

## MEMORANDUM

**TO:** Chief Justice Canady

**FROM:** Lisa Goodner

**DATE:** December 28, 2010

**SUBJECT:** Report and Recommendations Relating to the Residential Mortgage Foreclosure Mediation Program

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As you will recall, on December 28, 2009, the Chief Justice entered an administrative order<sup>1</sup> that required each circuit to establish a managed mediation program for mortgage foreclosure cases involving homestead properties. In order for the Court to be able to evaluate the success of the managed mediation program, the administrative order directed the Committee on Alternative Dispute Resolution Rules and Policy to develop a reporting system and collect data. The Committee was directed to report back to the Court in one year. The Committee's report to the Court is attached, along with the standard OSCA Committee Report Summary and Transmittal Form.

Due to the amount of time required to establish the programs, only seven circuits were able to submit data for inclusion in the report. Accordingly, the Committee is recommending continuation of the program until sufficient data can be collected and evaluated.

Additionally, we have had a press request for the report and it will be provided to the media in response to that request.

LG:dgh

Attachments

cc: Justices  
Tom Hall  
Deborah Meyer  
Craig Waters

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<sup>1</sup> See In Re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases, No. AOSC09-54 (Fla. Dec. 28, 2009).

OSCA COMMITTEE REPORT SUMMARY  
AND TRANSMITTAL FORM

I. **Background Information**

- A. **Name of Committee** Committee on Alternative Dispute Resolution Rules and Policy
- B. **Title of Project or Report** Report and Recommendations Relating to the Residential Mortgage Foreclosure Mediation Program
- C. **Date of Committee's Last Meeting** September 29, 2010
- D. **Supreme Court Liaison** Justice Ricky Polston
- E. **Chair** Judge William D. Palmer
- F. **Staff Contact(s)** Janice Fleischer

II. Committee Recommendations Requiring Action by the Chief Justice and/or Supreme Court

A. **Brief Summary of Report and/or Recommendations.**

One year ago the Chief Justice entered In Re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases, No. AOSC09-54 (Fla. Dec. 28, 2009). In that administrative order, the Court established the Residential Mortgage Foreclosure Mediation Program (the Program) and directed the Committee on Alternative Dispute Resolution Rules and Policy (the Committee) to implement a reporting system to collect data on the number of cases statewide that were referred to mediation through the Program in order to evaluate the success of the Program. The attached Report is in response to this directive.

In order to fulfill its requirement, the Committee established a Mortgage Foreclosure Subcommittee (MFS) that developed a series of reports designed to capture data on the various aspects of the Program. The program managers for each circuit were asked to capture this data as the Program was implemented in their respective circuits.

The Program required careful planning by the circuits to ensure proper implementation. Prior to July 1, 2010, only seven circuits were in a position to report statistics.<sup>1</sup>

The length of time necessary for the mediation cycle to occur has limited the data available at this time. The Program model was built on the premise that mediation should be initiated within 120 days after the case referral is received by the Program. Thus, and as further discussed in the attached Report, the circuits have been asked to submit 120-day and 180-day status reports.

Due to the fact that only seven circuits were able to submit data results for this Report, the Committee recommends the continuation of the Program until sufficient data can be collected. The Committee notes that an innovative and comprehensive program such as this one requires time to mature before a meaningful evaluation can be conducted.

**B. Supreme Court Action(s) Requested by the Committee.**

The Committee recommends continuing the Program for a sufficient amount of time to capture enough statistics to create “critical mass” in terms of statistical validity.

**C. Proposed Implementation Step(s).**

The Court may wish to consult with the circuit chief judges about an appropriate time frame for the collection and analysis of data to determine effectiveness of the Program.

**D. Time Frame.**

The continuation of the Program should be long enough to allow for the collection of sufficient statistics to permit meaningful analysis and conclusions.

**E. Rules of Court Procedure.**

No Rules of Court Procedure are being proposed.

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<sup>1</sup> At the bottom of page 5, the report indicates that four circuits were prepare to provide data by March 2010 and an additional two circuits were added by April 2010. The report then goes on to reference a remaining sixteen circuits; that appears to be a typographical error and should be read “Out of the remaining fourteen (14) circuits, only one additional circuit was operational prior to July 1, 2010.” Clearly, though, based on the data attached to the report, seven circuits were operational and able to begin reporting data by July 1, 2010.

**F. Referral to Other Court Committee(s).**

The Committee suggests that the development of a more extensive analysis to determine the impact of the Program on the overall workload of the trial courts be implemented and assigned to the Supreme Court Committee on Court Statistics and Workload. (See discussion under “Other” in Section III below.)

**III. Anticipated Judicial and Fiscal Impact**

No extraordinary fiscal impact is anticipated should the Court adopt the recommendation for Program continuation. A minimal impact may be seen as a consequence of the office of Court Services compilation of data. Costs associated with that data compilation will decrease over time as program managers and Court Services become better acquainted with the forms and reporting mechanisms.

This Program was designed to work outside the court system and eliminate court costs and resources associated with residential mortgage foreclosures.

	Amount Year 1 (FY 10-11)	Amount Year 2 (FY 11-12)	Amount Year 3 (FY 12-13)
<b>FISCAL IMPACT ON COURTS:</b>			
Non-recurring Effects:	Not determined		
Recurring Effects:	Not determined		
Long-Run Effects Other Than Normal Growth:	Not determined		
Total Revenues and Expenditures:	Not determined		

**FISCAL IMPACT ON OTHER GOVERNMENTAL ENTITIES:**

None

**DIRECT FISCAL IMPACT ON PRIVATE SECTOR:**

The direct fiscal impact on the private sector are the costs associated with the Plaintiff's fees for inclusion in the Program.

#### OTHER WORKLOAD AND FISCAL COMMENTS:

There should be no significant increase in workload for the staff of the OSCA Dispute Resolution Center.

OSCA Office of Court Services will be responsible for collecting and compiling the data received from the program managers in each circuit. This is a responsibility they have already begun to implement. It should be noted, however, that the recommendation in Section II.F., above, for involvement of the Court Statistics and Workload Committee could not be accomplished within existing resources, given the current scope of that Committee's responsibilities in the development of the Trial Court Information Management System (TIMS).

**Florida Supreme Court**  
**Committee on Alternative Dispute Resolution Rules and Policy**

**REPORT AND RECOMMENDATIONS RELATING TO THE  
RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION PROGRAM**

**December 28, 2010**

## Background

On December 28, 2009, the Supreme Court issued AOSC09-54, *Final Report and Recommendations on Residential Mortgage Foreclosure Cases* which adopted the recommendations of The Task Force on Residential Mortgage Foreclosure Cases (Task Force). The Task Force had been established to respond to the residential mortgage foreclosure crisis in Florida by recommending “policies, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties” through “mediation and other alternative dispute resolution strategies, case management techniques, and approaches to providing *pro bono* or low-cost legal assistance to homeowners.”

In AOSC09-54, the court directed at Page 8:

### Reporting and Data Collection

*The Court cannot anticipate how effective the statewide managed mediation program will be in easing the backlog of pending residential foreclosure cases in Florida. The Court therefore directs the Committee on Alternative Dispute Resolution Rules and Policy to implement a reporting system to collect data on the number of cases statewide that are referred to managed mediation programs; whether the cases were settled, adjourned, or ended in impasse; and other relevant information. Key determinants in evaluating the success of the program will be: (1) the percentage of cases referred to the program that result in the program manager successfully contacting borrowers; (2) the percentage of scheduled mediations failing to go forward because plaintiff's representative did not appear; (3) the percentage of scheduled mediations failing to go forward because the borrower did not appear; and (4) the percentage of mediations resulting in partial or complete agreements compared to those resulting in impasse (emphasis added). The Committee shall report these statistics to the court one year from the date of this Administrative Order.*

In response to the court's direction, the Florida Supreme Court -Committee on Alternative Dispute Resolution Rules and Policy (the Committee) established a Mortgage Foreclosure Subcommittee (MFS) to deliberate and make recommendations to the Committee. After several months of work by the MFS, the

Committee met on September 29, 2010, and, as part of their meeting, carefully reviewed and vetted the recommendations of the MFS. The Committee voted to approve the recommendations with a few revisions. What follows is the background, explanation of the data reports which were developed, and recommended actions.

Three members of the MFS, Judge Burton Conner (chair), Dr. Greg Firestone and Perry Itkin, were members of the Task Force. Judge Conner was the civil administrative judge for the first circuit to create a managed mediation program for foreclosure cases.

The MFS began meeting weekly by telephone beginning in March, 2010 to develop a data reporting system to be distributed to each circuit. The MFS met no less than 19 times over the next several months. During that time, among other items, the MFS determined it was best to develop a data report that could be disseminated by the Residential Mortgage Foreclosure Mediation Program (the Program) to the public in a format which would be easily understood by the public.

#### Key Determinants

As noted above, in AOSC09-54 the court listed its “key determinants” for evaluating the success of the Program. The MFS viewed the key determinants as the minimum data to be collected until it could develop a fully detailed data report and have it distributed to each circuit. The MFS determined it was imperative to begin to collect data as early as possible in order to develop information regarding whether the Program was demonstrating signs of success as it transitioned from a new program into an established one. The MFS initially developed a data report format to capture information regarding the key determinants, with the understanding that the MFS would subsequently be developing a more comprehensive data report to capture substantially more information. With the exception of the three pilot circuits (the 1<sup>st</sup>, 11<sup>th</sup> and 19<sup>th</sup> circuits), no circuits were in a position to collect data prior to July, 2010. The data statistics attached to this Report are based on the initial “Key Determinants” assessment each circuit was asked to collect until the full 120 and 180 Day Status Reports were distributed.

#### “Other Relevant Information:” The Need for Additional Data Determinants

The Committee was directed to collect data on "other relevant information" in addition to the key determinants. In deciding what other data should be collected



to comply with the directive to consider “other relevant information,” the MFS focused on certain language contained in the MAO as pertinent to data collection (emphasis added by italicized underlining):

**Program Manager to Monitor Compliance and Satisfaction**

*20. Monitoring Compliance Concerning Certain Provisions of This Administrative Order, Satisfaction with RMFM Program, and Program Operation. The Program Manager shall be responsible for monitoring whether Form A has been filed in all residential foreclosure actions that commence after the effective date of this Administrative Order and whether the Program fees have been paid if the residence is a homestead residence. The Program Manager shall send compliance reports to the chief judge or the chief judge’s designee in the format and with the frequency required by the chief judge. [Note: Form A is the document on which the Plaintiff supplies the Program with required certifications regarding the origination of the note and mortgage, the status of residential property, whether there has been pre-suit mediation, -and the designation of Plaintiff’s representative at mediation.]*

....

*The Program Manager shall also provide the chief judge with periodic reports as to whether plaintiffs and borrowers are satisfied with the RMFM Program. [Note: The Committee has developed and recommended an exit survey for this purpose<sup>1</sup>.]*

*The Program Manager shall also provide the chief judge with reports with statistical information about the status of cases in the RMFM Program and RMFM Program finances in the format and with the frequency required by the chief judge.*

...

Recommendations by the MFS for data collection in addition to the key determinants focused on the following goals:

- Developing data that will allow the court to determine if the Program is an effective case management tool.

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<sup>1</sup> See Attachment 1: Participant Exit Survey form

- Developing data to assess whether the participants in the Program are performing in a timely fashion.
- Developing data to assess whether the Program Managers (PMs) are performing in an efficient and timely fashion and are capable of sustained operation without fiscal impact to the courts.
- Developing data to assess what the roadblocks or bottlenecks are that keep the Program from operating as it should.
- Developing data that will show the trends of foreclosure settlements.

