant decline in minority participation as the homeowners progressed.

Homeowner Race/Ethnicity				
	Contacted	Entered	Completed	County
White, Not Hispanic	54.1%	52.3%	52.5%	58.4%
Black/African	5.1%	5.6%	6.1%	6.0%
American Latino/ Hispanic	35.0%	36.5%	34.3%	31.2%
Hispanic Asian	2.4%	2.5%	4.0%	3.9%
Multi-Racial	2.7%	2.5%	2.0%	1.7%



WHAT DOES THIS MEAN?

The program is doing a good job of bringing homeowners of all races and ethnicities into the program and then serving them equally once they enter.

³³ The race or ethnicity is for the primary homeowner. Only two cases included homeowners of different races or ethnicities.

INCOME LEVEL OF PARTICIPANTS

Most participants had a household income below the median for Kane County (\$53,000). Not surprisingly, those with an income less than \$20,000 were less likely to complete the program than those with a higher income.

Homeowner Household Income			
	Contacted	Entered	Completed
<\$20,000	18.2%	16.8%	11.6%
\$20,000 - \$34,999	27.2%	24.7%	23.2%
\$35,000 - \$49,999	20.1%	20.0%	22.1%
\$50,000 - \$74,999	18.5%	21.1%	24.2%
\$75,000 - \$99,999	8.0%	8.9%	10.5%
\$100,000-\$149,999	4.9%	4.2%	5.3%
\$150,000+	3.1%	4.2%	3.2%

WHAT DOES THIS MEAN?

Homeowners with an income less than \$20,000 would be the least likely to qualify for a loan modification, and, therefore, would more likely stop participating in the program prior to completion.

AGE RANGE

Most participating primary homeowners³⁴ were in their 40s and 50s. There is a clear drop off in homeowners who contacted the program versus those that completed the program for homeowners in their 50s, with only 20 of 132 entering and then completing the program. This is not a pattern seen in other programs.

Homeowner Age Range			
	Contacted	Entered	Completed
<30 years	2.4%	2.6%	3.1%
30-39	18.0%	18.4%	22.7%
40-49	30.3%	31.1%	29.9%
50-59	31.8%	27.0%	20.6%
60-69	13.8%	17.9%	21.6%
70-79	2.7%	2.0%	1.0%
80+	0.6%	1.0%	1.0%

³⁴ Primary homeowners are the homeowners who are designated as the first homeowner by the program.

Discussion and Recommendations

The 16th Circuit program is doing well at moving homeowners into the program. This is done through a hybrid model that tells the homeowners they must call the program coordinator by a particular date, gives the homeowners a one-on-one orientation to the program and what it can offer them for their particular situation, and keeps barriers to participation relatively low. Once homeowners enter the program, they are less likely than other programs to complete their documentation by the required deadline. Those who did complete the program were likely to avoid foreclosure, particularly because the program benefitted a large number of homeowners who did not want to keep their homes. Participants also had a positive experience in the program, and indicated that they were treated fairly and with respect.

BENEFIT OF HYBRID MODEL

The 16th Circuit decided on a program model that encourages participation by all homeowners by calling the program “mandatory” and instructing the homeowners to call the program coordinator for an initial conference. The initial conference allows the program coordinator to discuss the benefits of participating in the program and to build rapport with the homeowners. This has had the effect of bringing more homeowners into the program than the multi-step entry programs. This is particularly true with homeowners who did not want to keep their home. More homeowners who had the goal of exiting their home participated in the 16th Circuit program than any other Attorney General-funded program. Mediation benefitted those homeowners who completed the program, with 10 of 14 reaching agreement for an option that avoided foreclosure.

RECOMMENDATION: Continue the hybrid model. Continue instructing homeowners that they must contact the program coordinator. Continue the initial conferences. Continue to encourage homeowners who do not want to keep their homes but want a graceful exit to participate in mediation.

BENEFIT OF LOW BARRIERS TO ENTRY

The program also has low barriers to entry, which further encourages participation. The only hurdle to entry is to file a court appearance. While this has been a barrier that more than 40 homeowners did not overcome, the program enjoys a low drop off between contacting the program coordinator and entering the program when compared to other programs. Further, the court and program have worked to lower this barrier by facilitating the filing of the court appearance. This model for encouraging participation has worked well – the 16th Circuit has a 5% higher participation rate than the highest multi-step entry program.

RECOMMENDATION: Continue to facilitate homeowner filing of the court appearance.

NEED FOR SECOND OPPORTUNITY TO PARTICIPATE

While the program has been more successful at encouraging participation than the multi-step entry programs, it still has room for improvement. In the 16th Circuit, only five cases were referred by judges during the first year. Thus, despite having a rule that allows judges to refer cases, the judges are not doing so. There are benefits to offering the homeowners a second opportunity to enter the program. As a judge for another program said, homeowners often do not respond to their situation until they receive notice of default judgment. The 20th Circuit, in which more than half of homeowners were referred into the program by the judge, has had significant success with these second opportunities.

RECOMMENDATION: Offer more homeowners a second opportunity to participate by referring those who missed the initial deadline into the program. Referrals should be made for those homeowners who have shown they have tried to work with their lender in the past.

ISSUE OF NOT COMPLETING PACKET

Once homeowners entered the program, only 44% completed the program. Most who did not complete the program – 73% – did not complete their packets within the required timeframe, despite the program coordinator often extending the deadline by 30 days. This is a higher percentage than for other programs.

