

Ohio and Pennsylvania: Two Approaches to Judicial Foreclosure Alternatives

CR Report Fall 2010

Introduction¹

As the number of foreclosures continues to rise across the country, many policymakers are creating alternatives to foreclosure. Two counties in the Federal Reserve's Fourth District—Cuyahoga County in Ohio, which encompasses Cleveland, and Allegheny County in Pennsylvania, encompassing Pittsburgh—have developed mediation and diversion programs aimed at mitigating the externalities associated with foreclosure, such as reduced property values and increased crime rates in surrounding neighborhoods. These external costs are important because they are borne by neighborhoods and municipalities, as opposed to the parties who willingly engage in the transaction. How do they work? By using the courts and their power to sanction noncompliance. This ability to require participation makes the courts an effective forum for convening the parties to discuss foreclosure alternatives prior to completing the foreclosure. While there is no guarantee that an alternative can be agreed upon, these programs provide participants with the benefit of legal certainty—knowing that foreclosures will not proceed during discussions, that any agreements reached will be binding, and that, when agreements cannot be reached, the foreclosure will continue unobstructed.

Court-sponsored mediation programs are an opportunity for borrowers to work with lenders. Though mediations are not always successful at coming to ideal outcomes for all parties involved, there are a wide range of tools available to assist borrowers and lenders in reaching a better outcome than may have been achieved if no discussion were to take place.

Under foreclosure mediation programs, courts have several options to facilitate a more successful outcome for borrowers and lenders. These include options to help a borrower keep the property such as:

- **Modification of the loan's terms** – can include principal and/or interest rate reduction, extension of loan term, principal forbearance, capitalization of missed payments, etc.
- **Repayment plans** – missed payments are added to existing payments for a period of time until deficiencies are satisfied

Borrowers who wish to transition to rental property to reduce their housing costs or those who do not meet the required criteria for a loan modification still have access to several options. These options seek to quickly transfer ownership of the property to the lender and forgive the borrower's debt. These include:

- **Deed in lieu of foreclosure:** The borrower voluntarily signs title to the property over to the lender without foreclosure proceedings, and in exchange lenders often forgive the borrower's debt in its entirety. Alternatively, some borrowers may consent to the foreclosure to allow it to be expedited.
- **Short sale:** In a short sale, a borrower agrees to allow the relatively quick sale of the house for less than the loan amount and without foreclosure proceedings, and in exchange lenders often forgive the borrower's debt in its entirety.
- **Owner-to-renter programs:** Some lenders will allow borrowers to sign over their deed in lieu of foreclosure, and in exchange, the borrower is given the option of leasing the property from the lender or given a cash sum to assist with moving to and renting a new dwelling.

The convening role of the courts is important in two ways. First, courts can mandate the good faith participation of the parties. Anecdotal reports suggest that, outside of the courtroom setting, some borrowers have had difficulty reaching their lenders or servicers to discuss foreclosure alternatives.² Similarly, some lenders and servicers have reported difficulty connecting with borrowers outside of the courtroom setting.³ With no direct communication between the parties, there is practically no chance for

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an outcome other than foreclosure. Foreclosure-alternative programs by their nature bring borrowers and lenders together to discuss alternatives ranging from loan modifications to graceful exits through private, state, and federal programs.

Second, through the court process the courts can provide both parties with some certainty and legal finality. If a borrower summoned into court fails to appear, for example, the lender knows with legal certainty that it may proceed to foreclose without issue. For their part, borrowers also benefit from the power of the courts in this context, as foreclosure proceedings are placed on hold while the parties explore alternative options, giving borrowers a respite while attempting to negotiate a resolution with their lenders. This stay can be important, as borrowers and housing counselors have reported instances where foreclosure proceedings that were supposed to have been stopped during modification discussions nevertheless continued, resulting in some foreclosures being completed before the parties were able to finish negotiations on a possible modification.