The above goals for data assessment were used to identify various components of information that needed to be tracked as data. What follows is a discussion of the issues that served to develop the components of information recommended by the MFS.

One of the first questions considered by the Task Force was how wide to “cast the net” in terms of cases that would be referred to the Program. Lender representatives on the Task Force expressed concern that a significant number of borrowers were not interested in saving their homes from foreclosure and had either abandoned the property, or just wanted to stay as long as they could without making a mortgage payment. While the majority of the Task Force wanted to cast the net as widely as possible, given the cost imposed upon the plaintiffs, a compromise was struck. If the PM was not able to contact the borrower within 30 days after Form A was transmitted to the Program and verify the borrower wanted to participate in the Program, the case was to be eliminated from the Program (and the plaintiff could avoid the second part of the fee, \$350, and proceed on with obtaining a judgment). Thus, the MFS determined it was critically important to assess how well the PMs are complying with the timeline for contacting borrowers.

To assess whether the Program is an effective case management tool, it is important to know the details of the borrowers’ responses to the Program once they are contacted and the requirements of the Program are explained. Do the borrowers not want to participate from the beginning or do they drop out because they do not follow through with foreclosure counseling and do not put the required financial information together? Information regarding borrower response is additionally important to address the expense concerns of the plaintiffs. Thus, obtaining information on the borrowers’ response to the Program provides insight

into how to improve the Program and insight as to the experience for the borrowers who are caught in an economically dire situation.

To assess the cost effectiveness of the Program as a case management tool, the MFS determined it was important to know whether the written settlements are fully resolving the cases, or only settling some of the issues. Thus, obtaining information on partial settlements and full settlements as well as failures to settle is imperative in evaluating the case management and cost effectiveness of the Program.

The MFS determined that to effectively evaluate overall performance of the Program it is necessary to evaluate whether cases are referred that cannot or should not be set for mediation. Data needs to be collected to determine if the case did not proceed to mediation due to plaintiff error such as where the plaintiff gave insufficient information regarding borrower contact, was mistaken in identifying property as homestead, or did not complete Form A as instructed. Data also needs to be collected to determine other reasons why a case does not proceed to mediation: for example, bankruptcy was filed, the case was previously mediated, or the case was dismissed after the referral was made. Thus, obtaining information on plaintiff error or recalcitrance as well as other roadblocks is important to properly evaluate if there are problems with the Program design.

### **The Logic of the Structure of the Circuit Data Reports**

#### **Initial Report: Key Determinants Report**

The MFS determined that gathering data as soon as practical was imperative. However, this goal was problematic as most circuits were just getting their programs up and running and not in a position to provide data.

As the attached statistics show, only four (4) circuits were prepared to provide any data by March, 2010 and three (3) of these were the pilot circuits upon which this Program is based. An additional two (2) circuits were added by April, 2010. Out of the remaining sixteen (16) circuits, only one additional circuit was operational prior to July 1, 2010. The timing of establishing the Program in the sixteen circuits made it impossible to gather data from them to be used in this report.

The "Key Determinants Report" was designed to obtain statistics from the operational circuits based on the court's designation of "key determinants" for evaluating the Program (see Page 8 of AOSC09-54):

- The percentage of cases referred to the Program that result in the PM successfully contacting borrowers;
- The percentage of scheduled mediations failing to go forward because plaintiff's representative did not appear;
- The percentage of scheduled mediations failing to go forward because the borrower did not appear; and
- The percentage of mediations resulting in partial or complete agreements compared to those resulting in impasse.

These "key determinants" were seen by the MFS as minimal data which would be fairly easy for each circuit's PM to collect and report. All circuits were put on notice that more detailed and extensive reports would be required in the future. All statistics attached to this report are based on the data collected from the Key Determinants Report.

#### Rolling Cumulative Report vs. Snapshot Report

The MFS initially considered two distinct approaches to collecting data: a "rolling cumulative report" and a "snapshot report." Both approaches capture data on a monthly basis.

A rolling cumulative report would look at information at the same time each month and would look at the status of each referral, but include every referral that is open and pending in the Program. Therefore, the rolling cumulative view of information would include new referrals received since the last reporting date, but also referrals received in prior months that still remain open.

A snapshot report would look at all referrals that came in during a calendar month (the data pool) and take a "snapshot" of the status of each referral in the monthly pool on the last day of the report period. The Program model was built on the premise that mediation should be initiated within 120 days after the case referral is received by the Program (keeping in mind the MAO dictates the referral is to be made by plaintiff's counsel within one business day after suit is filed); therefore the logical choice for the number of days before taking the "snapshot" (the report period) is 120 days. The snapshot approach uses an event based format.

In other words, once the clock starts running, there are a series of specific events measured from the date the clock begins to run.

In the three pilot circuits, the Collins Center, operating as the PM, initially developed its data system along the lines of a cumulative rolling report. This approach was used because the Collins Center was initially assessing whether it was charging a fair fee for the workload it was carrying. As an administrative judge in one of the pilot circuits, MFS Chair Judge Burton Conner discovered these reports did not help assess how that circuit's program was working as a case management tool.

The MFS determined that the snapshot report was better suited to assess whether the Program is effective as a case management tool and whether it is operating within the timelines set by the MAO.

#### REFARs vs. NCFARs

In order to properly monitor if a case should be in the Program, two things need to happen: 1) there must be a Form A which certifies the case is eligible for the Program, and 2) the Program must get the contact information for all borrowers. These are the threshold requirements identified as making the referral "report eligible," (RE), i.e. eligible to track to see if mediation resulted in a settlement. The MFS adopted the nomenclature "Report Eligible Form A Referrals," or "REFARs" to identify those referrals which should be tracked using an event based format. The MFS adopted the nomenclature "Noncompliant Form A Referrals," or "NCFARs" to identify referrals that are initially noncompliant with the threshold requirements.

A significant goal of the data collection is to assess PM compliance with the MAO. However, it is not fair to measure the PM's compliance until the referral is "report eligible." (Note: the MFS added a third threshold component to "report eligible": the Program must receive a case number for the referral from plaintiff's counsel. The case number requirement does not affect whether mediation can go forward, but it is a necessary component for case specific data tracking and for MAO enforcement, if necessary, by the PM.)

The MFS recognized that some referrals which are initially noncompliant with the threshold requirements would become compliant within a reasonable time. Thus, it is necessary to designate initial referrals as either compliant or noncompliant Form A referrals: REFARs or NCFARs. NCFARs may remain

noncompliant for more than 120 days after the referral is received. REFARs are referrals that are initially compliant with the threshold requirements for being report eligible, but also include noncompliant referrals which become compliant within 120 days after the referral is received. If a referral is initially noncompliant, but becomes compliant, the 120 day clock does not begin to run for measuring compliance with various timelines until the referral becomes report eligible.

NCFARs will be tracked using a clock that begins the date the referral is initially received by the Program. REFARs will be tracked from the date they become report eligible.

### Organizational Structure of the Data Reports

The 120 and 180 Day Status Reports were designed to capture detailed data from all the circuits in the Program. Attached to this Report are the 120 Day Status Report, the 180 Day Status Report and the Instructions for their completion.<sup>2</sup>

#### *120 Day Status Report*

The 120 Day Status Report has ten subsections. Each subsection is designed to capture data for separate performance categories. Each subsection has specific data elements to analyze the performance category in a manner which will assess successes or roadblocks to the Program. The subsections and a brief summary of the performance categories are set forth below:

A. Listing of Totals

This performance category is designed to list various totals which will give a quick, overall assessment of key performance measures. The various totals also provide a benchmark to compare with other sections of the report to determine if data is being reported accurately.

B. REFARs: PM Compliance With MAO Timelines

This performance category collects data to assess the PM's compliance with various timelines in the MAO.

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<sup>2</sup> See the following Attachments:

Attachment 2a: Instructions to 120 and 180 Day Status Reports

Attachment 2b: 120 Day Status Report

Attachment 2c: 180 Day Status Report

- C. REFARs: Status of Contacting Borrower  
This performance category collects data to assess how many borrowers were contacted within the 30 day timeframe set by the MAO, how many borrowers were contacted outside the 30 day timeframe, how many borrowers could not be contacted despite seemingly accurate contact information, and how many borrowers could not be contacted for other reasons.
- D. REFARs: Remaining Open After 120 Days  
This performance category collects data to assess how many cases remain open more than 120 days after the referral becomes report eligible and identifies some of the reasons a referral may not begin mediation within 120 days after the referral becomes report eligible
- E. REFARs: Closed: Mediator Fee Imposed  
This performance category collects data to assess the outcome of a scheduled mediation (mediation fee imposed at this stage). More specifically, this category collects data on how often mediation is scheduled but does not go forward because one of the participants does not appear, and if everyone appears, this category assesses whether a partial or full written agreement is reached or if no written agreement is reached.
- F. REFARs: Closed: Mediator Fee Not Imposed  
This performance category collects data to assess the various reasons why mediation does not go forward after the referral is report eligible (mediation not scheduled; therefore no fee imposed). The category seeks to identify whether mediation does not occur because it is subsequently determined the case is not eligible for the Program, a bankruptcy is filed, the case is dismissed in court, there is borrower nonparticipation for various reasons or the parties reach a settlement agreement prior to mediation being scheduled.
- G. REFARs: Reconciliation of Subtotals  
This performance category is one of the internal checks in the report to assess whether data is being accurately reported. If certain subtotals do not add up, it is an indication that data is not being accurately monitored or reported by the PM.

H. REFARs: Results by Percentage (Total REFARs Reported For This Month)

This performance category looks at data as percentage calculations to assess two key performance attributes (how many mediations conducted and how many written agreements are reached) from the viewpoint of the total REFARs reported for the month. (Note: A subcategory of information includes data on cases settled prior to mediation. This information is being captured on the presumption that pre-mediation settlement is an outcome of the Program in that the Program prompted the parties to speak to each other.)

I. REFARs: Results by Percentage (Borrower Contacted)

This performance category looks at data as percentage calculations to assess two key performance attributes (how many mediations conducted and how many written agreements are reached) from the viewpoint of the total borrowers contacted for the report period. (Note: A subcategory of information includes data on cases settled prior to mediation. This information is being captured on the presumption that pre-mediation settlement is an outcome of the Program in that the Program prompted the parties to speak to each other.)

J. REFARs: Results by Percentage (Key Determinants Identified by Supreme Court)

This performance category tracks the data identified by the Supreme Court as "key determinants."

In tracking data regarding REFARs, the MFS determined it was important to separate those REFARs in which a mediator fee was imposed from those REFARs in which a mediator fee was not imposed. One of the objections by lenders (plaintiffs) to the Program has been the fees charged for the Program. The Program fees are paid by lenders and in two phases. When suit is filed, the plaintiff pays \$400 (a \$275-administrative fee for the PM and \$125 paid to the foreclosure counseling service provider). After the borrower participates in foreclosure counseling and provides required financial disclosure information to the plaintiff, mediation is scheduled, at which time the plaintiff pays the balance of the Program fees, \$350, which is for the payment of the mediator. Thus, a significant subset of data to be collected is whether mediator fees are paid.



The report is structured so the court can determine if PMs are accurately reporting the data. For example, the first entry is a "grand total" number. The next two entries, when added together, should add up to the "grand total" number. There are other internal checks built into the structure of the report which will indicate a "red flag" if numbers are being inaccurately reported.