It is unclear why this is the case. It could be an artifact of the ease of entry: because it is easy to enter the program, unmotivated homeowners might be more apt to enter and then leave without completing it, whereas the higher barriers to participation in other programs may weed out unmotivated homeowners before they enter the program. Nonetheless, it seems odd that unmotivated homeowners would file a court appearance, with the \$167 filing fee, and then not complete their packet. This may point to homeowners exiting the program without completing it for another reason.

One possibility is that homeowners stop participating once they find out that they most likely will not qualify for a loan modification. Since more homeowners enter the program, it is probable that more of them do not have the requisite income for a loan modification than in the multi-step entry programs.

Another possibility is the process for obtaining housing counseling: This is the only program in which housing counselors are not involved at the initial step for entering the program. The program coordinator has noted that this creates confusion, with homeowners not really understanding that they need to contact the housing counseling agency, which may lead them to fall between the cracks.

A third possibility is that because housing counseling is voluntary, homeowners who elect not to avail themselves of this service find they are unable to complete their packet on their own. A common theme from interviews with program staff is that helping homeowners to complete their packets and then facilitating document exchange requires a lot of assistance to the homeowners. This is the only

program that does not provide that help to all homeowners. This is all conjecture, however, and should be examined more deeply.

RECOMMENDATION: The program may want to investigate why homeowners do not complete their packets on time and then address any issues that are discovered. This could include an examination of individual cases in which the homeowners left the program without completing it. The case records in the online case management system include extensive notes for many cases that might provide clarity.

RECOMMENDATION: The program should also consider a way to better connect homeowners with housing counseling services after they complete the initial conference with the program coordinator. One suggestion is to expand opportunities for homeowners to participate in pre-screening workshops, where they complete intakes, file the court appearances and get housing counseling in one meeting. These workshops are currently held once a month and attendance to each is limited to four homeowners. If resources allow, the frequency of these workshops should be increased.

It is also important to develop a closer and more collaborative relationship with housing counseling service providers, ensuring that counselors understand and can communicate with homeowners about the benefits and legal protections the mediation program can provide, beyond the normal modification and lender negotiation process offered in housing counseling.

PROGRAM COMPLETION LEADS TO FORECLOSURE AVOIDANCE

Almost two-thirds of homeowners who complete the program – who comply with all the program deadlines and appearances and are able to negotiate with their lenders – avoid foreclosure. Half keep their homes. This is a similar rate of foreclosure avoidance of the other Attorney General-funded programs, as well as other programs around the country.

PARTICIPANTS HAD A POSITIVE EXPERIENCE

As important as how many homeowners avoid foreclosure, if not more so, is whether homeowners have a positive experience in the program. Homeowners' responses show that they feel they are being treated with respect and that they are being treated fairly. A few remarked on the poor behavior of the lender representatives or attorneys, which may have led them to have a less positive experience; however, the majority who responded to the questionnaire appeared to be having the experience that the court wanted them to have when it created the program – a more humanized experience in which they were able to communicate with their lender.

EXPECTATIONS MAY NEED TO BE MANAGED

A minority of homeowners were upset about the lack of compromise in mediation. This may point to the need to manage their expectations prior to mediation. While foreclosure mediation is a good forum for exchanging information and discussing options, much of what a lender can offer is

constrained by investor regulations and the financial situation of the homeowner. If the homeowners have different expectations, they may be more disappointed with the mediation than if they understand the constraints beforehand.

RECOMMENDATION: Since managing expectations is a role often played by housing counseling, the program should try to increase the number of homeowners who receive counseling. This likely would require additional funding for the housing counseling agencies to support their role in the program.

MEDIATOR SKILLS

The participants in general gave high marks to the mediators. Participants said that mediators were helpful while not being coercive and they treated the parties fairly and with respect. Nonetheless, in 11 cases, the lender attorney did not say they would definitely use the mediator again.

RECOMMENDATION: Continue having the program coordinator debrief with the mediator after mediation sessions, reviewing the questionnaire feedback. For mediators against whom there are complaints or for when there are poor marks on questionnaires, discuss mediator performance with the Chief Judge to decide if the mediators should be required to conduct more co-mediations or should be dismissed from the program.

ALL PARTICIPANTS ARE BEING SERVED EQUALLY

The racial and ethnic makeup of the homeowners who enter the program is similar to that of the entire county. This points to homeowners of all races and ethnicities participating equally. When they enter, they have a statistically equal chance of completing the program, which demonstrates that they are being treated and served equally once they enter the program.

Conclusion

The 16th Judicial Circuit Mortgage Foreclosure Mediation Program is successfully serving more homeowners than any other program. Its model provides the benefits of relatively easy entry into the process, and the participants feel they are being treated fairly and with respect, although there are concerns about some mediators. This program loses participants at a proportionately higher rate than other programs, but there is no racial or ethnic bias in who completes the program or leaves before doing so. The most important change this program can make would be to determine why homeowners leave the program and institute changes to help a larger number of homeowners to complete the program.

APPENDICES

DEFINITIONS

Definitions Specific to this Evaluation

Circuit: In this evaluation, the term “Circuit” refers to one of the 24 Judicial Circuits in Illinois. Some of those circuits are made up of multiple counties and others are single-county circuits. For those circuits comprised of multiple counties, the evaluation refers to the Circuit number and then indicates which counties are served. In the 6th, 20th and 21st Circuits, only one county is served by each program, while in the 17th Circuit both counties are served by the program, but these are referred to as the 6th, 20th, 21st and 17th Circuit programs.