This paper explores two foreclosure-mediation programs to share how they work and what lessons can be learned from their experiences. Each program uses different methods to notify borrowers, segregate participants from other foreclosure cases, and organize discussions between the parties. Each program accomplishes its goals, to varying degrees, through slightly different means. Both programs provide valuable insights and face common challenges. As more of these types of programs emerge across the country, lessons learned from these models may help other programs serve as more effective forums and, ultimately, as tools to reduce the costs associated with foreclosures.⁴

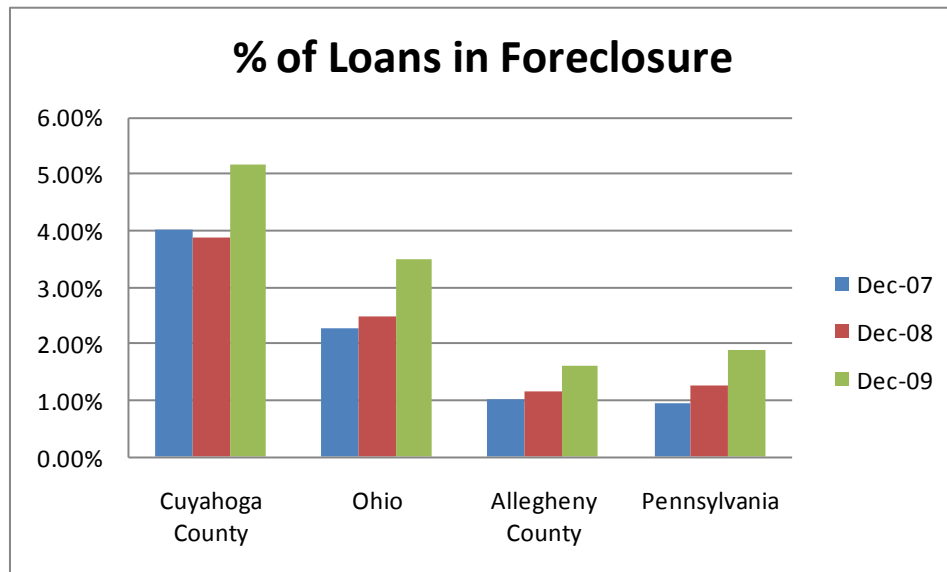
The Costs of Foreclosure

Foreclosure filings remain high in areas across the Fourth District, which includes Ohio, western Pennsylvania, eastern Kentucky, and the panhandle of West Virginia. In fact, high numbers of foreclosure filings have been a persistent problem in parts of the region for a decade. According to data collected by the Supreme Court of Ohio, there were more than 89,000 foreclosure filings in Ohio in 2009, up 3.8 percent from the previous year.⁵ Of those 89,000 filings in 2009, a single county—Cuyahoga, which encompasses Cleveland and parts of northeast Ohio—accounted for more than 14,000, a significantly higher number of filings than any of the other 87 counties in the state.⁶

Though the percentage of Pennsylvania's residential loans in foreclosure was lower than Ohio's, the state still experienced a significant increase, seeing its rate rise from 1.3 percent in 2008 to 1.9 percent in December 2009. A similar increase in the percentage of loans in foreclosure occurred in Allegheny County, where the rate of foreclosure rose to 1.6 percent in December 2009, up from 1.2 percent in December 2008.⁷

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Source: LPS (Lender Processing Services Inc.) Applied Analytics

This chronic problem is an important issue because of the significant externalities associated with foreclosures that are borne by neighbors and municipalities. These costs result, in part, from the length of time a house spends in foreclosure, especially in states—like Ohio and Pennsylvania—that have a judicial foreclosure process *and* high rates of foreclosure.⁸ According to judges in Cuyahoga and Allegheny Counties, it is not uncommon for the foreclosure process to take 12 months or longer from filing the complaint to the judicial decree.

