Report of the Effectiveness of RCW 61.24.031

November 30, 2010

INTRODUCTION

According to RealtyTrac[1], there were 6,346 new foreclosures filed in Washington in October of 2010, representing 1 in every 440 units of housing. This made Washington the 10th highest state in the nation for the number of foreclosure filings for the month of October. RealtyTrac also reported a total of 39,875 foreclosed homes for sale in Washington in October of 2010. By contrast, the number of Home Affordable Modification Program (HAMP) temporary and permanent loan modifications completed in Washington since the beginning of the program through September of 2010 was 12,444.[2]

While the number of HAMP modification arrangements started since April of 2009 through August of 2010 nationwide was nearly three times the number of foreclosure completions during that time, the number of loan modification starts in Washington has not kept pace.

The passage of Engrossed Senate Bill 5810 during the 2009 legislative session was an effort by the Governor and Legislature in Washington to address the growing number of foreclosures in Washington and was largely developed from the recommendations of an industry task force established by the Governor in late 2009 to recommend how Washington could best respond to the growing number of foreclosures caused by the sub-prime crisis of 2008.

In the 2010 legislature, several bills were introduced to amend the provisions of ESB 5810 but the Legislature wanted to review the effectiveness of the notice and meeting provisions of ESB 5810, primarily section 61.24.031, before enacting any amendments. That desire led to this report.

---

[1] www.realtytrac.com, November 20, 2010.

[2] 1.9% of the loan modifications under the HAMP program in the nation.

THE LEGISLATIVE MANDATE FOR THIS REPORT

In the 2010 Legislative Session, the following proviso mandated that the Housing Finance Commission review the notice and meeting requirements of RCW 61.24.031, which was enacted in 2009.

> **STATE HOUSING FINANCE COMMISSION**
> **FORECLOSURE REVIEW**
> In an effort to reduce the number of residential foreclosures while protecting the interests of both borrowers and beneficiaries, the state housing finance commission shall conduct a review of the effectiveness of RCW 61.24.031, which requires a beneficiary or authorized agent to contact the borrower before issuing a notice of default for the purposes of assessing the borrower's financial ability to repay the debt and discussing alternatives to foreclosure. The commission's review of the process shall, at a minimum, examine whether the contact requirement has resulted in an increase in the number of loan modifications and whether additional statutory provisions, such as mandatory mediation, are needed to produce effective communication between beneficiaries and borrowers. The state housing finance commission shall report its findings and any recommendations for legislation to the appropriate committees of the legislature by November 30, 2010.

In compliance with this mandate, the Housing Finance Commission is submitting to the Legislature this report of our review of the notice and meeting requirements and our recommendations for amendments to RCW 61.24.031 to reduce the number of foreclosures in Washington and protect the interests of both borrowers and beneficiaries in the foreclosure process.

PROCESS FOR CONDUCTING THE REVIEW

There are three components in the law for Deeds of Trust Originated between January 1, 2003 and December 31, 2007 (RCW 61.24.031) included in the review:

1. At the initial contact, the borrower must be provided the toll-free telephone number made available by the U.S. Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency and the toll-free numbers for the Department of Financial Institutions and the statewide civil legal aid hotline for possible assistance and referrals.

2. During the initial contact the lender shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the meeting shall be scheduled to occur within fourteen days of the request.

The assessment of the borrower's financial ability to repay the debt and a discussion of options may occur during the initial contact or at a subsequent meeting scheduled for that purpose.

All meetings can be over the phone and do not have to be in person.

3. Within fourteen days after the initial contact, if a borrower has a designated HUD-certified housing counseling agency, attorney, or other advisor to discuss their situation with the lender, the borrower shall inform the lender and provide the contact information. Then the lender shall contact the designated representative within fourteen days after the representative is designated by the borrower.

Prior to a foreclosure sale, a declaration must be provided by the lender to the foreclosure trustee that they have complied with the contact requirements, unless they could not reach the borrower, the borrower surrendered the property or the borrower declared bankruptcy.

REQUIREMENT TO REPORT TO THE LEGISLATURE

The Commission must complete the review of RCW 61.24.031 and report findings and recommendations for legislation to the appropriate legislative committees by November 30, 2010.

PROCESS FOR DEVELOPING THE REVIEW SURVEY

1. The Commission staff drafted the survey document.

2. The Commission staff solicited input from stakeholders, including:
   - Lenders
   - Lobbyists
   - Mortgage insurance company
   - Housing counselors
   - Department of Financial Institutions
   - Northwest Justice Project
   - Attorney General's Office
   - Columbia Legal Services

3. The survey document was finalized based on input received from stakeholders.
   - The survey to the counselors asked whether their clients were being advised of their right to a subsequent meeting within 14 days, whether the counselors had been contacted by lenders for a discussion of their client's options and if the toll-free numbers were provided (see Attachment B).

   - Similar but slightly different questions were asked of the lenders; plus, we asked lenders for sample documents to demonstrate they had the relevant

processes and procedures in place to inform their servicers/staff of these requirements (see Attachment A).