Foreclosure: This evaluation uses the term “foreclosure” as it is used in the vernacular, to refer to both the process of foreclosing on a home by a foreclosure action that is filed in court as well as the final act of a lender obtaining ownership of a home as the result of a court granting foreclosure.

Foreclosure avoidance: After a foreclosure lawsuit is initiated, the options are that the foreclosure process will continue, resulting in foreclosure judgement and sale, or the lender and homeowners may agree to some foreclosure alternative. Alternatives where the homeowners retain possession of their home are known as [retention](#) agreements. Alternatives where the homeowners vacate the property are known as [relinquishment](#) options.

Homeowners: The term “homeowners” is used in this evaluation – instead of other terms such for those who have borrowed via a mortgage, such as borrowers, debtors or mortgagors – because the programs studied specifically work with those who borrow money to purchase a home.

A further distinction is drawn between the use of the term “*the* homeowners” and “homeowners.” “*The* homeowners” refers to the person or people who have taken out a mortgage to own a single home. For example, “The homeowners decided to work through a foreclosure mediation program to try to keep their home.” Likewise, “homeowners” is used as the plural of “the homeowners.” For example, “Homeowners attend housing counseling sessions before meeting with lenders.” While this system may create moments of grammatical confusion, it is intended to differentiate between the owner(s) of a particular home who are defendants in a case concerning that home as compared to a group of people who all own homes. Thus, when discussing data, such as “homeowners entering the program,” the evaluation is not quantifying individual people who own homes, but rather, homes.

Lenders: The term “lenders” is used in this evaluation to refer to the various creditor entities that may be involved in foreclosure mediation, such as banks and servicers.

Foreclosure Terms

Document exchange: The term “document exchange” is used to describe the period between when the homeowners first submit a loan modification packet and the lender’s review of that packet. During that time, the lender may request additional documents from the homeowners in order to have the necessary information to review the packet. If this process does not move swiftly enough, the documents become “stale” and updated versions must be submitted.

Graceful Exit/Relinquishment: With a graceful exit or relinquishment option, homeowners avoid foreclosure, while transitioning out of the home. For example, through the federal government’s Home Affordable Foreclosure Alternatives (HAFA) Program, the homeowners may be able to receive assistance, such as with relocation, to help make it possible for them to transition to a new home after a short sale or deed in lieu of foreclosure.⁷⁷

Cash for Keys: With a cash for keys program, the lender offers the homeowners cash to vacate the property quickly, leaving it in good condition. This cash can assist the homeowners with expenses such as moving costs and security deposits in rented homes.

Consent Foreclosure: The lender and homeowners may agree to a consent foreclosure, where the homeowner will have no right of redemption and the lender agrees not to file for a deficiency judgment.

Deed in lieu: With a deed in lieu of foreclosure, the lender lets the homeowner give the title to the property back, transferring ownership back to the lender. A lender will not accept a deed in lieu of foreclosure if there are any other liens on the property. The lender may require that homeowners try to sell the property for 90 days first before approving a deed in lieu. One benefit of deed in lieu is that the lender may agree to waive the deficiency judgement, releasing homeowners of liability under the mortgage.

Short Sale: In a short sale, the lender agrees to let the homeowners sell the property to a new buyer for an amount less than what the homeowners currently owes the lender.⁷⁸

HAMP (Home Affordable Modification Program): A federal government program that helps homeowners obtain loan modifications from participating lenders. Most large lenders participate; a “HAMP review” is their first step in considering a loan modification.

Loan modification packet: In order to be considered for HAMP, homeowners must submit an “Initial Package” to their servicer.⁷⁹ The Initial Package includes a request for modification and

⁷⁷ “Home Affordable Foreclosure Alternatives (HAFA) Program,”

<http://www.makinghomeaffordable.gov/programs/exit-gracefully/Pages/hafa.aspx>

⁷⁸ Id.

← affidavit, tax forms, verification of income and a Dodd Frank certification form.⁸⁰ Lenders often ask that homeowners complete the lenders' specific Request for Mortgage Assistance (RMA) Application. The RMA Application will allow the lender to evaluate the homeowners for HAMP or other foreclosure prevention alternatives. The RMA Application requires detailed information, including borrower details, property details, income worksheets, a hardship affidavit and tax forms.

Retention: An alternative to foreclosure that allows the homeowners to retain possession of the home.

Forbearance: A forbearance reduces or suspends mortgage payments for a period of time. Therefore, a forbearance can be helpful to homeowners experiencing a temporary hardship. At the end of the forbearance period, the homeowner must bring the loan current.⁸¹

← Modification: Homeowners who wish to remain in their homes can ask to be evaluated for a loan modification. The lender will run a net present value test, which measures the benefit to the investor of a loan modification, part of which is the homeowners' ability to pay a new loan amount.⁸² A modification may be under [HAMP](#), but proprietary modifications may be available, as well. HAMP modifications are generally more favorable for homeowners and should be evaluated first.⁸³ Loans are modified based on a "waterfall analysis," meaning that the lender will evaluate a series of changes to the loan (capitalizing arrearages, reducing interest rate, extending amortization term, forbearing principal and/or reducing payment) to see if the homeowners' payment can be made affordable.⁸⁴

Redemption: Redemption is when the homeowner pays off the whole loan. In Illinois, the right to redeem, or to pay the balance of the mortgage and fees, expires seven months after service of summons or three months after judgment, whichever comes later.⁸⁵

Reinstatement: Reinstatement is when homeowners catch up on all missed payments and fees. Reinstatement ends the foreclosure suit so that the homeowner is up-to-date on the mortgage.⁸⁶ Homeowners can only reinstate once every five years.⁸⁷

⁷⁹ "Request a Home Affordable Modification," <http://www.makinghomeaffordable.gov/get-assistance/request-modification/Pages/default.aspx>

⁸⁰ Id.