This delay substantially increases the lender's costs. During this time interest and other fees continue to accrue, but the lender does not receive payment and bears the risk of a loss of all or a portion of its investment—the loan—while it is in default. The property itself may lose value over this time, not only as a function of the current weak market, but also because borrowers who remain in a house during the foreclosure process have little incentive to maintain the property's condition, and vacant properties can quickly fall into disrepair.⁹ The 12-month-plus delay thus increases the probability that lenders ultimately will sell foreclosed properties at a substantial loss. Lenders will also incur legal expenses in connection with the foreclosure proceeding, as well as in any subsequent sale of the property. In total, estimates of the lender's losses on foreclosures are between 30 percent and 60 percent of the loan balance.¹⁰

Foreclosures are also expensive for borrowers. Borrowers may incur legal expenses, typically a larger proportion of their income compared to lenders' legal expenses and income. In fact, legal representation may be out of the financial reach of many borrowers in foreclosure, and providers of free legal services increasingly report more requests for help than they are able to provide. One of the most significant costs incurred by borrowers, however, is not an out-of-pocket expense directly related to the foreclosure process, but one that will manifest as a result of impaired credit. Long after foreclosure, borrowers will not only face restricted access to credit, they will also pay more for any credit they do get.

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Most important, foreclosures are expensive to people other than the borrowers and lenders. The high number of foreclosure filings and the time it takes to complete the process strains judicial resources and slows the flow of all cases through the courts. People living in the vicinity of foreclosed homes are also affected negatively. Research supports the negative social and economic consequences for surrounding communities and their residents.¹¹ For example, foreclosures lower property values of nearby homes¹² and draw higher levels of criminal activity.¹³ Local governments are also burdened, as foreclosed houses erode the community's tax base and increase the cost of serving neighborhoods with high foreclosure rates.

Foreclosures may also drive other foreclosures. Because each foreclosure lowers surrounding property values and add inventory to the for-sale market, it can be more difficult for neighbors to sell their homes or refinance. If foreclosures drive property values down far enough, they may encourage strategic default. Avoiding these externalities is the key reason why policymakers have tried to avoid foreclosures.

Examples of 4th District County Responses to Foreclosure

In Ohio and Pennsylvania, foreclosure complaints are handled by the courts, making these “judicial foreclosure” states. In response to overwhelming caseloads, Cuyahoga County and Allegheny County each created a court-sponsored foreclosure alternative program to link borrowers with lenders. These programs offer a “last chance” for borrowers and lenders to sit down face-to-face and attempt to work out a mutually beneficial resolution to the foreclosure complaint. The following sections highlight the structure, details, challenges, and successes of the two programs.

The Cuyahoga County Program

How it Works

Under the Cuyahoga County mediation program, which was instituted in June 2008, when a foreclosure action is filed in the County, it triggers several actions. One is the issuance of a postcard informing the affected borrower of the Cuyahoga County Foreclosure Mediation Program. Following that, the borrower is sent materials for the mediation program *in the same envelope* as the foreclosure complaint and summons; these materials include information on the program, how to obtain legal assistance and financial counseling, and a Request for Mediation form.

After a borrower fills out and returns the mediation request, the judge assigned to the foreclosure action chooses either to allow the borrower to enter the program or to deny the request. (Judicial permission, given at the judge's discretion, is required regardless of a borrower's qualifications for the program, a component of the Cuyahoga County program that differs from the Allegheny County model.) In Cuyahoga County, foreclosure cases are assigned randomly to judges, most of whom allow borrowers and lenders to take advantage of the court-supervised forum for discussions about alternatives to foreclosure. A few judges do not allow use of the mediation program, in which case the borrower's request for mediation is denied and the foreclosure action continues. The judges who do allow use of the program are not directly involved with the mediation, though they maintain responsibility for the stayed foreclosure action.

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Once a judge approves the borrower's request for mediation, two things happen: the foreclosure action is halted and a pre-mediation conference scheduled. During this conference the delinquent borrower is given a questionnaire that aims to fully detail his or her financial situation. The borrower must submit this information within 14 days of the pre-mediation conference. Once the borrower's information has been submitted and reviewed, a second meeting takes place, with the borrower, a representative for the servicer or lender, and a court-provided mediator, to evaluate available options. The foreclosure remains halted as long as the borrower is in the program. If the borrower and lender are able to agree upon an alternative to an extended foreclosure process, the foreclosure is dismissed and is avoided entirely. If an acceptable solution cannot be agreed upon, or if the borrower does not comply with the program, the home re-enters foreclosure.