### *180 Day Status Report*

The Committee determined it was important to have a follow-up report as to those cases on the 120 Day Status Report which are reported as remaining open. This report will track those cases that are still unresolved after 120 days. Unlike the 120 Day Status Report, the 180 Day Status Report has only four sections which are designed to capture data for separate performance categories. The subsections and a brief summary of the performance categories are:

- A. REFARs Remaining Open More Than 180 Days  
This performance category collects data to assess how many cases remain open more than 180 days after the referral becomes report eligible and identifies some of the reasons a referral may not begin mediation within 180 days after the referral becomes report eligible.
- B. REFARs Closed Between 120-180 Days: Mediator Fee Imposed  
This performance category collects data regarding NCFARs which become report eligible after the 120 Day Status Report to assess the outcome of a scheduled mediation. More specifically, this category collects data on how often mediation is scheduled but does not go forward because one of the participants does not appear, and if everyone appears, this category assesses whether a partial or full written agreement is reached or if no written agreement is reached.
- C. REFARs Closed Between 120-180 Days: Mediator Fee Not Imposed  
This performance category collects data regarding NCFARs which become report eligible after the 120 Day Status Report to assess the various reasons why mediation does not go forward after the referral is report eligible. The category seeks to identify whether mediation does not occur because the case is dismissed in court, the parties reach a settlement agreement prior to mediation being scheduled or for other miscellaneous reasons.

D. Reconciliation of Subtotals

This performance category is one of the internal checks in the report to assess whether data is being accurately reported. If certain subtotals do not add up, it is an indication that data is not being accurately monitored or reported by the PM.

The Statistics<sup>3</sup>

General Information:

- *The statistics provided show the status of case eligible referrals that were reported from March 2010 to June 2010 at 120 days. Reports are from seven (7) circuits only.*
- *Thirteen circuits (65%) did not have an operational mediation program pursuant to AOSC09-54 prior to July 1, 2010.*
- *Of the seven circuits reporting, the highest percentage of case eligible referrals occurred in the 11<sup>th</sup> circuit (7,780 cases or approximately 58% of the total). The 4<sup>th</sup> and 19<sup>th</sup> Circuits follow with approximately 17% (2,239 cases) and 15% (1,968 cases) of the total, respectively.*
- *The 2<sup>nd</sup>, 3<sup>rd</sup>, and 14<sup>th</sup> Circuits had less than 210 case eligible referrals (2<sup>nd</sup> circuit with 43, 3<sup>rd</sup> circuit with 85 and the 14<sup>th</sup> circuit with 206).*
- *The statewide percentage of borrowers contacted is approximately 44%. The percentage of borrowers contacted for the 2<sup>nd</sup>, 3<sup>rd</sup>, 14<sup>th</sup> and 19<sup>th</sup> circuits had percentages of between 53.4% and 56.4%. The 4<sup>th</sup> circuit contacted the smallest percentage of borrowers (approximately 29%).*

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<sup>3</sup> See the following attachments:

Attachment 3a: Key Determinant Report: Number of Events overall

Attachment 3b: Key Determinant Report: Percentages overall

Attachment 3c: Key Determinant Report: Number by Circuit

Attachment 3d: Key Determinant Report: Percentage by Circuit

- *The largest percentage of lenders failing to appear at scheduled mediations is 4% in the 1<sup>st</sup> circuit. The statewide percentage is approximately 2%. In addition, all lenders in the 2<sup>nd</sup> and 3<sup>rd</sup> circuits appeared at scheduled mediations.*
- *The 4<sup>th</sup>, 11<sup>th</sup> and 19<sup>th</sup> Circuits show the highest percentage of borrowers failing to appear at scheduled mediations: approximately 5% for the 4<sup>th</sup> and 11<sup>th</sup> circuits and 4% for the 19<sup>th</sup> circuit. The statewide percentage is approximately 4%. In addition, all borrowers in the 2<sup>nd</sup> and 3<sup>rd</sup> circuits appeared at scheduled mediations.*
- *Only the 11<sup>th</sup> circuit reported a case where both borrower and lender failed to appear at the scheduled mediation.*
- *Four circuits exceeded the statewide percentage of 34% for written agreements occurring as a result of mediations conducted: the 1<sup>st</sup> circuit at 54%, the 2<sup>nd</sup> circuit at 70%, the 3<sup>rd</sup> circuit at 38% and the 14<sup>th</sup> circuit at 42%.*
- *Overall, 64 percent of mediations conducted did not result in a written agreement. There were five circuits with lower percentages than statewide for mediations conducted with no written agreement. The 1<sup>st</sup> circuit (46%), the 2<sup>nd</sup> circuit (30%), the 3<sup>rd</sup> circuit (54%), the 4<sup>th</sup> circuit (56%) and the 14<sup>th</sup> circuit (59%) all have percentages less than the statewide percentage of 64%. The 11<sup>th</sup> and 19<sup>th</sup> circuits both indicate 68% of mediations conducted concluded with no written agreement.*

### **Recommended Future Actions**

As can be seen from the statistics which could be collected, the Program is still too new and a large majority of the circuits did not initiate their respective programs until July 1, 2010, thereby not yielding any statistical data at this time. Although the attached statistical data provide some insight, these data cannot validly be used to evaluate this Program.

The Committee observes that this is an innovative and comprehensive program which attempts to alleviate the burden on the courts created by the current

mortgage foreclosure crisis. Any newly designed and comprehensive program cannot anticipate all nuances which may create barriers to the success of the Program. As with any new process, there will be a transition period during which unanticipated actions and events will occur. These occurrences, by necessity, should lead to revisions to the Program in order to further refine and create an environment for program success. As such, the Committee recommends continuing the Program for a sufficient amount of time to capture enough statistics to create "critical mass" in terms of statistical validity. The Committee would encourage the Court to give the Program time to demonstrate its overall success or failure.

The Committee also suggests to the Court that one of the key benefits of the Program is that the infrastructure is being developed statewide to promote pre-suit mediation. Section 23 of the MAO approved in AOSC09-54 acknowledges that pre-suit mediation is to be encouraged. The Committee advises the Court that Fannie Mae is in the process of implementing a pre-suit mediation program in all twenty circuits which follows in large part the Program model adopted by the Court. Fannie Mae recognizes that it is more beneficial to resolve cases pre-suit through mediation rather than after suit is filed.

On a final note, the Committee suggests that the court attempt to determine what impact the Program has on the overall workload of the trial courts. Answering this question will require a comparative analysis of multiple data sources. This determination would entail the analysis of data not captured solely by the PMs. The Committee suggests that the development of such an analysis be assigned to the Supreme Court Committee on Court Statistics and Workload.

Respectfully submitted, on behalf of the Florida Supreme Court Committee on Alternative Dispute Resolution Rules and Policy, on Dec 21, 2010.



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JUDGE WILLIAM D. PALMER, Chair  
Florida Supreme Court Committee on Alternative  
Dispute Resolution Rules and Policy  
Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, Florida 32114  
(386) 947-1502  
Florida Bar Number: 220361

## Attachment 1

### Foreclosure Mediation Participant Satisfaction Survey Procedures

Administrative Order No. AOSC09-54 requires that Program Managers must "establish procedures for participant evaluation of mediation program services, including satisfaction surveys." Each Program Manager shall utilize the following procedures and evaluation form to survey foreclosure mediation participation satisfaction with the mediation process.

The mediator should be instructed to hand out the Foreclosure Mediation Participant Survey at the beginning of mediation to all mediation participants and invite the participants to complete the form at the conclusion of mediation and drop the form in a box located in the waiting room or by the exit of the Program Manager's office. Mediators should explain that completion of the form is optional. Mediators should also explain that the survey is confidential and privileged to the extent that it can not be disclosed to the court or public in a fashion that compromises the confidentiality protections provided by statute or violates mediator ethical standards. Mediators should not collect the completed forms from the participants.

The Program Manager should provide the Chief Judge with quarterly reports concerning participant satisfaction surveys and keep the completed forms for a period of no less than six months. If the Program Manager is asked to provide survey statistics or survey forms to the Chief Judge for other evaluation or research purposes, the Program Manager must delete identifying information on the form such as the borrower's name or other case or party specific information before releasing any survey information.

**Foreclosure Mediation Participant Survey – Confidential**

I am the (check one):  Borrower  Borrower's Attorney  Plaintiff

Plaintiff's Attorney  Other (please specify) \_\_\_\_\_

1. Did you reach an agreement in the mediation?

Full agreement  Partial agreement  No agreement

2. How do you feel about the overall process of the mediation?

It was fair  It was unfair

If unfair, please provide details \_\_\_\_\_

\_\_\_\_\_

3. Would you say that the mediator:

Was fair and impartial  Favored you  Favored the other party

If the mediator was unfair or not impartial, please provide details \_\_\_\_\_

\_\_\_\_\_

4. Did you feel you had an opportunity to discuss your concerns in mediation?

Yes  No

If No, please provide details \_\_\_\_\_

\_\_\_\_\_

5. Overall were you satisfied with the mediation outcome?

Very satisfied  Satisfied  Neither satisfied nor dissatisfied

Dissatisfied  Very dissatisfied

Explain: \_\_\_\_\_

6. Would you recommend mediation for foreclosure cases?

Yes  No

7. Please use the reverse side of this page to make any additional comments.

# Attachment

2a

1                   **Residential Mortgage Foreclosure Managed Mediation**  
2                   **120 Day and 180 Day Status Reporting**

3  
4 This document provides guidance on procedures to be used when completing the Residential  
5 Mortgage Foreclosure Managed Mediation reporting form. For ease in understanding the report  
6 requirements of the form, this narrative is divided into three (3) major sections: Instructions,  
7 Definitions, and Audit Trails.  
8  
9

10 **INSTRUCTIONS**

11  
12 These instructions establish the reporting standards to be followed for residential foreclosure cases  
13 which are referred to the Residential Mortgage Foreclosure Managed Mediation Program ("RMFM  
14 Program") pursuant to Administrative Order No. AOSC10-57 ("Model Administrative Order" or  
15 MAO). The data from this report will be used to provide the Supreme Court of Florida with  
16 information pertaining to the number of cases statewide that are referred to managed mediation  
17 programs; the number of mediations with failures to appear; whether the cases were closed with a  
18 written agreement; and other relevant information. This report is a summary management report that  
19 provides information for which the program will be measured. In addition, this report represents all  
20 of the data that is required at this time by the supreme court. The supreme court may amend the  
21 reporting requirement at a later date as a need to capture additional information. The chief judge may  
22 require the Program Manager to supply additional data information in addition to 120 Day Status  
23 Report and the 180 Day Status Report, but such additional information shall not be included in the  
24 reports sent to the supreme court.  
25

26 The following are specific instructions and procedures to use when submitting a Residential  
27 Mortgage Foreclosure Managed Mediation Report:  
28

- 29       • Residential Mortgage Foreclosure Managed Mediation program managers are required to  
30 report monthly the status of cases at 120 days and 180 days that have been referred and are  
31 report eligible for the program. "Report eligible" means all of the following have been  
32 transmitted by plaintiff's counsel to the Program: 1) a complete Form A which indicates the  
33 case is eligible to participate in the program (homestead property/TILA loan), 2) facially  
34 complete contact information is received for all parties, 3) a case number assigned by the  
35 Clerk of Court for the case, and 4) full payment of all fees required.  
36  
37       • "Report eligible" refers to data which assists in assessing whether the program is an effective  
38 case management tool if the referral goes through the process in compliance with the MAO.  
39 Report eligible data will also help assess what are the roadblocks to the mediation process  
40 after the referral begins as initially compliant with the MAO.  
41  
42       • "REFARs" are defined as Report Eligible Form A Referrals.



## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 43 • “NCFARs” are defined as NonCompliant Form A Referrals received which are initially  
44 noncompliant with the MAO either because the required borrower contact information was  
45 not received from the plaintiff’s counsel, or Form A was not completed properly and there  
46 referral remains noncompliant during the 120 day or 180 day period after it is initially  
47 received.  
48
- 49 • Data systems designed to capture and report the 120 day and 180 day status of cases must  
50 have the capability of running two sets of data. One set of data for the REFARs and one set  
51 of data for the NCFARs.  
52
- 53 • The 120 Day and 180 Day Status Reports represents an analysis of a monthly cohort of  
54 REFARs. Do not begin tracking a referral as a REFAR until the calendar month in which the  
55 referral becomes report eligible, which may not be the calendar month the referral is initially  
56 received by the program.  
57
- 58 • In accordance with rule 1.090(a), Florida Rules of Civil Procedure, day number one of the  
59 120 Day Status Report and 180 Day Status Report begins one day after the case is determined  
60 eligible to be report eligible. In addition, if day number 120 (or day number 180) falls on a  
61 Saturday, Sunday, or legal holiday, then the end of the next day which is neither a Saturday,  
62 Sunday, or legal holiday is day number 120 (or day number 180).  
63

64 Example:  
65

<b>Date the Referral becomes Report Eligible</b>	<b>Date of 120 Day Status Evaluation</b>	<b>Date the 120 Day Status Report should be Submitted to the Chief Judge</b>	<b>Date of 180 Day Status Evaluation (if applicable)</b>	<b>Date the 180 Day Status Report should be Submitted to the Chief Judge (if applicable)</b>
on July 7, 2010	on November 4, 2010	on December 10, 2010	on January 3, 2011	on February 10, 2011
on July 16, 2010	on November 15, 2010	on December 10, 2010	on January 12, 2011	on February 10, 2011
on July 28, 2010	on November 29, 2010	on December 10, 2010	on January 24, 2011	on February 10, 2011

66  
67 To track the case, day number one begins one day after the referral becomes report  
68 eligible. For example, if a referral is report eligible on July 7, 2010, the 120 day status  
69 evaluation of the case should occur on November 4, 2010 and the 180 day status  
70 evaluation (if applicable) of the case should occur on January 3, 2011. Then, the 120  
71 Day Status Report should be submitted to the chief judge (or designee) for the July  
72 2010 cohort on December 10, 2010. If applicable, the 180 Day Status Report for the  
73 July 2010 cohort should be submitted on February 10, 2011.  
74

- 75 • The 120 Day Status Report and 180 Day Status Report must be submitted by the program  
76 manager on a monthly basis to the chief judge (or designee) in the circuit court in which they  
77 operate no later than the 10<sup>th</sup> day of each month.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 99
- The 120 Day Status Report and 180 Day Status Report must be provided to the chief judge in the format provided by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy.
  - Beginning January 1, 2011, each program manager must begin capturing and reporting the monthly 120 Day Status Report and the 180 Day Status Report. If a program has been in existence for more than six (6) months, the program manager must retroactively produce monthly reports from July 1, 2010 forward. Your program's first reports are due on February 10, 2011 even if you have no data and the reports contains only zero's.
  - The 120 Day Status Report and 180 Day Status Report must contain each REFAR within a specific month. For example, the status of REFARs from January 1 to January 31 must be reported in the same the month.
  - If there are no events to report, the program manager must submit a reports to the chief judge with zero events.
  - At this time, there is no follow up report after the 180 Day Status Report.
  - Data amendments can be made and will be accepted on the subsequent monthly report by overwriting the previous data which was submitted.

100

101 **DEFINITIONS – 120 Day Status Reporting**

102

103 **A. Listing of Totals**

104

105 **A1. Total Referrals Received For This Month**

106

- 107
- 108
- 109
- Report the total number of referrals received from plaintiff's counsel, regardless of whether the referral is report eligible as defined in A2.

110 **A2. Total REFARs Reported For This Month**

111

- 112
- 113
- 114
- 115
- 116
- 117
- 118
- 119
- 120
- Report the total number of Form A referrals received which become report eligible and reportable for calendar month the referral becomes report eligible. "Report eligible" means all of the following have been received by the Program from plaintiff's counsel to the Program: 1) a complete Form A which indicates the case is eligible to participate in the program (homestead property/TILA loan), 2) facially complete contact information is received for all parties, 3) a case number assigned by the Clerk of Court for the case, and 4) full payment of all fees required. Note: Do not begin tracking a referral as a REFAR until the calendar month in which the referral becomes report eligible, which may not be the calendar month the referral is initially received by the program.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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121 A3. Total NCFARs Reported For This Month

- 122
- 123 • Report the total number of Form A referrals received which are initially noncompliant with
- 124 the MAO either because the required borrower contact information was not received from
- 125 plaintiff's counsel, or Form A was not completed properly and the referral remains
- 126 noncompliant during the 120 day period after it is initially received. Include all noncompliant
- 127 referrals in which plaintiff's counsel has failed to identify which parties are borrowers.
- 128 Include all noncompliant referrals which remain noncompliant, regardless of whether an
- 129 enforcement proceeding was filed. Only include those referrals which did not become report
- 130 eligible as defined in A2 and the remains noncompliant during the 120 day period after it is
- 131 initially received. Note: If the referral is initially noncompliant as defined in A2, but becomes
- 132 compliant during the 120 day period after it is initially received, the progress of the referral
- 133 should be reported under section D (REFARs Remaining Open After 120 Days). If 120 days
- 134 after the referral is initially received the referral remains noncompliant but open, and the
- 135 referral subsequently becomes a REFAR, the progress of the referral will be reported in
- 136 subsequent status reports.

137

138 A4. REFARs: Total Borrowers Contacted

- 139
- 140 • Report the total number of REFARs where all listed borrowers were contacted. Report only
- 141 those REFARs where the Program Manager communicated with the borrower or the
- 142 borrower's attorney. If borrowers are married and contact is made with one spouse who
- 143 indicates both spouses want to participate in the program, there is no need for the Program
- 144 Manager to speak to the other spouse. If borrowers are married but separated or estranged, or
- 145 if one spouse contacted indicates he or she is unwilling to confirm the other spouse is willing
- 146 to participate in the program, the Program Manager must contact each spouse to determine if
- 147 they want to participate in the Program. If the borrowers are not married, one borrower
- 148 cannot speak for another borrower, and each non-married borrower or the borrower's attorney
- 149 must be contacted by the Program Manager.
- 150
- 151 • Include REFARs where all borrowers were contacted, regardless of whether each borrower
- 152 agreed or refused to participate in the program.
- 153
- 154 • DO NOT include REFARs where all borrowers have not been contacted.
- 155

156 A5. REFARs: Total Mediations Scheduled

- 157
- 158 • Report the total number of REFARs in which mediation sessions were scheduled and notice
- 159 of session date and time is sent to parties.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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160 A6. REFARs: Total Mediations Conducted

- 161
- 162 • Report the total number of REFARs in which a mediation session was conducted.
- 163 “Conducted” means a roll call was taken by the Program Manager and as a result of the roll
- 164 call, the Program Manager was not required to report to the court any nonappearance by a
- 165 required participant.
- 166
- 167 • Include mediation sessions that resulted in a partial written agreement, full written agreement,
- 168 no agreement, or adjournment.
- 169
- 170 • DO NOT include mediation sessions scheduled but not held.
- 171

172 A7. REFARs: Total Mediations With Written Agreement

- 173
- 174 • Report the total number of REFARs which resulted in a written agreement as a result of
- 175 mediation. Report only those REFARs where the mediation report indicates that a written
- 176 agreement partially or fully resolves the dispute. The agreement must be signed by the parties
- 177 or transcribed into the court record. A written memorandum which states an agreement but is
- 178 not signed by the parties or transcribed into the court record does not constitute a written
- 179 agreement for data collection.
- 180

181 A8. REFARs: Total Written Agreements Prior to Mediation Plus Total Mediations With Written

182 Agreement

- 183
- 184 • Report the total number of REFARs which resulted in a written agreement reached prior to
- 185 mediation plus total number of REFARs which resulted in a written agreement reached as a
- 186 result of mediation.
- 187

188

189 **B. REFARs: Program Manager Compliance with MAO Timelines**

190

191 B1. Borrower Nonparticipation Notice Filed Within 40 Days – Borrower No Contact

- 192
- 193 • Report the total number of REFARs where the Program Manager was unable to contact all
- 194 borrowers and borrower nonparticipation notice was filed within 40 days after the referral was
- 195 report eligible.
- 196

197 B2. Borrower Nonparticipation Notice Filed More Than 40 Days – Borrower No Contact

- 198
- 199 • Report the total number of REFARs where the Program Manager was unable to contact all
- 200 borrowers and borrower nonparticipation notice was filed more than 40 days after the referral
- 201 was report eligible.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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202 B3. Borrower Nonparticipation Notice Filed Within 40 Days – Borrower Refused Program

203

- 204 • Report the total number of REFARs where at least one borrower was contacted who refused  
205 to participate in the program. Report only those REFARs where the nonparticipation notice  
206 was filed within 40 days after the referral was report eligible.

207

208 B4. Borrower Nonparticipation Notice Filed More Than 40 Days – Borrower Refused Program

209

- 210 • Report the total number of REFARs where at least one borrower was contacted who refused  
211 to participate in the program. Report only those REFARs where the nonparticipation notice  
212 was filed more than 40 days after the referral was report eligible.

213

214 B5. Borrower Nonparticipation Notice Filed Within 40 Days – Borrower Does Not Attend  
215 Foreclosure Counseling

216

- 217 • Report the total number of REFARs in which at least one of the borrowers refused or failed to  
218 attend foreclosure counseling. A refusal may be given either by a borrower or a borrower's  
219 attorney. Report only those REFARs where the nonparticipation notice was filed within 40  
220 days after initial contact with all borrowers. If borrowers are married, only one spouse needs  
221 to actually participate in foreclosure counseling, and it is assumed the spouses are acting as a  
222 unit. If borrowers are married but separated or estranged, or if one spouse indicates the other  
223 spouse is unwilling to participate in foreclosure counseling, the Program Manager must  
224 contact each spouse to determine if they will confirm participation in foreclosure counseling.  
225 If the borrowers are not married, one borrower cannot speak for another borrower, and each  
226 non-married borrower must participate in foreclosure counseling. If any borrower indicates to  
227 the Program Manager that he or she does not want to participate or fails to participate in  
228 foreclosure counseling, a notice of nonparticipation must be filed.

229

230 B6. Borrower Nonparticipation Notice Filed More Than 40 Days – Borrower Does Not Attend  
231 Foreclosure Counseling

232

- 233 • Report the total number of REFARs in which at least one of the borrowers refused or failed to  
234 attend foreclosure counseling. A refusal may be given either by a borrower or a borrower's  
235 attorney. Report only those REFARs where the nonparticipation notice was filed more than  
236 40 days after initial contact with all borrowers. If borrowers are married, only one spouse  
237 needs to actually participate in foreclosure counseling, and it is assumed the spouses are  
238 acting as a unit. If borrowers are married but separated or estranged, or if one spouse  
239 indicates the other spouse is unwilling to participate in foreclosure counseling, the Program  
240 Manager must contact each spouse to determine if they will confirm participation in  
241 foreclosure counseling. If the borrowers are not married, one borrower cannot speak for  
242 another borrower, and each non-married borrower must participate in foreclosure counseling.  
243 If any borrower indicates to the Program Manager that he or she does not want to participate  
244 or fails to participate in foreclosure counseling, a notice of nonparticipation must be filed.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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245 B7. Borrower Nonparticipation Notice Filed Within 70 Days – Borrower Financial Info Not  
246 Provided

- 247
- 248 • Report the total number of REFARs where at least one of the borrowers refused to provide or  
249 did not provide the borrower financial information required by the MAO. A refusal may be  
250 given either by a borrower or a borrower’s attorney. Report only those REFARs where the  
251 nonparticipation notice was filed within 70 days after the referral is report eligible. If  
252 borrowers are married, only one spouse needs to actually submit the required borrower  
253 financial information, and it is assumed the spouses are acting as a unit. If borrowers are  
254 married but separated or estranged, or if one spouse indicates the other spouse is unwilling to  
255 participate in foreclosure counseling, the required borrower financial information must be  
256 obtained from each spouse individually. If the borrowers are not married, one borrower  
257 cannot speak for another borrower, and each non-married borrower must provide the required  
258 borrower financial information. If any borrower indicates to the Program Manager that he or  
259 she does not want to provide or fails to provide the required borrowers information, a notice  
260 of nonparticipation must be filed.