⁸¹ NOLO, Legal Encyclopedia, <http://www.nolo.com/legal-encyclopedia/whats-the-difference-between-loan-modification-forbearance-agreement-repayment-plan.html>

⁸² National Consumer Law Center, training material slides on file with Resolution Systems Institute.

⁸³ Id.

← ⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Illinois Legal Aid Online, http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_Content&contentID=4650#q=6

⁸⁷ Id.

Temporary loan modification: Under HAMP, if homeowners are approved for a modification, they must first complete a three month trial period plan (TPP). It is not necessary for homeowners to sign the trial modification agreement; they just have to start making timely payments to accept it.⁸⁸ During the TPP, the amount the homeowners owe the lender continue to accrue. Payments are held in a suspense account until the amount of a full payment under the mortgage note is reached, which is when the payments are applied. After three payments, the TPP should be converted into a permanent modification. Conversion to permanent modification can sometimes be stalled, which homeowners should not be penalized for. After the permanent modification is in place, arrearages are capitalized and interest will start to accrue at the reduced rate.⁸⁹ In the case of a proprietary modification not under a government program, the lender may still require a trial period.

Foreclosure Program Types

Hybrid: This term is used to describe the 16th Circuit program. In this program, homeowners receive a notice of mediation that says they must contact the program coordinator in order to participate, but they also must file an appearance. Thus, it is a hybrid of the one-step entry and multi-step entry models.

Multi-step entry: The term “multi-step entry” is used in this study to describe a program in which the homeowners receive a notice of mediation with their summons that tells them they have the opportunity to participate in the mediation program. They then must complete two or more steps to participate. The 17th, 19th and 20th Circuit programs use this model.

One-step entry: The term “one-step entry” is used in this study to describe a program in which the homeowners receive a summons that includes the date and time that must appear for their first pre-mediation session. When the homeowners appear for the session, they are considered to have entered the program, thus only needing one step to enter. The 6th and 21st Circuit programs have this type of program.

General Court Terms

Complaint: “A written statement by the plaintiff that starts a lawsuit. It says what the plaintiff thinks the defendant did and asks the court for help.”⁹⁰ In the foreclosure context in Illinois, the complaint

⁸⁸ National Consumer Law Center

⁸⁹ National Consumer Law Center

⁹⁰ Illinois Legal Aid Online,

http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_Content&contentID=4650#q=6

← form must comply with 735 ILCS 5/15-1504.⁹¹ The mortgage and current copy of the note should be attached. The plaintiff should identify the “capacity” in which it brings the suit, such as owner or agent.⁹² The complaint should also specify the current unpaid balance and per diem interest. Under 12 C.F.R. § 1024.41, the foreclosure complaint cannot be filed until the borrower is 120 days late.⁹³

Default: Default is defined by mortgage documents, but usually means a missed mortgage payment. Default could also result from a lack of insurance, sale of property, failure to make required repairs, etc.⁹⁴

Filing an Answer: An answer is the defendant’s response to the foreclosure complaint. The homeowners/defendant has 30 days from service to file the appearance and answer.⁹⁵ Under 735 ILCS 5/15-15-4(h), homeowners can answer or file a counterclaim.⁹⁶ If the defendant does not file an answer, the court will proceed with the foreclosure.

Filing an Appearance: By filing an appearance, a homeowner acknowledges the lawsuit, but makes no claim that he or she agrees with the lender’s suit. Having an appearance on file means the homeowner will be notified of all future court dates. There is a fee to file an appearance, but fee waivers may be available.⁹⁷

← Service of Process: Service is the delivery of “legal papers to the opposing party in a case.”⁹⁸ Service gives the defendant notice of the legal action and is carried out by the sheriff or process server. If personal service is not possible, a notice will be put in the local newspaper and the homeowner will be considered served by publication. Most program deadlines start from when service is made upon the homeowner.

Summons: “A notice to a defendant that a lawsuit against him or her was filed in a court and that the defendant has to appear in court.”⁹⁹ In the foreclosure context, the summons must include a Homeowner Notice (735 Illinois Compiled Statutes 5/15-1504.5). This notice explains the homeowners’ rights in terms of possession, ownership, [redemption](#) and surplus, among other things. For jurisdictions with foreclosure mediation, a notice of foreclosure mediation is attached to the summons and complaint.

⁹¹ Id.

⁹² Id.

⁹³ Id.

⁹⁴ National Consumer Law Center

← ⁹⁵ Illinois Legal Aid Online

⁹⁶ National Consumer Law Center

⁹⁷ Illinois Legal Aid Online

⁹⁸ Id.

⁹⁹ Id.

EVALUATION METHODOLOGY

This evaluation is the first of two that were funded by the Office of the Illinois Attorney General. It is formative, meaning that the goal is to provide guidance to the courts and the programs about what is working well and how they can improve. It is not meant to determine if one particular model is better than any other or to determine whether the homeowners who participated in the programs were better served than those who did not. The evaluation examines program processes, participation, outcomes and the time spent in the programs. It also examines participant experience, with a focus on whether homeowners were treated fairly and with respect, and whether they gained an understanding about their situation.