Recently, the Cuyahoga County program began utilizing housing counselors to assist borrowers during this mediation process. The counselors are available to explain loss mitigation options that borrowers might not be aware of or understand, help borrowers evaluate their financial situations, support those who represent themselves in the foreclosure mediation process, and to help borrowers gather required documentation. Due to the nature of mediation, hiring an attorney is not required, though it may be advisable. Many borrowers proceed through the program without formal legal representation, keeping their costs to a minimum. Others either hire their own counsel or use pro bono resources such as legal aid.

The Cuyahoga County Common Pleas Court tracks foreclosure cases that are in the mediation program via a coding system that retains original docket numbers, allowing the Court to identify at a glance those foreclosure cases that have been stayed due to a borrower's participation in the program.

Program Statistics

From January to December 2010, a third of all borrowers in foreclosure applied for mediation.¹⁴ That proportion increased from a fifth of all such borrowers in 2009. Over this same time period, the number of borrowers in foreclosure increased. Of those borrowers who actively participated in mediation, just over 61 percent achieved mediated resolutions ranging from loan modifications to signing over the deed to the property in lieu of foreclosure. The fact that increasing numbers of borrowers are requesting mediation could have many explanations. The increased participation may be driven by increased awareness of loan modification programs, but that alone does not explain why such discussions are not taking place before the parties enter the court system. One commonly reported issue is that borrowers, lenders, and servicers have a difficult time connecting outside the auspices of the courts.

Since the program's launch a little over two years ago, the speed at which borrowers move through mediation has improved relative to the 12-month average it takes to complete a foreclosure, despite the courts' increasing caseload. In June 2010, the average length of a foreclosure action in which the borrower participated in the program was 193 days, including time spent in courts if no mediated solution could be reached.

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A large part of the reason the program has kept up with the increasing number of participants is due to increased funding, which allows for more program staff. Court mediators certainly view adequate staffing as a necessity, but they have also employed creative methods to increase efficiency as well. For example, servicers or lenders with large caseloads will have all of their mediations scheduled for the same day, eliminating the costs associated with duplicative trips to the area. Similarly, requiring that documentation be brought to the initial meeting reduces the turnaround time between mediation sessions.

The Allegheny County Program

How it Works

The Allegheny County Residential Mortgage Foreclosure Program,¹⁵ also known as the “Save Your Home” program, serves as a secondary backstop for mortgage borrowers who fail to apply for or achieve a successful resolution under Pennsylvania’s longstanding Homeowners Emergency Mortgage Assistance Program (HEMAP).¹⁶ Implemented by Administrative Order, the Allegheny County program became effective on January 12, 2009, and is designed to be a collaborative effort between both public and private sector entities “to provide a single unified process for the amicable resolution of mortgage foreclosure proceedings through court intervention, counseling, and conciliation.”¹⁷

Allegheny County’s program differs from the Cuyahoga model in that court-appointed mediators are not central to the program. Instead, the Allegheny County model relies on discussions outside and inside the courtroom among lenders, borrowers, and representatives from counseling agencies to arrive at an amicable resolution to a foreclosure complaint. Exchanges outside the courtroom are usually informal and include lenders, their attorneys, counseling agency staff and borrowers. Formal conciliation hearings, which are typically held inside the courtroom or in judges’ chambers, are conducted to update a judge on the progress of discussions, decide whether or not an amicable solution can be reached, or finalize an agreement.

“I have no illusions that the program will save every borrower’s home. However, the conciliation program serves as a potential ‘lifeline’ and an opportunity for borrowers to ‘swim to the rope.’ For example, if a borrower is 10 feet away from shore, the conciliation program offers a rope that is eight feet long. The borrower must swim the extra two feet. Swimming the extra two feet includes ‘opting in’ to the program—the borrower must want to keep his/her home; keeping and completing counseling sessions with non-profit housing counseling agencies; and providing all necessary materials requested, including copies of financials (paystubs, W2s, etc.).”

— Allegheny County Common Pleas Judge Michael E. McCarthy

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As with the Cuyahoga County program, early communication is key. The first contact with the mortgage borrower about the Save Your Home program occurs when the Allegheny County Sheriff's Office serves the borrower with the foreclosure complaint. Included with the complaint is information on how to obtain legal assistance, as well as a conspicuously designed and worded flyer (printed on neon pink paper and bearing the heading "Urgent Notice") with specifics on the Allegheny County program. The flyer also includes the Save Your Home hotline number that borrowers must call to initiate the process. Incorporating the notice with the complaint helps eliminate the possibility of the borrower's overlooking the program notification.