4. August 7, 2010 – we emailed both surveys to the lists below, after attempting to contact each of the lenders to identify the appropriate person to respond to the survey.

5. Survey responses were initially due back August 31, 2010. We subsequently provided three lenders a two week extension at their request.

6. On September 9, 2010, Representatives Tina Orwall and Jamie Pedersen sent a letter to the lenders encouraging them to complete the survey (see Attachment C).

LIST OF SURVEY RECIPIENTS

Lenders Contacted[3]

Bank of America
Banner Bank
Chase
Cherry Creek Mortgage
Cobalt Mortgage
DHI Mortgage - Austin
Eagle Home Mortgage
Evergreen Home Loans
Golf Mortgage
Guild Mortgage
HomeStreet Bank
Key Bank
Kitsap Credit Union
Legacy Group Mortgage
Mann Mortgage
MetLife Home Loans
Mortgage Master Service Corporation
Network Mortgage Services
Numerica Credit Union
Peoples Bank
Prospect Mortgage
Pulte Mortgage, LLC
Republic Mortgage
Seattle Metropolitan Credit Union
Seattle Mortgage
The Bank of the Pacific
U.S. Bank
Washington Trust
Wells Fargo

Lobbyists Contacted

Name	Organization
Brad Tower	Tower LTD
Brian Finch	JPMorgan Chase
Denny Eliason	Alliances Northwest
Jim Pishue	Washington Bankers Association
Marcus Gaspard	Washington Financial League

[3] The Commission developed this list from lenders involved in the Commission's bond loan programs.

Mark Minickiello	Washington Credit Union League
Stacy Augustine	Washington Credit Union League

Counselors Surveyed

Name	Organization
Alex Kamaunu	Family Finance Resource Center
Arturo Gonzales	El Centro de la Raza
Barbara Mascarin	American Financial Services
Dixie Palmer	CCCS- Apprisen Financial Advocates
Estela Ortega	El Centro de la Raza
Jan Owens	Rural Resources
Jane Bloom	Parkview Services/Washington Homeownership Resource Center
Julie L Galligan	NeighborWorks of Grays Harbor
Kelly Cooper	NeighborWorks of Grays Harbor
Kevin Gillette	Community Housing Resource Center
Linda Taylor	Urban League of Metropolitan Seattle
Liza Beam	Consumer Credit Counseling Service of the Tri-Cities
Marc Cote	Parkview Services/Washington Homeownership Resource Center
Marnie Claywell	Parkview Services/Washington Homeownership Resource Center
Loren Shekell	Parkview Services/Washington Homeownership Resource Center
Margarita Mueses	American Financial Services
Marvelle Lahmeyer	American Financial Services
Neal McKeever	Community Housing Resource Center
Peggy Burrell	Spokane Neighborhood Action Program
Randy Felice	Spokane Neighborhood Action Program
Robin Finley	HomeSight
Shawna Hardeman	El Centro de la Raza
Teresa Seeley	South Sound Outreach Services
Teri Duffy	Community Housing Resource Center
Tom Jacobi	HomeSight
Troy Hanke	American Financial Solutions

SURVEY RESPONSES

Responses to the survey from counselors:

1. Written answers to the survey were received from 4 housing counselors.
2. In response to a request from counselors, 25 housing counselors participated in a telephone conference call to verbally respond to the survey.

Written answers to survey from lenders:

1. Only one major mortgage lender sent in a survey response[4].
2. Another mortgage lender responded that they have one loan that fit within the origination period covered by 61.24.031 that came to them by way of a merger[5].
3. Three lenders requested additional time to complete the survey, which was granted, but only one of these lenders submitted a response.

The findings of our survey and discussions with lenders, counselors and advocates are provided in the next section.

FINDINGS

1. **Lenders are generally providing the required toll-free numbers to assist delinquent borrowers to find counselors to avoid foreclosure (the counselor notice requirement). When borrowers get the toll-free numbers and contact housing counselors they are faring better that those who do not.**

   Discussion:
   Based on information and responses from counselors about how borrowers were being contacted, we concluded the contact and counselor notice requirements under 61.24.031 appear to have been implemented by a majority of the lenders with borrowers facing foreclosure in Washington. The majority of the lenders appear to have contacted borrowers in writing using the new format and provided the telephone number or numbers where they could be referred to a counselor for help. The majority of lenders also appear to have either: made telephone contact with borrowers as required; or, completed the due process requirements of attempting to contact borrowers as provided in RCW 61.24.031[6].

   Our findings indicate that the new contact requirements were largely successful and led to an increased number of borrowers faced with foreclosure contacting a counselor or their lender with a resulting increase in the prevention of foreclosure. Once borrowers contacted a counselor, they significantly increased their chances

[4] U.S. Bank
[5] Pulte Mortgage
[6] In a subsequent October survey of the websites of five large mortgage lenders in the state, we found that three of the five had the HUD counseling number posted on their website as required by 61.24.031; One had a HUD Resource Center number posted; and, one had an 800 number for reaching their foreclosure representatives posted on their website.

for obtaining either a temporary or permanent loan modification, or both. Many borrowers were also able to find and access other resources or methods of avoiding foreclosure as a result of contacting a counselor that they may not have been aware of had the contact not taken place.