Evaluation Period

The evaluation period for this study begins with the launch of each program and ends with cases that were filed by December 31, 2014. This means that there was a year or more of data for the 16th, 19th, 20th and 21st Circuit programs, but only seven months for the 17th Circuit program and three months for the 6th Circuit program. Additionally, in the 6th Circuit program, only two pre-mediation session calls had been held prior to the end of the evaluation period.

Data Collection Tools

ONLINE CASE MANAGEMENT AND MONITORING SYSTEM

One key to this evaluation was the creation and use of uniform data fields across six different program models. The evaluator worked with program coordinators, court personnel and housing counselors to customize a commercially-available online case management system to fit the foreclosure mediation programs' case management and data collection needs. The system was designed so that almost all data were collected automatically and did not require program staff to spend time entering data needed for the evaluation. For example, participant questionnaires were all scannable.

This system was used by five of the six programs in the study. In the 21st Circuit program, the mediation provider, Foreclosure Mediation Specialists, wanted to keep its data collection uniform with the other programs it was administering and declined to use the online system. The program administrator did, however, provide data the evaluator could adapt to work with the information the other programs were collecting.

Before each program launched, as well as during the evaluation period, the evaluator continued to work with each program to further customize fields to fit both their case management needs and the evaluator's need for a uniform set of definitions for each data collection field. The customized online

system enabled the five participating programs to collect the same data so that they could be assessed on the same criteria, allowing an apples-to-apples comparison.

The data collected from the online system included homeowner demographics, dates between each milestone to determine how long it was taking for cases to get through each phase of the process, the point at which each homeowner left the program, and case outcomes, including whether temporary loan modifications were converted to permanent modifications.

POST-SESSION REPORTS

The online system included online reports to be completed by the person charged with conducting the sessions. The reports collected data on whether or not the session was held, the reason it was not held and what the result of the session was if it was held. If it was the concluding session, the final outcome was recorded, as well. Finally, it included the amount of time spent in the session and whether the parties complied with the court rules.

These reports were completed after each session. In the 17th and 19th Circuit programs, the pre-mediation session report was completed by the housing counselor. In the 20th and 6th Circuit programs, the outcomes were entered by the program coordinator. The reports were not completed in the 16th or 21st Circuit programs. The mediation session reports were completed by the mediators in the 16th, 17th and 19th Circuit programs.

POST-SESSION QUESTIONNAIRES

Participant questionnaires in a paper-and-pencil format were created for pre-mediation and mediation sessions. In the 19th Circuit program, a questionnaire was created for its group informational session as well. The questionnaires were designed as optical mark recognition forms that allowed them to be scanned into software that automatically read the participants' responses into the database.

Informational Session Questionnaires

Questionnaires for the group informational session in the 19th Circuit program examined whether the goals of the session were met and provided an opportunity for homeowners to rate the presenter. They also collected the same demographic data as is collected in the online system. The questionnaires were passed out to homeowners at the end of the sessions. They were available in English and Spanish.

Pre-Mediation Session Questionnaires

The questionnaire completed after pre-mediation sessions in all programs asked homeowners about how much they learned about their options and how to work with their lender, how they were treated, and their overall satisfaction. The questionnaire was available in English and Spanish.

Programs had different practices for distributing the questionnaires:

- In the 17th and 19th Circuit programs, the housing counselor handed the homeowners the questionnaire after their last session. Homeowners completed the questionnaire after housing counselors stepped away.
- In the 6th and 21st Circuit programs, the program coordinator asked homeowners to complete the questionnaire after their first pre-mediation sessions. The homeowners had already left their session and were therefore no longer in the same room as the person with whom they met for their session.
- In the 20th Circuit program, the program coordinator asked homeowners to complete the questionnaire after the final pre-mediation sessions. This meant that they completed it after they completed the program and had negotiated with their lenders, in most cases. The program coordinator stepped away while the homeowners completed the questionnaire.

Mediation Session Questionnaires

Parties and attorneys completed separate mediation session questionnaires. The questionnaires were adapted from the model forms developed by a joint project of Resolution Systems Institute and the American Bar Association Section of Dispute Resolution. These forms were the product of a national committee of researchers and program administrators and had been tested in two mediation programs prior to their use for the Illinois foreclosure mediation programs.

The questionnaires examined procedural justice factors, mediator coercion and helpfulness, fairness and satisfaction. The questionnaire for attorneys also asked whether they would use their mediators again. The party questionnaire was available in English and Spanish.

The participants were asked to complete the post-session questionnaire at the end of each session.¹⁰⁰ The mediator asked the participants to complete the form, and then left the room. Because the representatives for the lender participated by phone, the lender attorneys read them the questions and filled out the questionnaire for them. For the evaluation, only the last questionnaire completed by each participant was used to calculate aggregate responses.

INTERVIEWS

The evaluator interviewed all program coordinators, as well as a judge in each of the programs, except the 6th and 21st Circuit programs. She also interviewed others involved in the programs if they were extensively involved in its administration. This included the housing counselor in the 17th Circuit program and a mediator who managed the cases and conducted half of the sessions in the 21st Circuit program. Two lender attorneys were also interviewed. All interviews were semi-

¹⁰⁰ The questionnaires were not used in the 21st Circuit program because formal mediation was rare. No mediations had occurred in the 6th Circuit program; therefore the questionnaire had not yet been used there.

structured and conducted over the phone. For all but the program coordinators, the interviews lasted 20 to 30 minutes. The program coordinator interviews took about two hours each.