Eligibility for the Allegheny program is not the same as the Cuyahoga model; to be eligible for the Save Your Home program, the residential property in foreclosure must include four or fewer units and be the borrower's primary residence.¹⁸ The requirement of owner occupancy represents a significant difference between the Allegheny County and Cuyahoga County models.

During the initial call to the hotline, the homeowner hears an overview of the program and, if interested, schedules a face-to-face appointment¹⁹ with one of the participating Allegheny County nonprofit housing counseling agencies.²⁰ The Allegheny County foreclosure program is distinguishable from many other programs in that it relies heavily on nonprofit counseling agencies to perform much of the borrower intake and to provide borrowers with credit and housing counseling during the process.²¹ Within days of the borrower's call to the hotline, the counseling agency sends the borrower a confirmation letter of the appointment and a list of required financial documentation that must be brought to the appointment, such as pay stubs and W2s. During the initial face-to-face counseling appointment—which usually occurs within two weeks of a call to the hotline—counselors screen the borrowers for program eligibility and use information from the requested documentation to complete an intake file.

In addition to Allegheny County's requirement of owner occupancy, another significant difference between the two programs is the staff involvement of the Housing and Human Services Division, a department of the Allegheny County Department of Economic Development (ACED),^{22 23} ACED's responsibilities include scheduling mediation hearings, a process that automatically stays foreclosure proceedings, and serving as a communications channel between the courts and the housing counselors who meet with borrowers in the program. The goal of the Save Your Home program is to conduct hearings within 90 days. Before the actual hearing date, housing counselors work with borrowers and their lenders to facilitate a resolution, and then provide updates to ACED on the status of these efforts. ACED relays these updates to the court, which decides whether cases should be removed from the program, settled, or continued for another hearing to allow parties enough time to reach a resolution.²⁴

The Allegheny County program's heavy reliance on nonprofit counseling agencies and process administration assistance by ACED originally permitted a single judge to oversee the entire program. This judge supervised every case and conducted conciliations in addition to a regular caseload. As the number of program participants began to increase, the court enlisted additional judges to oversee conciliation hearings, including several retired civil court judges. Though the court added several more

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judges and relies heavily on the ACED, many of the parties involved in the Allegheny County program acknowledge the need for dedicated staff.

Several processes have been identified as critical to the program's effectiveness and efficiency. As in Cuyahoga, the assignment of a special docket code identifying foreclosure complaints that have been accepted into the County's foreclosure conciliation program allows ready distinction of program cases from other civil cases and facilitates their removal from normally scheduled proceedings. This coding is extremely helpful to the court, records department, and the sheriff's office. Second, communication and coordination among County agencies—including ACED, the Court system, the Department of Court Records office, and the Sheriff's office—are key to the program's effectiveness. Third, open dialogue between County agencies and other stakeholders, including lenders, mortgage borrowers, plaintiff's attorneys, and participating nonprofit counseling agencies, is also critical to the process.

Program Statistics

Improvements in program operations and procedures, as well as the addition of several more judges, have allowed the program to move borrowers through at an accelerated rate since its inception in January 2009. For example, over the seven-month period from December 15, 2009, to July 26, 2010, Allegheny County reduced the percentage of borrowers in pre-conference counseling from 41 percent to 36 percent. By improving the intake counseling process, the conciliation program is better able to handle the average of 15-25 new cases per week in which borrowers choose to participate in the program. However, it should be noted that Allegheny County staff estimate that only 20 to 25 percent of all eligible borrowers choose to opt in to the program.

Since the court has sole discretion over the conciliation process, the judge decides which cases should be removed from the program or continued for another hearing to allow parties enough time to reach a resolution.²⁵ On average, 15 percent of borrowers are removed from the program for reasons such as a borrower's failure to appear for scheduled conciliation hearings or counseling sessions, while 15 percent of cases are held over for a second conciliation hearing and 6 percent are held over for a third. Conciliation staff estimate that the ideal time for a borrower to remain in the conciliation process is approximately six months, though this figure is largely contingent upon lenders and borrowers efficiently moving through the process.