Borrower Outcomes When Working with a Counselor
Attachment D provides a summary of the client count by outcomes from four rounds of federal foreclosure counseling funds provided by NeighborWorks America to the Housing Finance Commission. The four rounds of grants provided some level of contact or counseling to 3,695 borrowers during the period from April of 2008 through October 2010. After analyzing the outcomes, we made the following conclusions:

- Only 56 of the clients ended up in direct foreclosure out of the 3,695 clients served. That is 1.5% of the clients.

- There are still 1,256 (34%) clients in negotiations with a servicer. This demonstrates that the process is taking a considerable amount of time with the majority of the delinquent loans from the 4/08 - 5/09 time period.

- There are many options which borrowers may not be considering without counselors bringing these alternatives to their attention and guiding them through the process.

- Housing counselors have contacts at the mortgage companies/servicers that they work with on a regular basis and this makes it easier for them to discuss possible solutions and options.

- Clients are getting resolutions that, for the overwhelming majority, appear to be positive.

- Without the dedication and tenacity of the counselors, many of the borrowers would have given up long ago.

- Counselors have a great deal of knowledge about local resources that may be available to help borrowers avoid foreclosure that borrowers don't know about.

- Once a home is saved from foreclosure the counselor can continue to help clients assess their situation and suggest realistic and sustainable goals to increase the likelihood that the borrower will successfully remain in their home.

2. **The survey did not provide evidence that a significant number of lenders are telling delinquent borrowers that they have the right to a subsequent meeting with the lender's representative within 14 days to discuss their options to avoid foreclosure (the 14 day meeting notice).**

Discussion:

We were provided with no significant evidence that the 14 day meeting requirement was properly implemented by a majority of the mortgage lenders in the state nor did we find that the 14 day meeting requirement led to any increase in the number of loan modifications obtained by borrowers facing foreclosure.

We received only one completed survey from a major lender, who should be commended for responding. This lender indicated in the survey that they were notifying delinquent borrowers, when contacted by telephone, that they had the right to a subsequent meeting within 14 days. The response also provided copies of training documents to demonstrate their callers had been trained to notify borrowers of this right. However, the survey response indicated that out of 9,004 delinquent borrowers contacted by their callers, less than 1% of the borrowers asked for a subsequent meeting within 14 days.

While we were told in a follow-up meeting with a group of lenders that one other major lender also trained their callers to notify borrowers of their right to a subsequent meeting, we never received a survey response from this lender or any other evidence to support this claim.

However, in our contact with lenders prior to the release of the survey and in our discussions with lenders about the survey, more often than not, the lender representatives indicated to us that they were not aware of their responsibility to inform borrowers they had the right to a subsequent meeting within 14 days or they were unaware that the meeting notice requirement existed.

Further, our discussions and responses from counselors around the state largely confirmed that neither they nor their clients had been informed upon initial contact by their lender that they had the right to a subsequent meeting with the lender's representative within 14 days of their initial contact[7].

The findings indicate that lenders are not generally in compliance with the "14 day meeting notice" to the borrowers or their counselors, attorneys or advisors.

[7] October 8, 2010 was the first time Parkview Services/WA Homeownershp Center reported a lender had informed a client they had a right to a meeting within 14 days. The lender offered to fly a person to Seattle for a face-to-face meeting. The trustee sale was scheduled to happen in one week.

3. **Delinquent borrowers are not advising lenders within fourteen days of the initial contact that they have a counselor, advisor or attorney and that the lender has an obligation to contact their counselor, advisor or attorney within 14 days to discuss the borrower's options to avoid foreclosure (the counselor meeting requirement).**

   Discussion:
   Our discussions with counselors across the state and their responses to our survey indicated that neither borrowers nor counselors were aware of the counselor meeting requirement in RCW 61.24.031. The counselor meeting requirement said that if within 14 days of the initial contact, a borrower facing foreclosure engaged a counselor, advisor or attorney, the borrower could notify the lender of that fact and the lender had to contact the counselor, advisor or attorney within 14 days to discuss the borrower's options to avoid foreclosure.

   However, the counselors have consistently told us that despite of not being aware of the counselor meeting requirement, they have been requesting meetings or telephone conversations on behalf of their clients with lenders or their representatives to discuss their clients options to avoid foreclosure and they have had serious problems getting timely meetings or telephone conversations scheduled with lenders or their representatives. In fact, the greatest frustration voiced by counselors to us during our review was their frustration at not being able to reliably or consistently communicate with a lender representative to adequately discuss the situation of their client.

   Therefore, we have no evidence that the counselor meeting requirement led to any increase in the number of loan modifications obtained by borrowers facing foreclosure.

SUBSEQUENT MEETINGS WITH INTERESTED PARTIES

In anticipation of preparing this report, the Commission gathered together a list of statements representing proposed recommendations from a variety of sources including articles and reports on preventing foreclosure, the results and discussions from the survey process, discussions with the Attorney General's office and other legal firms and representatives of interested parties. The members of the Commission staff that work on foreclosure problems also suggested potential recommendations.