Limitations of the Study

In setting up the online system for data collection purposes, the evaluator aimed to have uniform data and uniform definitions of what each field represented. However, the programs, at times, developed their own uses for some of those fields and definitions that did not coincide exactly with the other programs. In order to make the data more uniform, the evaluator redefined the fields when analyzing the data; however, there may be some skewing of the data because of the differences in how the data were collected.

The evaluation was conducted by an employee of Resolution Systems Institute. Her status as an employee of RSI may have led to an unconscious bias when evaluating the programs administered by RSI, although she guarded against it.

**ILLINOIS FORECLOSURE MEDIATION PROGRAM
Information Session Homeowner Survey**

To help us to best provide information to homeowners like you, please answer the questions below. Your responses will be kept confidential and will be used to evaluate our services.

Answer Selection: Correct = ● Incorrect = ☒ ☑ ⊖

Date of Class:

Presenter:

	Excellent	Good	Poor	Very Poor
1. How would you rate the class overall?	☐	☐	☐	☐

Please let us know how well you understand the following topics from the presentation:

	Very well	Somewhat	Not at all
2. The options available to you to save your home	☐	☐	☐
3. How the foreclosure mediation program works	☐	☐	☐
4. How to contact AHC	☐	☐	☐

Please rate the presenter on the following:

	Excellent	Good	Poor	Very poor
5. Presentation of the material	☐	☐	☐	☐
6. Knowledge of the material	☐	☐	☐	☐
7. Organization of the material	☐	☐	☐	☐

8. Are you eligible to participate in the foreclosure mediation program? This is the program where you can sit down with the bank to mediate the foreclosure.

- ☐ Yes
☐ No

9. What did you like most about the class?


10. What did you like the least about the class?

PLEASE TURN OVER ⇒

FORECLOSURE MEDIATION

Pre-Mediation Session Report

Please fill out this form after your pre-mediation session.

Final Report	<input type="checkbox"/> Yes <input type="checkbox"/> No
Type of Service	<input type="checkbox"/> Facilitated Bi-Lateral Session <input type="checkbox"/> Housing Counseling Session <input type="checkbox"/> Pre-Mediation Session <input type="checkbox"/> Legal Services (Required)
Was the session held?	<input type="checkbox"/> Yes, Service Completed (R) <input type="checkbox"/> Yes, Service Continued <input type="checkbox"/> No, Return to Court <input type="checkbox"/> No, Session Rescheduled
Session Date	<input style="width: 50px;" type="text"/> mm/dd/yy 
Time Spent in Session (hours; can be in portions: 1.25 etc)	<input style="width: 50px;" type="text"/>
Final Session Result	<input type="checkbox"/> Referred to mediation <input type="checkbox"/> Referred to other service <input type="checkbox"/> Accepted homeowner as client (legal services only) <input type="checkbox"/> Return to court <input type="checkbox"/> Temporary Loan Modification <input type="checkbox"/> Agreement <input type="checkbox"/> Other (indicate below)
Reason returned to court (check all that apply)	<input type="checkbox"/> Homeowner did not appear <input type="checkbox"/> Servicer did not appear/did not have authority <input type="checkbox"/> Servicer attorney did not appear <input type="checkbox"/> Homeowner did not provide complete documentation in required timeframe <input type="checkbox"/> Homeowner withdrew <input type="checkbox"/> Other (indicate below)
If other reason returned to court, describe	<input style="width: 250px; height: 20px;" type="text"/>

FORECLOSURE MEDIATION

Pre-Mediation Session Report

Reason case rescheduled or continued (check all that apply)	<input type="checkbox"/> Servicer required new packet <input type="checkbox"/> Servicer didn't have requisite documents prepared <input type="checkbox"/> Servicer didn't review homeowner documents <input type="checkbox"/> Homeowner did not provide sufficient documents <input type="checkbox"/> Homeowner's change in circumstances <input type="checkbox"/> Rescheduled at request of homeowner <input type="checkbox"/> Rescheduled at request of servicer <input type="checkbox"/> Servicer did not appear/did not have authority <input type="checkbox"/> Servicer attorney did not appear <input type="checkbox"/> More time needed to negotiate <input type="checkbox"/> Other (indicate below)
If "other" above, reason rescheduled/continued	<input style="width: 100%;" type="text"/>
Which service was homeowner referred to?	<input type="checkbox"/> Land of Lincoln Legal Services <input type="checkbox"/> Prairie State Legal Services <input type="checkbox"/> Bankruptcy attorney <input type="checkbox"/> Credit/debt management agency <input type="checkbox"/> Social services agency (select below) <input type="checkbox"/> Other (indicate below)
If "particular agency" above, which one?	
If "other" above, which other service was the homeowner referred to?	<input style="width: 100%;" type="text"/>
Final Case Outcome	<input type="checkbox"/> Program Not Completed - Return to Court <input type="checkbox"/> Temporary Loan Modification <input type="checkbox"/> Agreement: Retention <input type="checkbox"/> Agreement: Relinquishment <input type="checkbox"/> No Agreement <input type="checkbox"/> Other (indicate below)
If other case outcome, please describe	<input style="width: 100%;" type="text"/>

FORECLOSURE MEDIATION

Pre-Mediation Session Report

If home retained, what was agreed to?	<input type="checkbox"/> Permanent loan modification <input type="checkbox"/> Reinstatement <input type="checkbox"/> Forbearance <input type="checkbox"/> Short payoff <input type="checkbox"/> Refinance <input type="checkbox"/> Other (indicate below)
If other retention option, please describe	<input style="width: 100%; height: 20px;" type="text"/>
If home relinquished, what was agreed to?	<input type="checkbox"/> Short sale <input type="checkbox"/> Deed in Lieu <input type="checkbox"/> Relocation assistance (cash for keys) <input type="checkbox"/> Consent judgment <input type="checkbox"/> Other (indicate below)
If other relinquishment option, please describe	<input style="width: 100%; height: 20px;" type="text"/>
Did both parties comply with program requirements?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, who didn't comply? (check all that apply)	<input type="checkbox"/> Lender <input type="checkbox"/> Homeowner

**Illinois Foreclosure Mediation Program
HOUSING COUNSELING SESSION SURVEY**

To help us to maintain the quality of the housing counseling program, please answer all of the questions below. Your responses will be kept confidential and will be used to improve our services. No identifying information about you will be released.