Several factors affect the length of time Allegheny County borrowers spend in the conciliation process. First, the housing and credit counseling that nonprofit agencies provide to borrowers may be more intensive than the Cuyahoga County mediation model. One strength of the Allegheny program is providing the borrower with money management and debt counseling, mortgage delinquency and default counseling, additional exposure to foreclosure programs, and other social services programs such as rental assistance. Nevertheless, these additional counseling services can require more of the borrower's time compared to a borrower in the Ohio program.

Second, capacity limitations of the court and ACED staff also impact the time borrowers spend in the conciliation process. Because the Allegheny County program has not received any additional funding to

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manage the program, it has experienced little opportunity to expand its staff to meet the demands of increasing requests for conciliation. A third factor affecting the amount of time Allegheny County borrowers spend in the conciliation process involves a practice similar to that adopted in Cuyahoga County, wherein the judges schedule conciliation hearings with specific regard to parties' availability. For instance, the court makes an effort to schedule hearings with the same plaintiff's counsel or non-profit agency staff representatives in consecutive order, thus reducing the hearing participants' cumulative travel time.

Challenges & Lessons Learned

Connecting Borrowers, Lenders, and Servicers

Connecting the parties early in the foreclosure process is both difficult and consequential. Both Cuyahoga County and Allegheny County include information about their foreclosure alternative programs with copies of the foreclosure complaint that is delivered to borrowers to ensure they are notified of the respective programs early in the process. While their methods vary slightly, both appear to be effective at getting program information to borrowers in a timely manner.

These timely notifications serve another purpose: They can help borrowers avoid paying for services that are often available for free. Because foreclosure filings are a matter of public record, many types of businesses use those records to identify potential clients. Businesses that charge for foreclosure-rescue services, for example, such as loan counseling and assistance obtaining a loan modification, often market their services to borrowers in foreclosure. Borrowers may be able to obtain similar services free of charge, however, which both counties make a point to communicate to borrowers. In some cases, notice of official court programs may help borrowers to avoid falling prey to foreclosure-rescue scams, which courts, legal aid, state Attorneys General, and prosecutors alike report are always changing and to which distressed borrowers continue to be vulnerable.

Managing the Parties

Although each model has had successes, over time several issues became apparent in both the Cuyahoga and Allegheny County models. In both programs it was immediately apparent that there is no room in the process for unresponsive, uncooperative, and unprepared parties, be they borrowers or lenders, especially as the number of foreclosures in each county increases without a proportional increase in judicial resources. Both programs require borrowers to opt-in, which helps screen out unresponsive borrowers. However, borrowers who have opted in but subsequently fail to participate in a productive way can overwhelm the system and therefore should be removed. Similarly, the lender's representative must be cooperative and have proper settlement authority. Both programs require the lender's representative to have proper settlement authority. Without that authority, time spent by all parties in trying to reach an agreement may be wasted.

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The Cuyahoga and Allegheny County programs have encouraged cooperation among the parties in several ways. Both move the cases of truly unresponsive borrowers out of the program and back into foreclosure. Similarly, each will dismiss foreclosures if lenders or servicers are unresponsive. And both programs now engage in higher-quality and more frequent communication among the parties.

For example, the Cuyahoga and Allegheny County programs recognize the importance of being very hands-on when gathering and completing necessary documentation, because a missing form or one filled out incorrectly can prevent meetings from proceeding smoothly or, worse yet, may result in the rejection of a more amicable outcome. Similarly, paperwork that is processed incorrectly or too slowly will result in agreements not being approved under loan modification programs. Program requirements make sure that the lender provides clear, explicit instructions regarding what documentation is needed, that borrowers follow those instructions, and that the paperwork is handled in a timely fashion. However, even with the threat of sanctions, obtaining and processing documentation continues to be a challenge for the parties.

One potential solution for the continuing documentation challenges the programs report is a central document clearinghouse so that borrowers, lenders, and the courts could easily track paperwork. Although the courts have no control over how documentation is processed, they could require the use of such a clearinghouse for cases included in the program.