Prior to writing the recommendations, the Commission consulted with members of the counseling network, with the lending community and with the advocate community about the potential recommendations for consideration in this report to the legislature.

- On October 8, 2010, at the invitation of the Attorney General's office, we met with representatives of the realtor, lender and nonprofit communities.

- On October 26, 2010, we met with representatives of the mortgage lending community.
- On October 29, 2010, we held a conference call/meeting with counselors from our counseling network and a representative of the City of Seattle.
- On November 5, 2010, we met with representatives of the NW Justice Project/WA State Bar Association, Poverty Action Network and Columbia Legal Services.

The Commission used the same agenda and list of potential recommendations for each of these meetings. A copy of the agenda and list of potential recommendations from the meeting with the lender community is provided in Attachment E.

The Commission asked attendees in each meeting to give comments as to which proposed recommendations they felt were important and which proposed recommendations they did not like or raised concerns. Following these discussions, the Commission staff discussed the proposals and determined which recommendations merited inclusion in this report.

RECOMMENDATIONS

1. In response to the review findings that the contact requirements have effectively increased the number of loan modifications and prevented foreclosures, *the Legislature should keep Washington's good notice provisions in 61.24.031. These helped reduce the number of foreclosures, as demonstrated by the results of borrowers working with a qualified counselor* (see Attachment D).

2. However, to improve the effectiveness of the notice requirements and better prepare borrowers to explore options to avoiding foreclosure, *the Legislature should require the lender or foreclosing party to provide homeowners with a loss mitigation/loan modification application in tandem with the pre-foreclosure written notice now required in 61.24.031*[8].

3. At the time 61.24.031 was passed it was assumed the surge in foreclosures would be caused by sub-prime loans originated between 2003 and 2007. Now the state is suffering from massive numbers of foreclosures caused by the near collapse of the banking system in 2008 and the Great Recession and job losses that have ensued, causing thousands of families to become delinquent on their mortgages. *Therefore, the Legislature should delete the reference in RCW 61.24.031 that requires compliance with the notice and meeting requirements "only on loans originated between 2003 and 2007". This will make the notice and meeting requirements apply to all foreclosures in the state.*

4. As noted in three above, the assumption at the time 61.24.031 was enacted was that foreclosures caused by the sub-prime crisis would subside by the end of 2012 and the

[8] Foreclosure as a Last Resort, Center for Responsible Lending, October 2010

contact and meeting requirements would no longer be needed. Now however, we realize that a significant number of foreclosures will be with us for many years to come. *Therefore, the Legislature should repeal the un-codified section of Chapter 292, Section 13, which would allow RCW61.24.031 to expire at the end of 2012. Repealing this section will make the provisions of RCW 61.24.031 permanent.*

5. Our review found that the meeting requirements currently contained in 61.24.031 were not recognized, were not properly implemented by a majority of lenders or borrowers and were not effective in causing the lender or foreclosing party to meet and confer with borrowers in a timely manner for the purpose of assessing the borrower's financial ability to repay the debt and to discuss alternatives to foreclosure with the borrower before issuing a notice of default.

   In addition, there is no recourse currently available for borrowers if the "meet and confer" requirements are not implemented in good faith or borrowers are subjected to abusive practices. *Therefore, we recommend the Legislature amend 61.24.031 to require one of the following:*

   A. *That prior to a notice of sale, the borrower and lender or foreclosing party must participate, in good faith, in a mediation process with a qualified, independent third party mediator to evaluate the borrower's eligibility for a loan modification and other available options that will prevent the foreclosure sale from going forward, unless the borrower waives the right to mediation in writing. The Legislature should also require the foreclosing party to stop the foreclosure process during mediation and require that no trustee sale can happen within 60 days of the end of mediation.*

   B. *Make a violation of the requirements of 61.24.031 and failure of the lender or foreclosing party to engage in a good faith review of foreclosure alternatives with the borrower within 45 days of receipt of a loss mitigation application a violation of the WA Consumer Protection Act with enforceable penalties, including fines, the fees from which will support counseling programs*[9].

   C. *Amend 61.24.031 to include both of the above recommendations.*

6. To provide relief to borrowers if the lender or foreclosing party does not engage in a good faith review of foreclosure alternatives, *the Legislature should create a borrower's right to defend against the foreclosure based on that failure.*[10]

7. To provide borrowers with a reasonable expectation of how and when their loss mitigation application will be reviewed and a determination made, *the Legislature should require that within 10 business days following receipt of a completed loss mitigation application, the lender or foreclosing party must provide the borrower written confirmation that the loss mitigation application was received and a*

[9] Ibid
[10] Ibid

description of the foreclosing party's evaluation process and timeline. If the application was received via email, the confirmation may be made via email[11].

8. To provide borrowers with a reasonable opportunity to review and correct any errors in the consideration of their loss mitigation application or to appeal a denial, *the Legislature should require the lender or foreclosing party to submit to the borrower an affidavit disclosing the specific basis for the denial of a loan modification (loss mitigation) application, including the input data and output data of any Net Present Value (loss mitigation) calculation, at the time of denial*[12].