261

262 B8. Borrower Nonparticipation Notice Filed More Than 70 Days – Borrower Financial Info Not  
263 Provided

- 264
- 265 • Report the total number of REFARs where at least one of the borrowers refused to provide or  
266 did not provide the borrower financial information required by the MAO. A refusal may be  
267 given either by a borrower or a borrower’s attorney. Report only those REFARs where the  
268 nonparticipation notice was filed more than 70 days after the referral is report eligible. If  
269 borrowers are married, only one spouse needs to actually submit the required borrower  
270 financial information, and it is assumed the spouses are acting as a unit. If borrowers are  
271 married but separated or estranged, or if one spouse indicates the other spouse is unwilling to  
272 participate in foreclosure counseling, the required borrower financial information must be  
273 obtained from each spouse individually. If the borrowers are not married, one borrower  
274 cannot speak for another borrower, and each non-married borrower must provide the required  
275 borrower financial information. If any borrower indicates to the Program Manager that he or  
276 she does not want to provide or fails to provide the required borrowers information, a notice  
277 of nonparticipation must be filed.

278

279 B9. Mediator Report Filed and Served Within 10 Days After Mediation

- 280
- 281 • Report the total number of REFARs where a mediation report was filed and served to all  
282 parties. Report only those REFARs where the report was filed and served within 10 days  
283 after completion of the mediation session.

284

285 B10. Mediator Report Filed and Served More Than 10 Days After Mediation

286

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 287
- 288
- 289
- Report the total number of REFARs where a mediation report was filed and served to all parties. Report only those REFARs where the report was filed and served more than 10 days after completion of the mediation session.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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290 **C. REFARs: Status of Contacting Borrower**

- 291
- 292 C1. Borrowers Contacted Within 30 Days
- 293
- 294 • See above definition for A4.
- 295
- 296 • Report only those REFARs in which all borrowers were contacted within 30 days after the
- 297 referral was report eligible.
- 298
- 299 C2. Borrowers Contacted More Than 30 Days
- 300
- 301 • See above definition for A4.
- 302
- 303 • Report only those REFARs in which all borrowers were contacted more than 30 days after the
- 304 referral was report eligible.
- 305
- 306 C3. Borrowers Not Contacted: Attempt Unsuccessful
- 307
- 308 • Report the total number of REFARs where at least one borrower was not contacted after an
- 309 attempt to contact was made using contact information provided by plaintiff's counsel, and the
- 310 attempt was unsuccessful.
- 311
- 312 C4. Borrowers Not Contacted: Reasons Other Than C3
- 313
- 314 • Report the total number of REFARs where at least one borrower was not contacted for any
- 315 reason other than the reason defined in C3.
- 316
- 317

318 **D. REFARs: Remaining Open 120 Days After Referral Became Report Eligible** (Note: Report

319 the last event only.)

320

321 D1. Pending REFARs: No Mediation Scheduled Yet

322

- 323 • Report the total number of REFARs pending over 120 days after the referral becomes report
- 324 eligible but no mediation session has been scheduled.
- 325

326 D2. Pending REFARs: Mediation Scheduled Beyond 120 Days Due to Lender Only

327

- 328 • Report the total number of REFARs pending over 120 days after the referral becomes report
- 329 eligible in which a mediation session has been scheduled beyond 120 days after the referral
- 330 became report eligible due, and the reason of the delay is due to the request of the lender or
- 331 for reasons attributable only to the lender.



## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 332 D3. Pending REFARs: Mediation Scheduled Beyond 120 Days Due to Borrower Only  
333  
334 • Report the total number of REFARs pending over 120 days after the referral becomes report  
335 eligible in which a mediation session has been scheduled beyond 120 days after the referral  
336 became report eligible due, and the reason of the delay is due to the request of the borrower or  
337 for reasons attributable only to a borrower.  
338
- 339 D4. Pending REFARs: Mediation Schedule Beyond 120 Days Due to Both Borrower and Lender  
340  
341 • Report the total number of REFARs pending over 120 days after the referral becomes report  
342 eligible in which a mediation session has been scheduled beyond 120 days after the referral  
343 became report eligible, and the reason of the delay is due to the request of both a borrower  
344 and the lender or for reasons attributable to both a borrower and the lender.  
345
- 346 D5. Pending REFARs: Mediation Scheduled Beyond 120 Days Due to Program Manager  
347  
348 • Report the total number of REFARs pending over 120 days after the referral becomes report  
349 eligible in which a mediation session has been scheduled for any reason attributable only to  
350 the Program Manager.  
351
- 352 D6. Pending REFARs: MAO Enforcement Proceeding Pending  
353  
354 • Report the total number of REFARs pending over 120 days after the referral becomes report  
355 eligible in which scheduled mediation session has not been scheduled or has been postponed  
356 because there is a pending proceeding to enforce compliance with the MAO and the matter  
357 has not been ruled upon by the court or there was an enforcement proceeding which had not  
358 been resolved in time for mediation to begin within 120 days of when the referral became  
359 report eligible.  
360
- 361 D7. Mediation Adjourned by Mediator  
362  
363 • Report the total number of REFARs pending over 120 days after the referral became report  
364 eligible and is still pending because the mediator has adjourned the mediation and scheduled  
365 another session.  
366
- 367 D8. Subtotal  
368  
369 • Report the total number of events for D1 to D7.  
370  
371
- 372 **E. REFARs: Closed: Mediator Fee Imposed** (Note: Report the last event only.)  
373
- 374 E1. Failure to Appear: Borrower Only

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 375
- 376 • Report the total number of REFARs closed because one of the borrowers or the borrower's
- 377 attorney failed to appear for a scheduled mediation session.
- 378 E2. Failure to Appear: Lender Only
- 379
- 380 • Report the total number of REFARs closed because the plaintiff's representative or the
- 381 plaintiff's attorney failed to appear for a scheduled mediation session.
- 382
- 383 E3. Failure to Appear: Both Borrower and Lender
- 384
- 385 • Report the total number of REFARs closed because both the borrowers and the lender failed
- 386 to appear for a scheduled mediation session.
- 387
- 388 E4. Mediations Resulting in Written Agreement Partially Resolving Dispute
- 389
- 390 • Report the total number of REFARs closed where the mediation report indicates that a written
- 391 agreement partially resolving the dispute has been signed by all parties or transcribed into the
- 392 court record. A written agreement partially resolving the dispute means that some, but not all,
- 393 issues in dispute were resolved. Include written agreements in which the parties agree as to
- 394 the procedures they will follow to try to reach an agreement in the future. A written
- 395 memorandum which states an agreement but is not signed by the parties or transcribed into
- 396 the court record does not constitute a written agreement for data collection.
- 397
- 398 E5. Mediations Resulting in Written Agreement Fully Resolving Dispute
- 399
- 400 • Report the total number of REFARs closed where the mediation report indicates that a written
- 401 agreement fully resolving the dispute has been signed by all parties or transcribed into the
- 402 court record. A written agreement fully resolving the dispute means that all issues in the case
- 403 have been resolved. A written memorandum which states an agreement but is not signed by
- 404 the parties or transcribed into the court record does not constitute a written agreement for data
- 405 collection.
- 406
- 407 E6. Mediations Resulting in No Written Agreement
- 408
- 409 • Report the total number REFARs closed where the mediation report indicates that no written
- 410 agreement was reached by the parties.
- 411
- 412 E7. Subtotal
- 413
- 414 • Report the total number of events for E1 to E6.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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#### 415 **F. REFARs: Closed: Mediator Fee Not Imposed**

- 416
- 417 F1. Ineligible
- 418
- 419 • Report the total number of REFARs closed due to ineligibility. Report only those REFARs
- 420 which initially appeared to be report eligible but it was determined later that the case is not to
- 421 be eligible for the RMFM Program. "Ineligible" means the property was not homestead or the
- 422 loan was not subject to TILA regulations.
- 423
- 424 F2. Bankruptcy Filed
- 425
- 426 • Report the total number of REFARs closed where the Program Manager has been advised a
- 427 notice of bankruptcy has been filed in the court file prior to a mediation session occurring.
- 428 (There is no obligation on the part of the Program Manager to confirm whether a notice of
- 429 bankruptcy has been filed in the court file.)
- 430
- 431 F3. Case Dismissed by Court Prior to Mediation
- 432
- 433 • Report the total number of REFARs closed due to the case being dismissed by the court prior
- 434 to a mediation session occurring.
- 435
- 436 F4. Dismissed by Lender Prior to Mediation – No Agreement
- 437
- 438 • Report the total number of REFARs closed due to the lender dismissing the case prior to a
- 439 mediation session occurring and as a result, no agreement was reached.
- 440
- 441 F5. Borrower Nonparticipation: Borrowers Not Contacted: Attempt Unsuccessful
- 442
- 443 • Report the total number of REFARs closed where the attempt to contact at least one of the
- 444 borrowers was unsuccessful. This number should not only included the REFARs under B1
- 445 and B2, but also those REFARs in which the attempt to contact one of the borrowers was
- 446 unsuccessful and no notice of borrower nonparticipation was filed.
- 447
- 448 F6. Borrower Nonparticipation: Borrower Refused Program
- 449
- 450 • Report the total number of REFARs closed because one of the borrowers refused to
- 451 participate in the program prior to a mediation session occurring. This number should not
- 452 only included the REFARs under B3 and B4, but also those REFARs in which one of the
- 453 borrowers refused to participate in the program and no notice of borrower nonparticipation
- 454 was filed.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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455 F7. Borrower Nonparticipation: Borrower Failed to Meet With Foreclosure Counselor  
456

- 457 • Report the total number of REFARs closed because one of the borrowers refused to  
458 participate in foreclosure counseling or failed to attend foreclosure counseling prior to a  
459 mediation session occurring. This number should not only included the REFARs under B5  
460 and B6, but also those REFARs in which one of the borrowers refused to participate in  
461 foreclosure counseling or failed to attend foreclosure counseling and no notice of borrower  
462 nonparticipation was filed.

463  
464 F8. Borrower Nonparticipation: Borrower Failed to Provide Financial Info  
465

- 466 • Report the total number of REFARs closed because one of the borrowers refused to provide  
467 the required borrower financial information prior to a mediation session occurring. This  
468 number should not only included the REFARs under B7 and B8, but also those REFARs in  
469 which one of the borrowers refused to provide the required borrower financial information  
470 and no notice of borrower nonparticipation was filed.

471  
472 F9. Borrowers Not Contacted: Reasons Other Than C3  
473

- 474 • Report the total number of REFARs closed where at least one borrower was not contacted and  
475 the reason is something other than an unsuccessful attempt to contact the borrower (C3). This  
476 number should not only included the REFARs under C3, but also those REFARs in which a  
477 borrower was not contacted and no notice of borrower nonparticipation was filed.