Program Scalability

Operating with an extremely small staff creates problems for the programs as they attempt to scale up to meet demand. Cuyahoga County employs an administrator and a handful of mediators for its program, but still relies on non-judicial resources, such as housing counselors and legal aid. The program is directly funded through an additional foreclosure filing fee imposed on all residential foreclosures, a set-up that has the benefit of adjusting program funding as the need for it rises or falls.

Allegheny County's program, on the other hand, is not funded, and as a result has only the services of several active judges—who also have a full civil caseload—and the part-time services of retired judges. The program relies heavily on non-judicial resources, such as housing counselors, legal aid, and particularly the ACED. This makes scaling the program up when necessary an arduous task, as the program is heavily dependent on agency staffing levels. More disconcerting still, the program reports that participating borrowers are, with increasing frequency, failing to qualify for free legal aid, because many applicants have higher household incomes than may have been typical in the past.

Conclusion

The Cuyahoga and Allegheny foreclosure alternatives programs offer effective judicial forums for convening borrowers and lenders in an attempt to reach a mutually beneficial resolution. The courts are able to convene the parties because they have the power to require participation, and can offer legal certainty. Additionally, when organized properly, the programs minimize any additional time spent in the judicial system. Success requires that these programs reach borrowers early in the foreclosure

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process and employ a hands-on approach to ensuring that the parties handle paperwork correctly and in a manner that facilitates an expeditious settlement. Additionally, the programs must be scalable, enjoy both judicial and non-judicial support, and, perhaps most critical if such programs can offer meaningful relief to overwhelmed courts, be adequately funded.

¹ Economist and Senior Policy Analyst, respectively, in Community Development at the Federal Reserve Bank of Cleveland. Our special thanks to Cuyahoga County Common Pleas Judge Eileen T. Gallagher, Allegheny County Common Pleas Judge Michael E. McCarthy, and Cuyahoga County Program Director Andrea Kinast for being so generous with their time and helpful comments. We would also like to thank Cassandra H. Collinge, Manager, Consumer Programs, the Housing & Human Services Division Allegheny County Economic Development, Allegheny County Sheriff William P. Mullen, and Allegheny County foreclosure program participating non-profit agencies for their helpful input. The views and opinions expressed are those of the authors, and not necessarily the views and opinions of the Federal Reserve Bank of Cleveland, its Board of Directors, the Federal Reserve Board, or other banks in the Federal Reserve System.

² Braucher, Jean, Humpty Dumpty and the Foreclosure Crisis: Lessons from the Lackluster First Year of the Home Affordable Modification Program (HAMP) (June 20, 2010). *Arizona Law Review*, Vol. 52, 2010; *Arizona Legal Studies Discussion Paper No. 09-37*. Available at SSRN: <http://ssrn.com/abstract=1518098>; Alys Cohen, National Consumer Law Center, Written Testimony Before the United States Subcommittee on Administrative Oversight and the Courts of the Committee on the Judiciary (July 23, 2009) at 4, 28, 30, 45 (concerning borrowers difficulties in getting information and timely and accurate processing of requests for modifications).

³ Anecdotally, judges presiding over foreclosures in Cuyahoga and Allegheny County have estimated that 60-80% of borrowers do not respond to foreclosure complaints or otherwise contest the foreclosure in court. Lenders and servicers report similar difficulties reaching out to borrowers who are in danger of foreclosure.

⁴ Many similar programs have emerged already. The National Consumer Law Center had compiled information on foreclosure mediation programs in 16 states. See Geoff Walsh, FORECLOSURE MEDIATION PROGRAMS: CAN THEY SAVE HOMES? (National Consumer Law Center, 2009), available at http://www.nclc.org/issues/foreclosure_mediation/content/ReportS-Sept09.pdf; Geoff Walsh, STATE AND LOCAL FORECLOSURE MEDIATION PROGRAMS: UPDATES AND NEW DEVELOPMENTS (National Consumer Law Center, 2010), available at http://www.nclc.org/issues/foreclosure_mediation/content/ReportS-UpdateJan10.pdf; National Consumer Law Center, Summary of Foreclosure Mediation Programs (2010), available at http://www.nclc.org/issues/foreclosure_mediation/content/SummaryOfPrograms.pdf.