9. To provide borrowers and counselors with an opportunity to engage the lender or foreclosing party in a good faith review of the borrowers options to avoid foreclosure in a timely and reasonable manner, *the Legislature should require the foreclosing party to have reliable points of contact, including a working telephone number and an email address, where borrowers seeking options to avoid foreclosure can contact a trained, qualified representative of the foreclosing party on a reliable basis. A loan modification center with trained staff on hand is recommended.*

10. To provide borrowers and counselors with an opportunity to submit the necessary documents for a loss mitigation application and a good faith review of the borrower's options to avoid foreclosure in a timely and reasonable manner, *the Legislature should require the lender or foreclosing party to accept electronic, faxed or scanned documents and communications submitted by or on behalf of the borrower.*

11. In order to be sure the lender or foreclosing party is entitled to foreclose against the borrower, *the Legislature should require that the lender or foreclosing party sign an affidavit stating they can produce and demonstrate a clean chain of assignment of the promissory note or obligation secured by the deed of trust, under penalty of a violation of the state's Consumer Protection Act.*

12. In order to improve and promote expanded use of the "cash for keys" option for borrowers who are not eligible for a foreclosure prevention option, *the Legislature should extend the payment of the excise tax requirements until the sale of a foreclosed property by the lender or foreclosing party to another buyer; or, exempt foreclosed properties from payment by the foreclosing party.*

13. Finally, to prevent the common occurrence of a borrower being faced with a very short and unreasonable time to relocate due to the foreclosure process continuing while the borrower's loss mitigation application is being considered and upon denial, being faced with imminent foreclosure, *the Legislature should require that no trustee sale can happen within 60 days of the final denial of a loss mitigation application or within 60 days of the end of mediation or a denied "second look" or appeal process.*

---

[11] HAMP Supplemental Directive 10-01, page 2

[12] Foreclosure as a Last Resort, Center for Responsible Lending, October 2010

IN CLOSING

While the Housing Finance Commission recognizes not every participant which contributed to this process will agree with the recommendations above, the Commission believes these recommendations best fulfill the mandate of the Legislature to "examine whether the contact requirement has resulted in an increase in the number of loan modifications and whether additional statutory provisions, such as mandatory mediation, are needed to produce effective communication between beneficiaries and borrowers."

The Commission hereby commends these recommendations for full consideration and deliberation by the Legislature during the 2011 legislative session.

Attachment A: Lender Survey

To all Lenders issuing notices of default under RCW 61.24.030(8) in Washington State:

The Washington State legislature is concerned about the increasing numbers of homeowners facing foreclosure and how mortgage lenders/servicers are assisting their delinquent borrowers.

Senate bill 5810 was passed during the 2009 regular legislative session to help homeowners who are making the effort to save their homes, but finding it difficult to work through the permanent loan modification process. The law became effective July 26, 2009 as RCW 61.24.031. (See attached) It applies to deeds of trust made from January 1, 2003 to December 31, 2007, for owner-occupied, residential property.

One of the initiatives that came out of the 2010 legislative session was to require the Commission to conduct a review of the effectiveness of RCW 61.24.031. The focus of the study is primarily on the contact requirements contained in the law. The Commission must complete the study and report findings and any recommendations for legislation to the appropriate legislative committees by November 30, 2010.

You are receiving this email because we believe the requirements of the law apply to your organization and you are an integral part of the process to determine if the contact requirements contained in the 2009 law have resulted in an increase in the number of permanent loan modifications. If it has not brought the desired results, then additional statutory provisions, such as mandatory mediation, may be needed to produce more effective communication and better results between lenders/servicers and borrowers.

To prepare for the report to the legislature, we would appreciate your comments to the questions below that are based on the contact requirements contained in RCW 61.24.031 by **August 31, 2010.** Please email your responses to me at: Dee.Taylor@wshfc.org or by mail to:

Dee Taylor
Director, Homeownership Division
Washington State Housing Finance Commission
1000 2nd Avenue, Suite 2700
Seattle, WA 98104

Thank you very much for completing the survey. If you have questions, please do not hesitate to contact me at (206) 287 4414 or by email at Dee.Taylor@wshfc.org .

Sincerely,

Dee Taylor
Director, Homeownership Division

Survey Questions

[Note: the law refers to beneficiary or authorized agent, for purposes of this survey we use the term lender/servicer.]

General Questions:

1. How many of the borrowers you are servicing have a Washington State deed of trust made from January 1, 2003, to December 31, 2007, for owner-occupied, residential property?
2. Of these borrowers, henceforth called Contact Borrowers, how are you making sure you are following the guidelines for informing the Contact Borrowers of their communication rights as required by the law?

Contact Requirements:

[Note: Any meeting required by the law may occur telephonically.]

The law requires the lender/servicer to contact the Contact Borrower by letter and telephone to assess the Contact Borrower's financial ability to repay the debt and discuss alternatives to foreclosure before the lender/servicer can send a notice of default.