478  
479 F10. Written Agreement Prior to Mediation  
480

- 481 • Report the total number of REFARs closed prior to mediation occurring in which the parties  
482 entered into a written agreement by settlement discussions without the services of a mediator.  
483

484 F11. Subtotal  
485

- 486 • Report the total number of events for F1 to F10.  
487  
488

489 **G. REFARs: Reconciliation of Subtotals**  
490

491 G1. Subtotal: REFARs Remaining Open 120 Days After Referral Became Case Eligible  
492

- 493 • Report the value provided in D8.  
494

495 G2. Subtotal: REFARs Closed: Mediator Fee Imposed  
496

- 497 • Report the value provided in E8.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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498 G3. Subtotal: REFARs Closed: Mediator Fee Not Imposed

499

- 500 • Report the value provided in F11.

501

502 G4. Reconciled Total

503

- 504 • Report the total number of events for G1 to G3.

505

506

#### 507 **H. REFARs: Results By Percentage-(Total REFARs Reported For This Month)**

508

509 H1. Mediations Conducted Percentage

510

- 511 • Report the percentage of mediations conducted in relation to total REFARs Reported For This  
512 Month. This value is the result of dividing REFARs: Total Mediations Conducted (A6) by  
513 Total REFARs Reported For This Month (A2).

514

515 H2. Mediations With Written Agreement Percentage

516

- 517 • Report the percentage of mediations conducted which resulted in a written agreement partially  
518 or fully resolving the dispute in relation to total REFARs Reported For This Month. This  
519 value is the result of dividing REFARs: Total Mediations With Written Agreement (A7) by  
520 Total REFARs Reported For This Month (A2).

521

522 H3. Written Agreements Prior to Mediation Plus Mediations With Written Agreement Percentage

523

- 524 • Report the percentage of REFARs settled prior to mediation plus mediations resulting in a  
525 written agreement which partially or fully resolves the dispute in relation to total REFARs  
526 Reported For This Month. This value is the result of dividing REFARs: Total Written  
527 Agreements Prior to Mediation Plus Total Mediations With Written Agreement (A8) by Total  
528 REFARs Reported For This Month (A2).

529

530

#### 531 **I. REFARs: Results By Percentage-(Borrowers Contacted)**

532

533 I1. Mediations Conducted Percentage

534

- 535 • Report the percentage of mediations conducted in relation to total borrowers contacted. This  
536 value is the result of dividing REFARs: Total Mediations Conducted (A6) by REFARs: Total  
537 Borrowers Contacted (A4).

538

539 I2. Mediations With Written Agreement Percentage

540

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 541 • Report the percentage of mediations resulting in written agreements in relation to total  
542 borrowers contacted. This value is the result of dividing REFARs: Total Mediations With  
543 Written Agreement (A7) by REFARs: Total Borrowers Contacted (A4).

544 I3. Written Agreement Prior to Mediation Plus Mediation With Written Agreement Percentage

545

- 546 • Report the percentage of REFARs settled prior to mediation plus mediations resulting in a  
547 partial or full written agreement in relation to total borrowers contacted. This value is the  
548 result of dividing REFARs: Total Written Agreements Prior to Mediation Plus Total  
549 Mediations With Written Agreement (A8) by REFARs: Total Borrowers Contacted (A4).

550

551

552 **J. REFARs: Results By Percentage (Key Determinants Identified by Supreme Court)**

553

554 J1. Borrower Contacted Percentage

555

- 556 • Report the percentage of REFARs in which all borrowers were contacted. This value is the  
557 result of dividing REFARs: Total Borrowers Contacted (A4) by Total REFARs Reported For  
558 This Month (A2).

559

560 J2. Mediations: Lender Failure to Appear Percentage

561

- 562 • Report the percentage of REFARs in which the plaintiff's representative or plaintiff's attorney  
563 failed to appear for a scheduled mediation. This value is the result of dividing Failure to  
564 Appear: Lender Only (E2) by REFARs: Total Mediations Scheduled (A5).

565

566 J3. Mediations: Borrower Failure to Appear Percentage

567

- 568 • Report the percentage of REFARs in which one of the borrowers or the borrower's attorney  
569 failed to appear for a scheduled mediation. This value is the result of dividing Failure to  
570 Appear: Borrower Only (E1) by REFARs: Total Mediations Scheduled (A5).

571

572 J4. Mediations: Both Borrower and Lender Failure to Appear Percentage

573

- 574 • Report the percentage of REFARs in which the failure to appear for a scheduled mediation is  
575 attributable to both the borrower and the lender. This value is the result of dividing Failure to  
576 Appear: Both Borrower and Lender (E3) by REFARs: Total Mediations Scheduled (A5).

577

578 J5. Mediations With Written Agreement Percentage

579

- 580 • Report the percentage of REFARs in which there is a written agreement after mediation  
581 which partially or fully resolves the dispute. This value is the result of dividing REFARs:  
582 Total Mediations With Written Agreement (A7) by REFARs: Total Mediations Conducted  
583 (A6).

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 584  
585 J6. Mediations Resulting in No Agreement Percentage  
586  
587     • Report the percentage of REFARs which result no written agreement after mediation. This  
588 value is the result of dividing Mediations Resulting in No Written Agreement (E6) by  
589 REFARs: Total Mediations Conducted (A6).
- 590 **DEFINITIONS – 180 Day Status Reporting**  
591
- 592 **A. REFARs Remaining Open More Than 180 Days**  
593
- 594 A1. Total REFARs Remaining Open More Than 180 Days  
595  
596     • Report the total number of REFARs reported on a previous 120 Day Status Report which  
597 remains open more than 180 days after the referral became report eligible.  
598
- 599 A2. Total NCFARs Which Became REFARs After 120 Day Status Report  
600  
601     • Report the total number of NCFARs reported on a previous 120 Day Status Report which  
602 became report eligible after the 120 Day Status Report. Note: If the referral is initially  
603 noncompliant as defined in A2 of the instructions for the 120 Day Status Report, but becomes  
604 compliant during the 180 day period after it is initially received, the progress of the referral  
605 should be reported under section A4-A10 or section B below, as appropriate.  
606
- 607 A3. Total NCFARs Reported For This Month  
608  
609     • Report the total number of Form A referrals received which were reported on the 120 Day  
610 Status Report as noncompliant with the MAO either because the required borrower contact  
611 information was not received from plaintiff's counsel, or Form A was not completed properly  
612 and the referral remains noncompliant as of the ending date for the 180 Day Status Report.  
613 Include all noncompliant referrals in which plaintiff's counsel has failed to identify which  
614 parties are borrowers. Include all noncompliant referrals regardless of whether an  
615 enforcement proceeding was filed. Only include those referrals which did not become report  
616 eligible as defined in A2 of the instructions for the 120 Day Status Report and the remains  
617 noncompliant.  
618
- 619 A4. Pending REFARs Remaining Open More Than 180 Days: No Mediation Scheduled Yet  
620  
621     • Report the total number of REFARs reported on a previous 120 Day Status Report which  
622 remains open more than 180 days and which no mediation has been scheduled yet.  
623
- 624 A5. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120  
625 Days Due to Lender Only  
626

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 627 • Report only those REFARs reported on a previous 120 Day Status Report which remain open  
628 more than 180 days where mediation has been scheduled beyond 120 days after the referral  
629 was report eligible due the request of the lender or for reasons attributable only to the lender.



## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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630 A6. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120  
631 Days Due to Borrower Only  
632

- 633 • Report only those REFARs reported on a previous 120 Day Status Report which remain open  
634 more than 180 days where mediation has been scheduled beyond 120 days after the referral  
635 was report eligible due to the request of the borrower or for reasons attributable only to the  
636 borrower.

637  
638 A7. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120  
639 Days Due to Both Borrower and Lender  
640

- 641 • Report only those REFARs reported on a previous 120 Day Status Report which remain open  
642 more than 180 days where mediation has been scheduled beyond 120 days after the referral  
643 was report eligible due to the request of both the borrowers and the lender or for reasons  
644 attributable to both the borrowers and the lender.

645  
646 A8. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120  
647 Days Due to Program Manager  
648

- 649 • Report only those REFARs reported on a previous 120 Day Status Report which remain open  
650 more than 180 days where mediation has been scheduled beyond 120 days after the referral  
651 was report eligible due to the Program Manager for whatever reason.

652  
653 A9. Pending REFARs Remaining Open More Than 180 Days: MAO Enforcement Proceeding  
654 Pending  
655

- 656 • Report only those REFARs reported on a previous 120 Day Status Report which remain  
657 open more than 180 days where mediation has been scheduled beyond 120 days after the  
658 referral was report eligible because there is a pending proceeding to enforce compliance  
659 with the MAO and the matter has not been ruled upon by the court or there was an  
660 enforcement proceeding which had not been resolved in time for mediation to begin  
661 within 120 days of when the referral was report eligible.

662  
663 A10. Pending REFARs Remaining Open More Than 180 Days: Mediations Adjourned By Mediator  
664  
665

- 665 • Report only those REFARs reported on a previous 120 Day Status Report which remain open  
666 more than 180 days where the mediator the mediator has adjourned the mediation and  
667 scheduled another session.

### 668 **B. REFARs Closed Between 120 and 180 Days: Mediator Fee Imposed**

670

671 B1. Failure to Appear: Borrower Only  
672

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 673       • Report the total number of REFARs reported on a previous 120 Day Status Report which are  
674       closed between 120 and 180 days because one of the borrowers or the borrower's attorney  
675       failed to appear for a scheduled mediation session.
- 676   B2. Failure to Appear: Lender Only  
677
- 678       • Report the total number of REFARs reported on a previous 120 Day Status Report which are  
679       closed between 120 and 180 days because the plaintiff's representative or the plaintiff's  
680       attorney failed to appear for a scheduled mediation session.
- 681
- 682   B3. Failure to Appear: Both Borrower and Lender  
683
- 684       • Report the total number of REFARs reported on a previous 120 Day Status Report which are  
685       closed between 120 and 180 days because both the borrowers and the lender failed to appear  
686       at a scheduled mediation session.
- 687
- 688   B4. Mediations Resulting in Written Agreement Partially Resolving Dispute  
689
- 690       • Report the total number of REFARs reported on a previous 120 Day Status Report which are  
691       closed between 120 and 180 days where the mediation report indicates that a written  
692       agreement partially resolving the dispute has been signed by all parties or transcribed into the  
693       into the court record. A written agreement partially resolving the dispute means that some,  
694       but not all, issues in dispute were resolved. Include written agreements in which the parties  
695       agree as to the procedures they will follow to try to reach an agreement in the future. A  
696       written memorandum which states an agreement but is not signed by the parties or transcribed  
697       into the court report does not constitute a written agreement for data collection.
- 698
- 699   B5. Mediations Resulting in Written Agreement Fully Resolving Dispute  
700
- 701       • Report the total number of REFARs reported on a previous 120 Day Status Report which are  
702       closed between 120 and 180 days where the mediation report indicates that a written  
703       agreement fully resolving the dispute has been signed by all parties or transcribed into the  
704       court record. A written agreement fully resolving the dispute means that all issues in the case  
705       have been resolved. A written memorandum which states an agreement but is not signed by  
706       the parties or transcribed into the court record does not constitute a written agreement for data  
707       collection.
- 708
- 709   B6. Mediations Resulting in No Written Agreement  
710
- 711       • Report the total number REFARs reported on a previous 120 Day Status Report which are  
712       closed between 120 and 180 days where the mediation report indicates that no written  
713       agreement was reached by the parties.
- 714
- 715   B7. Subtotal

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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716