Case Number:


Date:

The following questions ask about your experience with the pre-mediation counseling session. Please fill in one circle for each question.

Answer Selection: Correct = ● Incorrect = ☒ ☑ ⊖

	Not at all	Somewhat	Very much
1. Did the counselor treat you with respect?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Did the counselor treat you fairly?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Do you understand how to work with your lender better than you did before the session?			
<input type="radio"/> No, I still don't understand.			
<input type="radio"/> No, because I understood before the session.			
<input type="radio"/> Yes, somewhat better.			
<input type="radio"/> Yes, very much better.			
4. Do you <u>understand the options</u> you have regarding your home better than you did before the session?			
<input type="radio"/> No, I still don't understand my options.			
<input type="radio"/> No, because I understood my options before the session.			
<input type="radio"/> Yes, somewhat better.			
<input type="radio"/> Yes, very much better.			
4. How satisfied are you with your <u>overall experience</u> with the counseling session(s)?			
<input type="radio"/> Very unsatisfied			
<input type="radio"/> Unsatisfied			
<input type="radio"/> Satisfied			
<input type="radio"/> Very satisfied			
5. Please let us know what you <u>liked</u> about the session(s):			
6. Please let us know what you <u>didn't like</u> about the session(s):			

FORECLOSURE MEDIATION PROGRAM**Mediator Report**

Final Report?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Was mediation held?	<input type="checkbox"/> Yes, Mediation Completed <input type="checkbox"/> Yes, Mediation Continued <input type="checkbox"/> No, Return to Court <input type="checkbox"/> No, Mediation Rescheduled
If not held, reason returned to court (check all that apply)	<input type="checkbox"/> Homeowner did not appear <input type="checkbox"/> Homeowner did not provide complete documentation in required timeframe <input type="checkbox"/> Homeowner withdrew <input type="checkbox"/> Servicer did not appear/did not have authority <input type="checkbox"/> Servicer attorney did not appear <input type="checkbox"/> Other (indicate below)
If other reason returned to court, describe	<input type="text"/>
Reason mediation rescheduled or continued (check all that apply)	<input type="checkbox"/> Servicer required new packet <input type="checkbox"/> Servicer didn't have requisite documents prepared <input type="checkbox"/> Servicer didn't review homeowner documents <input type="checkbox"/> Homeowner didn't provide sufficient documentation <input type="checkbox"/> Homeowner's change in circumstances <input type="checkbox"/> Rescheduled at request of homeowner <input type="checkbox"/> Rescheduled at request of servicer <input type="checkbox"/> Servicer did not appear/did not have authority <input type="checkbox"/> Servicer attorney did not appear <input type="checkbox"/> More time needed to negotiate <input type="checkbox"/> Other (indicate below)
If other reason rescheduled or continued, describe	<input type="text"/>
Date of mediation session	<input type="text"/> mm/dd/yy 
Time spent in mediation session (in fractions of hours - e.g., 1.25)	<input type="text"/>
Time spent on case outside of mediation session	<input type="text"/>

FORECLOSURE MEDIATION PROGRAM

Mediator Report

Final Case Outcome	<input type="checkbox"/> Program Not Completed - Return to Court <input type="checkbox"/> Temporary Loan Modification <input type="checkbox"/> Agreement: Retention <input type="checkbox"/> Agreement: Relinquishment <input type="checkbox"/> No Agreement <input type="checkbox"/> Other (indicate below)
If other case outcome, please describe	<input type="text"/>
If home retained, what was agreed to?	<input type="checkbox"/> Permanent loan modification <input type="checkbox"/> Reinstatement <input type="checkbox"/> Forbearance <input type="checkbox"/> Short payoff <input type="checkbox"/> Refinance <input type="checkbox"/> Other (indicate below)
If other retention option, please describe	<input type="text"/>
If home relinquished, what was agreed to?	<input type="checkbox"/> Short Sale <input type="checkbox"/> Deed in lieu <input type="checkbox"/> Relocation assistance (cash for keys) <input type="checkbox"/> Consent Judgment <input type="checkbox"/> Other (indicate below)
If other relinquishment option, please describe	<input type="text"/>
Did both parties comply with program requirements?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, who didn't comply (check all that apply)	<input type="checkbox"/> Lender <input type="checkbox"/> Homeowner

**ILLINOIS FORECLOSURE MEDIATION PROGRAM
EVALUATION FOR PARTIES**

Case Number: Date:

To help us to maintain the quality of the mediation program, please answer all of the questions below. Your responses will be kept confidential and will be used to evaluate our services. No identifying information about you will be released.

Answer Selection: Correct = ● Incorrect = ☒ ☑ ☐

1. What is your role in the case?

- Lender/Servicer
 Homeowner
 Other: _____

The following questions ask about your experience during the mediation session. Please fill in one circle for each question.