During the initial contact, the lender/servicer shall advise the Contact Borrower that he or she has the right to request a subsequent meeting and, if requested, the meeting shall be scheduled to occur within fourteen days of the request. The assessment of the Contact Borrower's financial ability to repay the debt and a discussion of options may occur during the initial contact or at a subsequent meeting scheduled for that purpose.

3 What is your process for ensuring you have complied with the 14 day meeting requirement request? Please attach any documentation provided to the Contact Borrower.
4 What percentages of your Contact Borrowers have requested the subsequent meeting?

At the initial contact, the Contact Borrower must be provided the toll-free telephone number made available by the U.S. Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency and the toll-free numbers for the Department of Financial Institutions and the statewide civil legal aid hotline for possible assistance and referrals.

5. What is your process for ensuring you have complied with the toll-free numbers for assistance requirement?

6. What phone numbers are you providing to Contact Borrowers?

Within fourteen days after the initial contact, if a Contact Borrower has a designated HUD-certified housing counseling agency, attorney, or other advisor to discuss their situation with the lender/servicer, the Contact Borrower shall inform lender/servicer and provide the contact information. The lender/servicer shall contact the designated representative within fourteen days after the representative is designated by the Contact Borrower.

7. What is your process for ensuring you have complied with the designated representative contact requirement?
8. What percentage of your Contact Borrowers has a designated representative?
9. What percentage of your Contact Borrowers has requested the subsequent meeting with their designated representative?
10. Do you do anything proactively to make the Contact Borrower aware of this provision in the law? Or, do you leave it up to the Contact Borrower to know this section of the law?

A notice of default under RCW 61.24.030(8) may not be issued until thirty days after initial contact with the Contact Borrower is made or thirty days after satisfying the due diligence requirements in subsection (5) of the law (see attached copy of the law). The 30 days are measured from the time the lender contacts the Contact Borrower, or satisfies the due diligence requirements to contact the Contact Borrower to try and work out a way to avoid foreclosure.

Note: The 30 day requirement does not apply if any of the following occurs:

(a) The lender/servicer has evidence that the property has been surrendered by the Contact Borrower; or (b) the Contact Borrower has filed for bankruptcy, and the bankruptcy stay remains in place, or the Contact Borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing enforcement of the deed of trust.

11. Please describe your process for complying with the due diligence requirements as required under subsection (5) of the law (see attached copy of the law). Include relevant sections from internal manuals, training materials and quality control measures taken to ensure all requirements are followed.

12. The notice of default must include a declaration from the lender/servicer that they contacted the Contact Borrower, or if they were not able to contact the Contact Borrower they used due diligence in attempting to do so. Please provide a copy of the "Foreclosure Loss Mitigation Form" used to by the lender/servicer to ensure the trustee is entitled to rely on as evidence that the due diligence requirements have been met.

Results:

13. We want to know the status of delinquent first mortgages for Contact Borrowers since 7/26/09, the effective date of the new requirements? Please tell us how many of your Contact Borrowers fell into each of the following categories on 7/26/09 and on August 15, 2010:
    a. No Resolution (includes trial modification, forbearance, repayment plan, bankruptcy)
    b. Permanent Loan Modification
    c. Reinstated
    d. Short Sale
    e. Deed in Lieu of Foreclosure
    f. Foreclosed
    g. Other (please specify)

14. What additional comments do you want to make for inclusion in the study to be presented to the legislature?

Attachment B: Counselor Survey

To Housing Counselors:

The Washington State legislature is concerned about the increasing numbers of homeowners facing foreclosure and how mortgage lenders/servicers are assisting their delinquent borrowers.

Senate bill 5810 was passed during the 2009 regular legislative session to help homeowners who are making the effort to save their homes, but finding it difficult to work through the permanent loan modification process. The law became effective July 26, 2009 as RCW 61.24.031. (See attached) It applies to deeds of trust made from January 1, 2003, to December 31, 2007, for owner-occupied, residential property.

One of the initiatives that came out of the 2010 legislative session was to require the Commission to conduct a review of the effectiveness of RCW 61.24.031. The focus of the study is primarily on the contact requirements contained in the law. The Commission must complete the study and report findings and any recommendations for legislation to the appropriate legislative committees by November 30, 2010.

You are receiving this email because we believe the requirements of the law impact your ability to work with lenders/services of the clients you are counseling to avoid foreclosure. You are an integral part of the process to determine if the contact requirements contained in the 2009 law have resulted in an increase in the number of permanent loan modifications. If it has not brought the desired results, then additional statutory provisions, such as mandatory mediation, may be needed to produce more effective communication and better results between lenders/servicers and borrowers.

To prepare for the report to the legislature, we would appreciate your comments to the questions below that are based on the contact requirements contained in RCW 61.24.031 by **August 31, 2010.** Please email your responses to me at: Dee.Taylor@wshfc.org or by mail to:

Dee Taylor
Director, Homeownership Division
Washington State Housing Finance Commission
1000 2nd Avenue, Suite 2700
Seattle, WA 98104

Thank you very much for completing the survey. If you have questions, please do not hesitate to contact me at (206) 287 4414 or by email at Dee.Taylor@wshfc.org .