⁵ Supreme Court of Ohio press release http://www.sconet.state.oh.us/PIO/news/2010/foreclosureStats_021710.asp

⁶ Data at the end of the Supreme Court of Ohio's Press release. In total, there were 14,171 foreclosure filings in Cuyahoga County in 2009, up 2.3% from 2008. http://www.sconet.state.oh.us/PIO/news/2010/foreclosureStats_021710.asp

⁷ Source: LPS (Lender Processing Services Inc.) Applied Analytics

⁸ Judicial foreclosure states afford borrowers procedural and evidentiary protection by requiring all foreclosures to proceed through a court of law.

⁹ See, e.g. Thomas J Fitzpatrick IV, *Ohio's Land Banking Legislation: Modernizing an Aged Model*, 19 J. Aff. Housing 127, 129-130 (2010).

¹⁰ Karen Pence, *Foreclosing on Opportunity: State Laws and Mortgage Credit* 1 (working paper, federal reserve board of governors 2003) available at <http://www.federalreserve.gov/pubs/FEDS/2003/200316/200316pap.pdf>

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¹¹ See, e.g., Dan Hartley, *The Impact of Foreclosures on the Housing Market*, Economic Commentary 2010-15 (Federal Reserve Bank of Cleveland, 2010), available at <http://www.clevelandfed.org/research/commentary/2010/2010-15.cfm>.

¹² See, e.g., Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 HOUSING POLICY DEBATE 57 (2006) (finding conventional foreclosures within an eighth of a mile of a single-family home results in a decline in value); Brian A. Mikelbank, *Spatial Analysis of the Impact of Vacant, Abandoned and Foreclosed Properties* (Federal Reserve Bank of Cleveland, 2008) (finding foreclosures reduce the value of all properties within 500 feet).

¹³ Dan Immergluck & Geoff Smith, *The Impact of Single-family Mortgage Foreclosures on Neighborhood Crime*, 21 HOUSING STUDIES 851 (2006) (finding higher foreclosure levels contribute to higher levels of violent crime).

¹⁴ According to internal analytics, the Cuyahoga County Foreclosure Mediation program calculated that 33% of all foreclosure filings, including commercial and tax foreclosures, requested mediation. The percentage of mediation requests out of all *residential* foreclosure filings they estimate to be higher.

¹⁵ The program resulted from the joint efforts of many different stakeholders from both the public and private sectors. Currently the Allegheny County Executive Office's Department of Economic Development (ACED), Sheriff's Office, Bar Association and a number of private non for profit credit counseling agencies all work together to carry out the program.

¹⁶ The HEMAP program was created in 1983 and was designed to assist mortgage borrowers who were unable to make their mortgage payments, through no fault of their own, and in danger of having their home foreclosed. For additional information, see <http://www.phfa.org/consumers/homeowners/hemap.aspx>.

¹⁷ <http://www.alleghenycourts.us/civil/foreclosure.asp>.

¹⁹ Each of the participating counseling agencies regularly forwards its counseling calendars to Allegheny County's Department of Community and Economic Development.

²⁰ To participate in the program, housing counseling agencies must be certified either by HUD or the Pennsylvania Housing Finance Agency to provide housing counseling services.

²¹ Participating Allegheny County non-profits typically provide housing and credit counseling services to borrowers in conciliation. Credit and housing counseling typically includes budget creation; referrals to other social service programs such as rental assistance-if the borrower is unable to keep the home; and counseling regarding other foreclosure mitigation resources available outside of Allegheny County's Conciliation program such as national and state foreclosure rescue funds and HOPE Now.

²² The Housing Development and Consumer Services division of ACED strives to improve the County's housing stock and strengthen its residential neighborhoods. Its chief vehicles are financing programs for individual homeowners, for developers and contractors, and for nonprofit human services agencies (Source: http://economic.alleghenycounty.us/about_aced/about_aced.aspx)

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²⁴ <http://www.alleghenycourts.us/civil/foreclosure.asp>.

²⁵ <http://www.alleghenycourts.us/civil/foreclosure.asp>.