2. Were you able to talk about the issues and concerns that were most important to you?

- I was able to talk about **none** of the issues and concerns that were most important to me.
 I was able to talk about **some** of the issues and concerns that were most important to me.
 I was able to talk about **most** of the issues and concerns that were most important to me.
 I was able to talk about **all** of the issues and concerns that were most important to me.

3. Was the mediator active enough in helping you to work out the issues in the dispute?

- No
 Yes

Not at all Somewhat Very much

- | | | | |
|--|-----------------------|-----------------------|-----------------------|
| 4. How much did the mediator understand what was important to your side? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 5. Did the mediator treat you with respect? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 6. Did the mediator treat you fairly? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

7. Did the mediator push too hard to get you to settle?

- No
 Yes

8. To the best of your knowledge, were any of the following true at the time of the mediation? Please fill in the circle for all that apply

- A. Some information that would have been helpful in the settlement discussions was not available at the mediation.
- B. When mediation began, the other party and I were very far apart in what we wanted the outcome of the case to be.
- C. The time we had to mediate was too short.
- D. One or more participants did not have authority to settle.
- E. There was anger/hostility between the other party and me.
- F. There was a large power imbalance between the other party and me.

	Very Unsatisfied	Unsatisfied	Satisfied	Very Satisfied
9. How satisfied are you with the <u>outcome</u> of the mediation?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. Regardless of the outcome, how satisfied are you with your <u>overall experience</u> in the mediation session(s)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11. Overall, was the mediation process fair?

- Not at all
- Somewhat
- Very much

Please let us know more about your experience:

12. Please let us know what you liked about the mediation:

13. Please let us know what you didn't like about the mediation:

ILLINOIS FORECLOSURE MEDIATION PROGRAM EVALUATION FOR ATTORNEYS
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Case Number: Date:

To help us to maintain the quality of the mediation program, please answer all of the questions below. Your responses will be kept confidential and will be used to evaluate our services. No identifying information about you will be released.

Answer Selection: Correct = ● Incorrect = ✕ ✓ ⊖

1. Which party did you represent in the case?

- Lender/Servicer
 Homeowner
 Other: _____

The following questions ask about your experience during the mediation session. Please fill in one circle for each question.

2. Was your side able to talk about the issues and concerns that were most important to you?

- We were able to talk about **none** of the issues and concerns that were most important to us.
 We were able to talk about **some** of the issues and concerns that were most important to us.
 We were able to talk about **most** of the issues and concerns that were most important to us.
 We were able to talk about **all** of the issues and concerns that were most important to us.

3. Was the mediator active enough in helping the parties work out the issues in the dispute?

- No
 Yes

	Not at all	Somewhat	Very much
4. How much did the mediator understand what was important to your side?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Did the mediator treat you with respect?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Did the mediator treat your side fairly?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. Did the mediator push too hard to get your side to settle?

- Yes, the mediator pushed too hard

- No, the mediator did not push too hard

8. To the best of your knowledge, which of the following were true at the time of the mediation?

Please fill in the circle for all that apply

- A. Additional documents were needed.
- B. A question of law needed to be determined.
- C. The time scheduled for mediation was too short.
- D. The case required a mediator with a different skill set.
- E. One or more participants did not have authority to settle.
- F. There was a high level of anger/hostility in the relationship between the parties.
- G. There was a large power imbalance between the parties.

	Very Unsatisfied	Unsatisfied	Satisfied	Very Satisfied
9. How satisfied are you with the <u>outcome</u> of the mediation?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. Regardless of the outcome, how satisfied are you with your <u>overall experience</u> in the mediation session(s)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11. Overall, was the mediation process fair?

- Not at all
- Somewhat
- Very much

12. If given the choice, would you use this mediator again?

- Yes
- No
- Possibly

Why or why not?

13. How many mediations have you participated in prior to this mediation?

- None
- 1-10
- 26-50
- 51-100

11-25

More than 100

14. What, if anything, made the mediation effective?

15. What could have improved the mediation?

ABOUT THE AUTHOR

Jennifer Shack has been Director of Research at Resolution Systems Institute since 2000. In this role, she conducts complex evaluations of court-based mediation programs and researches the effectiveness of mediation in court settings. As part of RSI's efforts to help courts to monitor the functioning of their mediation programs, she has designed data collection systems that are in use around Illinois. This includes the cloud-based case management and monitoring system used by the Attorney General-funded foreclosure mediation programs.

Nationally, Ms. Shack has led a national committee to develop model evaluation forms for civil case mediation programs and serves on the American Bar Association Section of Dispute Resolution Research Task Force. Over the past decade, she has presented on program monitoring and evaluation at numerous conferences.

Ms. Shack's evaluations include a comprehensive evaluation of the Child Protection Mediation Program in Cook County, Illinois, and evaluations of the mediation programs in the U.S. District Court for the Northern District of Illinois. Ms. Shack has also written a number of articles, including "Mediation in Courts Can Bring Gains, But Under What Conditions?" in *Dispute Resolution Magazine*, Winter 2004, and the co-authored, "Judicial Settlement Databases: Development and Uses," *Judges' Journal*, Winter 2004. Most recently, she co-authored two articles on foreclosure mediation: "Foreclosure Dispute Resolution Programs: Do They Work?" in *Probate and Property*, December 2013, and "A (Mortgage) Crisis in Communication: Foreclosure Dispute Resolution as Effective Response?" in *Arkansas Law Review*, Spring 2013. Ms. Shack also discusses issues related to research on issues related to court ADR on RSI's blog, *Just Court ADR*.