Sincerely,

Dee Taylor
Director, Homeownership Division

Survey Questions

[Note: the law refers to beneficiary or authorized agent, for purposes of this survey we use the term lender/servicer.]

Contact Requirements (RCW 61.24.031):

[Note: Any meeting required by the law may occur telephonically.]

The law requires the lender/servicer to contact the borrower by letter and telephone to assess the borrower's financial ability to repay the debt and discuss alternatives to foreclosure before the lender/servicer can send a notice of default.

During the initial contact, the lender/servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the meeting shall be scheduled to occur within fourteen days of the request. The assessment of the borrower's financial ability to repay the debt and a discussion of options may occur during the initial contact or at a subsequent meeting scheduled for that purpose.

1. Are lenders/servicers telling your clients about the right to a subsequent meeting within 14 days of the request?

2. If available, please provide a sample of the letters your clients are receiving from their lender/servicer informing them of their right to a subsequent meeting. (Please redact your client's personal information to protect their confidentiality.)

At the initial contact, the borrower must be provided the toll-free telephone number made available by the U.S. Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency and the toll-free numbers for the Department of Financial Institutions and the statewide civil legal aid hotline for possible assistance and referrals.

3. Are lenders/servicers providing toll-free numbers to your clients?

4. What phone numbers are your clients receiving?

5. If available, please provide a sample of the letters your clients are receiving from their lender/servicer informing them of the numbers. Please redact your client's personal information to protect their confidentiality.

Within fourteen days after the initial contact, if a borrower has a designated HUD-certified housing counseling agency, attorney, or other advisor to discuss their situation with the lender/servicer, the borrower shall inform lender/servicer and provide the contact information. The lender/servicer shall contact the designated representative within fourteen days after the representative is designated by the borrower.

15. Have your clients been told about this meeting requirement by their lender/servicer?

16. Have you informed your clients about this meeting requirement?

17. How many lenders/servicers have contacted you as a direct result of this meeting requirement?

18. What additional comments do you want to make for inclusion in the study to be presented to the legislature?

Attachment C: Request letter

State of
Washington
House of
Representatives

September 10, 2010

Dear Lenders:

You recently received a request from the Washington State Housing Finance Commission to complete a survey they will use to evaluate the effectiveness of foreclosure prevention legislation passed by the 2009 legislature, which is codified in part at RCW 61.24.031. The law, which imposes a "meet and confer" requirement before a foreclosure can proceed, applies to deeds of trust made from January 1, 2003 to December 31, 2007, for owner-occupied, residential property.

We are writing to you to encourage you to complete the survey so that we have your input on the law and any recommendations you may have to deal with the foreclosure problem in the state of Washington. As members of the Washington State legislature and citizens of the State, we are committed to helping keep people in their homes whenever possible. We want to work with you to find ways to avoid home foreclosures and welcome your feedback on how to make the process more effective.

Sincerely,

Jamie Pedersen
State Representative
43rd District

Tina L. Orwall
State Representative
33rd District

Attachment D: Clients Counts by Outcome

Outcome	Round 4 3/10- 12/10	Round 3 2/10- 5/10	Round 2 6/09- 2/10	Round 1 4/08- 5/09	TOTAL All Rounds
Initiated Forbearance Agreement/Repayment Plan:	107	38	354	101	**600**
Executed a Deed-in-Lieu:	2	0	3	2	**7**
Mortgage Foreclosed:	18	2	16	20	**56**
Received Second Mortgage:	0	1	1	4	**6**

NFMC Client Count by Outcome

Other:	7	10	47	44	**108**
Counseled and referred to another social service or emergency assistance agency:	2	2	329	19	**352**
Obtained partial claim loan from FHA lender:	0	0	3	6	**9**
Bankruptcy:	25	1	25	20	**71**
Counseled and referred for legal assistance:	24	4	98	39	**165**
Withdrew from counseling:	30	5	56	49	**140**
Currently in negotiation with servicer; outcome unknown:	153	138	450	515	**1256**
Referred homeowner to servicer with action plan and no further counseling activity; outcome unknown:	0	11	34	0	**45**
Foreclosure put on hold or in moratorium; final outcome unknown:	0	0	3	0	**3**
Brought mortgage current with rescue funds:	0	0	1	0	**1**
Brought mortgage current (without rescue funds):	9	2	5	20	**36**
Mortgage refinanced into FHA product:	1	0	3	9	**13**
Mortgage refinanced (non-FHA product):	1	1	3	0	**5**
Mortgage Modified:	0	0	0	88	**88**
Mortgage modified with PITI less than or equal to 38% of gross monthly income with at least a 5 year fixed rate:	26	6	73	0	**105**
Mortgage modified with PITI greater than 38% of gross monthly income or interest rate fixed for less than 5 years and appears to be sustainable:	8	2	13	0	**23**