717

- Report the total number of events for B1 to B6.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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718 **C. REFARs Closed Between 120 and 180 Days: Mediator Fee Not Imposed**

- 719
- 720 C1. Bankruptcy Filed
- 721
- 722 • Report the total number of REFARs reported on a previous 120 Day Status Report which are
- 723 closed between 120 and 180 days where the Program Manager has been advised a notice of
- 724 bankruptcy has been filed in the court file prior to a mediation session occurring. (There is no
- 725 obligation on the part of the Program Manager to confirm whether a notice of bankruptcy has
- 726 been filed in the court file.)
- 727

728 C2. Dismissed by Court Prior to Mediation

- 729
- 730 • Report the total number of REFARs reported on a previous 120 Day Status Report which are
- 731 closed between 120 and 180 days due to the case being dismissed by the court prior to a
- 732 mediation session occurring.
- 733

734 C3. Dismissed Lender Prior to Mediation: No Agreement

- 735
- 736 • Report the total number of REFARs reported on a previous 120 Day Status Report which are
- 737 closed between 120 and 180 days due to the lender dismissing the case prior to a mediation
- 738 session occurring.
- 739

740 C4. Closed for Other Reasons With No Mediation Session

- 741
- 742 • Report the total number of REFARs reported on a previous 120 Day Status Report which are
- 743 closed between 120 and 180 days without a mediation session and for other reasons not
- 744 identified in C1 to C3 above.
- 745

746 C5. Written Agreement Prior to Mediation

- 747
- 748 • Report the total number of REFARs reported on a previous 120 Day Status Report which are
- 749 closed between 120 and 180 days and prior to a mediation occurring in which the parties
- 750 entered into a written agreement by settlement discussions without the services of a mediator.
- 751

752 C6. Subtotal

- 753
- 754 • Report the total number of events for C.1 to C.5.
- 755

756 **D. Reconciliation of Subtotals**

757

758 D1. Beginning Total: REFARs Remaining Open After 120 Days

- 759
- 760 • Report the value provided in D8 of the 120 Day Status Report.

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 761 D2. Less Subtotal: REFARs Closed Between 120 and 180 Days: Mediator Fee Imposed  
762  
763     • Report the value provided in B8.  
764  
765 D3. Less Subtotal: REFARs Closed Between 120 and 180 Days: Mediator Fee Not Imposed  
766  
767     • Report the value provided in C6.  
768  
769 D4. Reconciled Total  
770  
771     • Report the total number of events for D1 to D3  
772  
773

### AUDIT TRAILS

774  
775  
776 All programs are required to maintain an audit trail of each REFAR and NCFAR within the  
777 Residential Mortgage Foreclosure Managed Mediation program. The audit trails must be made  
778 available to the chief judge upon request. Audit trails link each activity reported on the monthly 120  
779 Day Status Report and 180 Day Status Report to specific case numbers and should validate whether  
780 the data was accurately reported. The audit trail information may be in any form (i.e., printouts,  
781 worksheets) and may include the use of codes (a code sheet must be provided for data verification if  
782 codes are used). Regardless of the format developed, the following information must be retained for  
783 each REFAR:  
784

- 785     • Date referral received;
- 786     • Date referral became report eligible;
- 787     • County of referral;
- 788     • Uniform Case number;
- 789     • Date all borrowers contacted;
- 790     • Reason all borrower were not contacted (unable to contact all borrowers or other);
- 791     • Date borrower nonparticipation notice filed;
- 792     • Reason borrower nonparticipation notice filed (unable to contact all borrowers, borrower(s)  
793 contacted and refused to participate in program, borrower(s) refused or does not attend  
794 foreclosure counseling; or borrower(s) refused or did not provide required financial  
795 information);
- 796     • Date mediation session scheduled;
- 797     • Reason mediation session not scheduled after REFAR occurred more than 120 days  
798 (mediation session not scheduled due to lender only, mediation session not scheduled due to  
799 borrower only, mediation session not scheduled due to both borrower and lender; mediation  
800 session not scheduled due to Program Manager, mediation session not scheduled due to  
801 pending MAO enforcement proceeding, or mediation session not scheduled due to  
802 adjournment by mediator);

## Attachment 2a

### Residential Mortgage Foreclosure Managed Mediation Reporting

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- 803 • Date mediations session conducted;
- 804 • Date mediator report filed;
- 805 • Date the service of the mediator report to all parties was completed;
- 806 • Date REFAR closed;
- 807 • Reason REFAR closed with fee imposed (written agreement prior to mediation, written
- 808 agreement partially resolving dispute as a result of mediation, written agreement fully
- 809 resolving dispute as a result of mediation, borrower failure to appear, lender failure to appear,
- 810 both borrower and lender failed to appeal, or no written agreement);
- 811 • Reason REFAR closed with no fee imposed (written agreement prior to mediation, ineligible,
- 812 bankruptcy filed, dismissed by court prior to mediation, dismissed by lender prior to
- 813 mediation, attempt to contact borrower unsuccessful, borrower refused program, borrower
- 814 failed to meet with foreclosure counselor, borrower failed to provide financial information, or
- 815 other );
- 816 • Age of case.

817

818 Regardless of the format developed, the following information must be retained for each NCFAR:

819

- 820 • Date referral received;
- 821 • Date referral became report eligible;
- 822 • Number of days between date referral received and date referral became report eligible;
- 823 • County of referral; and
- 824 • Uniform Case number.

# Attachment

2b

## Attachment 2b

<b>RMFM Program 120 Day Status Report</b>	[Mo/Yr]	[Mo/Yr]	[Mo/Yr]	[Mo/Yr]	[Mo/Yr]	[Mo/Yr]	6 Mo.
“REFARs”: Report Eligible Form A Referrals	Run	Run	Run	Run	Run	Run	Total
“NCFARs”: Noncompliant Form A Referrals	[Date]	[Date]	[Date]	[Date]	[Date]	[Date]	
<b>A. LISTING OF TOTALS</b>							
A1. Total Referrals Received For This Month							
A2. Total REFARs Reported For This Month							
A3. Total NCFARs Reported For This Month							
A4. REFARs: Total Borrowers Contacted							
A5. REFARs: Total Mediations Scheduled							
A6. REFARs: Total Mediations Conducted							
A7. REFARs: Total Mediations With Written Agreement (Mediations Resulting in Partial Written Agreement plus Mediations Resulting in Full Written Agreement)							
A8. REFARs: Total Written Agreements Prior to Mediation Plus Total Mediations With Written Agreement							
<b>B. REFARs: Program Manager Compliance With MAO Timelines</b>							
B1. Borrower Nonparticipation Notice Filed Within 40 Days-Borrower No Contact (notice filed within 40 Days after REFAR is report eligible)							
B2. Borrower Nonparticipation Notice Filed More Than 40 Days-Borrower No Contact (notice filed more than 40 days after REFAR is report eligible)							
B3. Borrower Nonparticipation Notice Filed Within 40 Days-Borrower Refused Program (notice filed within 40 days after REFAR is report eligible)							
B4. Borrower Nonparticipation Notice Filed More Than 40 Days-Borrower Refused Program (notice filed more than 40 days after REFAR is report eligible)							
B5. Borrower Nonparticipation Notice Filed Within 40 Days-Borrower Does Not Attend Foreclosure Counseling (notice filed within 40 days after initial contact with Borrower)							
B6. Borrower Nonparticipation Notice Filed More Than 40 Days-Borrower Does Not Attend Foreclosure Counseling (notice filed more than 40 days after initial contact with Borrower)							
B7. Borrower Nonparticipation Notice Filed Within 70 Days-Borrower Financial Info Not Provided (notice filed within 70 days after REFAR becomes data eligible)							
B8. Borrower Nonparticipation Notice Filed More Than 70 Days-Borrower Financial Info Not Provided (notice filed more than 70 days after REFAR)							



## Attachment 2b

becomes report eligible)							
<b>B9. Mediator Report Filed and Served Within 10 Days After Mediation</b>							
<b>B10. Mediator Report Filed and Served More Than 10 Days After Mediation</b>							
<b>C. REFARs: Status of Contacting Borrower</b>							
<b>C1. Borrowers Contacted Within 30 days (after REFAR becomes report eligible)</b>							
<b>C2. Borrowers Contacted More Than 30 days (after REFAR becomes data eligible)</b>							
<b>C3. Borrowers Not Contacted: Attempt Unsuccessful</b>							
<b>C4. Borrowers Not Contacted: Reasons Other Than C3</b>							
<b>D. REFARs: Remaining Open 120 Days After Referral Became Report Eligible</b>							
<b>D1. Pending REFAR: No Mediation Scheduled Yet</b>							
<b>D2. Pending REFAR: Mediation Scheduled Beyond 120 Days Due to Lender Only</b>							
<b>D3. Pending REFAR: Mediation Scheduled Beyond 120 Days Due to Borrower Only</b>							
<b>D4. Pending REFAR: Mediation Scheduled Beyond 120 Days Due to Both Borrower and Lender</b>							
<b>D5. Pending REFAR: Mediation Scheduled Beyond 120 Days Due to Program Manager</b>							
<b>D6. Pending REFAR: MAO Enforcement Proceeding Pending</b>							
<b>D7. Mediations Adjourned by Mediator</b>							
<b>D8. Subtotal</b>							
<b>E. REFARs: Closed: Mediator Fee Imposed</b>							
<b>E1. Failure to Appear: Borrower Only</b>							
<b>E2. Failure to Appear: Lender Only</b>							
<b>E3. Failure to Appear: Both Borrower and Lender</b>							
<b>E4. Mediations Resulting in Written Agreement Partially Resolving Dispute</b>							
<b>E5. Mediations Resulting in Written Agreement Fully Resolving Dispute</b>							
<b>E6. Mediations Resulting in No Written Agreement</b>							
<b>E7. Subtotal</b>							

**Attachment 2b**

<b>F. REFARs: Closed: Mediator Fee Not Imposed</b>							
F1. Ineligible (FARs received later determined to be ineligible for the program)							
F2. Bankruptcy Filed							
F3. Dismissed by Court Prior to Mediation							
F4. Dismissed by Lender Prior to Mediation - No Agreement							
F5. Borrower Nonparticipation: Borrowers Not Contacted: Attempt Unsuccessful							
F6. Borrower Nonparticipation: Borrower Refused Program							
F7. Borrower Nonparticipation: Borrower Failed to Meet With Foreclosure Counselor							
F8. Borrower Nonparticipation: Borrower Failed to Provide Financial Info							
F9. Borrowers Not Contacted: Reasons Other Than C3							
F10. Written Agreement Prior to Mediation							
F11. Subtotal							
<b>G. REFARs: Reconciliation of Subtotals</b>							
G1. Subtotal: REFARs Remaining Open 120 Days After Referral Became Case Eligible							
G2. Subtotal: REFARs Closed: Mediator Fee Imposed							
G3. Subtotal: REFARs Closed: Mediator Fee Not Imposed							
G4. Reconciled Total							
<b>H. REFARs: Results by Percentage (Total REFARs Reported For This Month)</b>							
H1. Mediations Conducted Percentage (Total Mediations Conducted divided by Total REFARs Reported For This Month)	%	%	%	%	%	%	5
H2. Mediations With Written Agreement Percentage (Total Mediations With Written Agreements divided by Total REFARs Reported For This Month)	%	%	%	%	%	%	%
H3. Written Agreement Prior to Mediation Plus Mediations With Written Agreement Percentage (Total Written Agreement Prior to Mediation Plus Total Mediations With Written Agreement divided by Total REFARs Reported For This Month)	%	%	%	%	%	%	%