Mortgage modified with PITI greater than 38% of gross monthly income or interest rate fixed for less than 5 years and appears not to be sustainable:	1	0	3	0	**4**
Homeowner(s) sold property (not short sale):	3	2	7	20	**32**
Pre-foreclosure sale/short sale:	9	1	16	17	**43**
Counseled on debt management or referred to debt management agency:	9	0	9	3	**21**
Home lost due to tax sale or condemnation:	0	0	0	0	**0**
Ending counseling after level 1 -- outcome unknown:	87	50	267	102	**506**
TOTAL:	**522**	**276**	**1,819**	**1078**	**3695**

Attachment E: Agenda and List of Proposed Recommendations

WSHFC Meeting with Lenders
9:30 AM, October 26, 2010
Commission Offices, 1000 Second Ave., 28th Floor

Purpose of the Meeting:

- Seek solutions that will foster the will and ability of servicers to process loan modifications quickly for qualifying homeowners
- Identify actions that can be included in legislation to provide a fair playing field between lenders/servicers/trustees and borrowers facing foreclosure and seeking loan modifications
- Identify what is working the best in WA state regarding foreclosure/modification processes at this time
- Discussion of suggested recommendations for the 5810 Study Report
- Set-up a process for moving forward following this meeting

Agenda

9:30 AM	Kim Herman-Introduction of Attendees
9:40 AM	Kim Herman-Brief review the Legislature's mandate to review and report on the effectiveness of SB 5810
9:55 AM	All Attendees-Discussion of the proposed recommendations for inclusion in the Report to the Legislature due November 30, 2010
10:50 AM	All Attendees-Discussion of next steps
11:00 AM	Adjourn

Attachment: Proposed recommendations for the 5810 Report to the Legislature

For discussion at the October 26th meeting:

Proposed recommendations under serious consideration:

- Keep Washington's good notice provisions that worked, 61.24.031(1)(a) and (5)
- Repeal the un-codified provision of section of 5810 (c 292 s 13) to extend RCW 61.24.031 past 2012 and make permanent
- Remove reference in 61.24.031 that requires compliance only on loans originated between 2003 and 2007
- Require lenders/servicers to establish a formal "second look or appeal process" for borrowers who are declined for a modification

- Require lenders/servicers/trustees to accept electronic, faxed or scanned documents to be submitted; or, agree on a common electronic submission process (Example-Homeport)
- Allow only the initial contact with the borrower to be telephonic; require all subsequent meetings to be face-to-face between the borrower/counselor/advisor and a loan officer/servicer that can approve a loan modification
- Require lenders/servicers to make a decision within 30 days or receipt of a complete application for a loan modification
- Require/encourage lenders/servicers to have a single, primary point of contact to assist borrowers seeking options to avoid foreclosure
- Require/encourage lenders/servicers to review all options during the initial face-to-face contact, including loan modifications, short sales, deed-in-lieu of foreclosure, forbearance, etc.
- Require/encourage qualified lender/servicer foreclosure staff to improve efficiency and outcomes for both parties, including Spanish speaking staff or interpretive services when necessary

Recommendations being strongly suggested for consideration:

- Add mandatory mediation on every foreclosure unless knowingly waived by the borrower
- Make violation of the contact and meeting requirements in SHB 5810 (RCW 61.24.031(1) (a,b,c) a violation of the WA Consumer Protection Act
- Require a clear and clean "chain of assignment" of the promissory note and deed of trust at the beginning of the foreclosure process to ensure that the correct entity is asserting the security interest; or,
- Require that the trustee actually have in their possession the original promissory note at the beginning of the foreclosure process.
- Implement a fine or consequence to lenders/servicers/trustees for repeated loss of documents
- Require the input data for the Net Present Value (NPV) calculation to be disclosed early in the process to all parties to be sure the data is accurate
- Provide the NPV calculation results to the borrower/counselor with 45 days of submission of the correct data
- Guarantee transparency of key information to all involved parties to facilitate resolution
- Noncompliance with the provisions of 61.24.031 will result in a fine against lenders that will go to housing counseling agencies to support counselors
- Extend the 14 day meeting requirement to 30 days
- Extend Excise tax for deed in lieu to improve "cash for keys" option for those who are not eligible for foreclosure prevention options.
- Remove accounting impediments to loan forbearance as alternative to foreclosure

Other recommendations:

- Get improved information to counselors up-front to front load advice and decision making with distressed homeowners (on the assumption that the outcome of 95% of cases can be predicted early)
- Get the lender/servicer/trustee and counselor on same page early and provide early informed advice to the distressed homeowner
- Collect, distribute and implement "voluntary loan modification best practices" to facilitate loan modifications across national servicers and trustees in Washington
- Provide Transparency of loan modification qualification templates to borrowers and counselors
- Work with the industry to create standardized documents
- Recommend a method to fund counselors, legal services and pro bono attorneys to advise and represent distressed homeowners
- Recommend that Lenders pay for an effective Public Awareness Campaign on how to respond to a notice of foreclosure and apply for a loan modification
- Develop standardized disclosure/modification documents for all lenders/servicers/trustees in WA
- Distinguish between material and technical irregularities in the processing of foreclosures in Washington.
- Allow lenders to disclose critical modification numbers earlier in the process (assuming that Fannie Mae and Freddie Mac prohibit this early disclosure)