## Attachment 2b

<b>I. REFARs: Results by Percentage (Borrower Contacted)</b>							
<b>I1. Mediations Conducted Percentage</b> (Total Mediations Conducted divided by Total Borrower Contacted)	%	%	%	%	%	%	%
<b>I2. Mediations With Written Agreement Percentage</b> (Total Mediations With Written Agreements divided by Total Borrower Contacted)	%	%	%	%	%	%	%
<b>I3. Written Agreement Prior to Mediation Plus Mediations With Written Agreement Percentage</b> (Total Written Agreement Prior to Mediation Plus Mediations With Written Agreement divided by Total Borrower Contacted)	%	%	%	%	%	%	%
<b>J. REFARs: Results by Percentage (Key Determinants Identified by Supreme Court)</b>							
<b>J1. Borrower Contacted Percentage</b> (Total Borrower Contacted divided by Total REFARs Reported For This Month)	%	%	%	%	%	%	%
<b>J2. Mediations : Lender Failure to Appear Percentage</b> (Failure to Appear: Lender Only divided by Total Mediations Scheduled)	%	%	%	%	%	%	%
<b>J3. Mediations : Borrower Failure to Appear Percentage</b> (Failure to Appear: Borrower Only divided by Total Mediations Scheduled)	%	%	%	%	%	%	%
<b>J4. Mediations : Both Borrower and Lender Failure to Appear Percentage</b> (Failure to Appear: Both Borrower and Lender divided by Total Mediations Scheduled)	%	%	%	%	%	%	%
<b>J5. Mediations With Written Agreement Percentage</b> (Total Mediations With Written Agreement divided by Total Mediations Conducted)	%	%	%	%	%	%	%
<b>J6. Mediations Resulting in No Agreement Percentage</b> (Mediations Resulting in No Agreement divided by Total Mediations Conducted)	%	%	%	%	%	%	%

# Attachment

2c

**Attachment 2c**

<b>RMFM Program 180 Day Status Report</b>	[Mo/Yr] Run [Date]	[Mo/Yr] Run [Date]	[Mo/Yr] Run [Date]	[Mo/Yr] Run [Date]	[Mo/Yr] Run [Date]	[Mo/Yr] Run [Date]	6 Mo. Total
<b>"REFARs": Report Eligible Form A Referrals</b>							
<b>"NCFARs": Noncompliant Form A Referrals</b>							
<b>A. REFARs Remaining Open More Than 180 Days</b>							
A1. Total REFARs Remaining Open More Than 180 Days							
A2. Total NCFARs Which Became REFARs After 120 Day Status Report							
A3. Total NCFARs Reported For This Month							
A4. Pending REFARs Remaining Open More Than 180 Days: No Mediation Scheduled Yet							
A5. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120 Days Due to Lender Only							
A6. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120 Days Due to Borrower Only							
A7. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120 Days Due to Both Borrower and Lender							
A8. Pending REFARs Remaining Open More Than 180 Days: Mediation Scheduled Beyond 120 Days Due to Program Manager							
A9. Pending REFARs Remaining Open More Than 180 Days: MAO Enforcement Proceeding Pending							
A10. Pending REFARs Remaining Open More Than 180 Days: Mediations Adjourned by Mediator							
<b>B. REFARs Closed Between 120-180 Days: Mediator Fee Imposed</b>							
B1. Failure to Appear: Borrower Only							
B2. Failure to Appear: Lender Only							
B3. Failure to Appear: Both Borrower and Lender							
B4. Mediations Resulting in Written Agreement Partially Resolving Dispute							
B5. Mediations Resulting in Written Agreement Fully Resolving Dispute							
B6. Mediations Resulting in No Written Agreement							
B7. Subtotal							

**Attachment 2c**

<b>C. REFARs Closed Between 120-180 Days: Mediator Fee Not Imposed</b>							
<b>C1. Bankruptcy Filed</b>							
<b>C2. Dismissed by Court Prior to Mediation</b>							
<b>C3. Dismissed by Lender Prior to Mediation: No Agreement</b>							
<b>C4. Closed For Other Reasons With No Mediation Session</b>							
<b>C5. Written Agreement Prior to Mediation</b>							
<b>C6. Subtotal</b>							
<b>D. Reconciliation of Subtotals</b>							
<b>D1. Beginning Total: REFARs Remaining Open 120 Days After Referral Became Report Eligible(Subtotal from 120 Day Status Report)</b>							
<b>D2. Less Subtotal: REFARs Closed Between 120-180 Days: Mediator Fee Imposed</b>							
<b>D3. Less Subtotal: REFARs Closed Between 120-180 Days: Mediator Fee Not Imposed</b>							
<b>D4. Reconciled Total</b>							

# Attachment

3a

**Residential Mortgage Foreclosure Mediation**  
**Key Determinant 120 Day Status Report as of November 2010 - Number of Events**  
**State Total by Month and Type of Event, Based on Referrals from March 2010 to June 2010**

<b>Type of Event</b>	<b>March 2010</b> (Four Circuits Participating)	<b>April 2010</b> (Six Circuits Participating)	<b>May 2010</b> (Six Circuits Participating)	<b>June 2010</b> (Seven Circuits Participating)	<b>March to June 2010 Total</b>
Total Form A Referrals Received for the Month- Case Eligible	3,196	3,574	3,384	3,263	<b>13,417</b>
Total Borrowers Contacted	1,575	1,550	1,395	1,399	<b>5,919</b>
Total Mediations Scheduled	872	936	886	647	<b>3,341</b>
Total Mediations Conducted	535	592	581	542	<b>2,250</b>
Total Form A Referrals Closed with Failure to Appear-Borrower Only	39	49	34	26	<b>148</b>
Total Form A Referrals Closed with Failure to Appear-Lender Only	11	27	14	17	<b>69</b>
Total Form A Referrals Closed with Failure to Appear-Both Borrower and Lender	0	0	0	1	<b>1</b>
Total Form A Referrals Closed with Written Agreements	202	201	183	182	<b>768</b>
Total Form A Referrals Closed without Written Agreements	329	365	388	357	<b>1,439</b>
Total Form A Referrals Pending After 120 Days	227	364	329	389	<b>1,309</b>

## Notes:

1. Mediation programs which began on or after July 1, 2010 are not included. This includes programs in circuits 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, and 20.
2. March 2010 includes circuits 1, 4, 11, and 19. April 2010 to June 2010 includes circuits 1, 2, 3, 4, 11, 14, and 19.



# Attachment

3b

**Residential Mortgage Foreclosure Mediation**  
**Key Determinant 120 Day Status Report as of November 2010 - Percentages**  
**State Total by Month, Based on Referrals from March 2010 to June 2010**

<b>Key Determinant</b>	<b>March 2010 (Four Circuits Participating)</b>	<b>April 2010 (Six Circuits Participating)</b>	<b>May 2010 (Six Circuits Participating)</b>	<b>June 2010 (Seven Circuits Participating)</b>	<b>March to June 2010 Total</b>
The percentage of cases referred to the program that result in the program manager successfully contacting borrowers.	49.3%	43.4%	41.2%	42.9%	<b>44.1%</b>
The percentage of scheduled mediations failing to go forward because plaintiff's representative did not appear.	1.3%	2.9%	1.6%	2.6%	<b>2.1%</b>
The percentage of scheduled mediations failing to go forward because the borrower did not appear.	4.5%	5.2%	3.8%	4.0%	<b>4.4%</b>
The percentage of scheduled mediations failing to go forward because the borrower and lender did not appear.	0.0%	0.0%	0.0%	0.2%	<b>0.0%</b>
The percentage of mediations conducted resulting in a written agreement.	37.8%	34.0%	31.5%	33.6%	<b>34.1%</b>
The percentage of mediations conducted that did not result in a written agreement.	61.5%	61.7%	66.8%	65.9%	<b>64.0%</b>

## Notes:

1. Mediation programs which began on or after July 1, 2010 are not included. This includes programs in circuits 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, and 20.
2. March 2010 includes circuits 1, 4, 11, and 19. April 2010 to June 2010 includes circuits 1, 2, 3, 4, 11, 14, and 19.

# Attachment

3c

**Residential Mortgage Foreclosure Mediation**  
**Key Determinant 120 Day Status Report as of November 2010 - Number of Events**  
**By Circuit, Based on Case Eligible Referrals from March 2010 through June 2010**

Circuit	Total Form A Referrals Received for the Month-Case Eligible	Total Borrowers Contacted	Total Mediations Scheduled	Total Mediations Conducted	Referrals Closed with Failure to Appear-Borrower Only	Total Form A Referrals Closed with Failure to Appear-Lender Only	Referrals Closed with Failure to Appear-Both Borrower and Lender	Total Form A Referrals Closed with Written Agreements	Total Form A Referrals Closed without Written Agreements	Total Form A Referrals Pending After 120 Days
1	1,096	536	346	247	12	14	0	133	114	78
2	43	23	16	10	0	0	0	7	3	8
3	85	48	24	24	0	0	0	9	13	2
4	2,239	646	218	183	10	1	0	40	102	309
5										
6										
7										
8										
9										
10										
11	7,780	3,503	2,160	1,364	104	38	1	439	925	773
12										
13										
14	206	110	56	53	1	1	0	22	31	10
15										
16										
17										
18										
19	1,968	1,053	521	369	21	15	0	118	251	129
20										
<b>Total</b>	<b>13,417</b>	<b>5,919</b>	<b>3,341</b>	<b>2,250</b>	<b>148</b>	<b>69</b>	<b>1</b>	<b>768</b>	<b>1,439</b>	<b>1,309</b>

## Notes:

1. Mediation programs for the shaded circuits began on or after July 1, 2010. Osceola and Seminole Counties do not have a mediation program.
2. Circuits 1, 4, 11, and 19 includes case eligible referrals for March 2010 through June 2010; Circuit 3 and 14 includes case eligible referrals for April 2010 through June 2010; and Circuit 2 includes case eligible referrals for June 2010.

# Attachment

3d

**Residential Mortgage Foreclosure Mediation**  
**Key Determinant 120 Day Status Report as of November 2010 - Percentages**  
**By Circuit, Based on Case Eligible Referrals from March 2010 through June 2010**

Circuit	Borrower Contacted Percentage	Mediations- Lender Failure to Appeal Percentage	Mediations: Borrower Failure to Appeal Percentage	Mediations- Both Borrower and Lender Failure to Appear Percentage	Mediations With Written Agreement Percentage	Mediations Without Agreement Percentage
1	48.9%	4.0%	3.5%	0.0%	53.8%	46.2%
2	53.5%	0.0%	0.0%	0.0%	70.0%	30.0%
3	56.5%	0.0%	0.0%	0.0%	37.5%	54.2%
4	28.9%	0.5%	4.6%	0.0%	21.9%	55.7%
5						
6						
7						
8						
9						
10						
11	45.0%	1.8%	4.8%	0.0%	32.2%	67.8%
12						
13						
14	53.4%	1.8%	1.8%	0.0%	41.5%	58.5%
15						
16						
17						
18						
19	53.5%	2.9%	4.0%	0.0%	32.0%	68.0%
20						
<b>Total</b>	<b>44.1%</b>	<b>2.1%</b>	<b>4.4%</b>	<b>0.0%</b>	<b>34.1%</b>	<b>64.0%</b>

## Notes:

1. Mediation programs for the shaded circuits began on or after July 1, 2010. Osceola and Seminole Counties do not have a mediation program.
2. Circuits 1, 4, 11, and 19 includes case eligible referrals for March 2010 through June 2010; Circuit 3 and 14 includes case eligible referrals for April 2010 through June 2010; and Circuit 2 includes case eligible referrals for June 2010.