



Executive Summary

October 9, 2012

Since 2007, a myriad of foreclosure prevention tools have been constructed by servicers, non-profit counselors, local, state and federal government aimed at reducing the impact of the housing crisis on homeowners. Mediation programs have been adopted in 23 states, Massachusetts and Missouri have pending legislation and California, Michigan and Oregon have initiatives that require further documentation or discussion prior to foreclosure, but do not meet the definition of mediation, as no neutral third party presence is required.

Each program has unique attributes given the jurisdiction and origination of the program. This document was created to provide insight into the alternative models in place and provide background of the complexities and issues that should be addressed in order to deliver the consumer driven results desired by mediation programs. Mediation programs generally have four defining attributes: (1) state foreclosure process: judicial, non-judicial or both; (2) borrower participation: automatic participation (opt-out) or opt-in; (3) enactor: state statute, court rule or court initiative, local or county court without statewide recognition; (4) program jurisdiction: single county, multiple county (judicial circuit), statewide.

Mediation offers an opportunity for homeowners to engage in meaningful discussion with their servicers in an attempt to find common ground. When jurisdictions attempt to operationalize mediation programs, procedural complexities and a diverse set of participants can stymie results. This paper was designed to illuminate current practices based on input from multiple servicers, state mediation administrators, judges, counselors, government personnel and investors on approaches to efficiently address the concerns and barriers to consumers participating in the mediation process.



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HOPENOW MEDIATION REVIEW OF COMPONENTS AND ROLES

I. Participation

a. Borrower Role (Opt out)

- i. Eligibility is limited to an owner-occupied property with a first lien mortgage loan. Mediations should be limited to First Lien Mortgages in foreclosure only. If servicers hold dual lien positions, both liens should be reviewed for modification options.
- ii. Borrower must be offered reasonable notice and timeline parameters for mediation. A borrower should fully engage in all required steps of mediation, such as providing all required documents, attending non-profit counseling, and attending the actual mediation session(s), and failure to work with the process will terminate the borrower's eligibility for continuation of the mediation program (for timeline refer to section II. C)
- iii. Mediation should be free to borrowers entering the process.
- iv. Borrower shall participate in counseling with a HUD-certified counselor before the mediation session. This participation will include providing all necessary financial information to the counselor, actively following holistic debt management plans developed by the counselor, and participating in a second session following a successful workout.
- v. Borrower shall provide the program administrator or lender all current financial documents in advance of the mediation meeting before the first meeting. The use of a data port, such as HOPE LoanPort or other like systems, is an effective tool that a state should use to facilitate the efficient and effective transfer of financial documents between the borrower and the lender or if an electronic submission is not available, a borrower can provide to the NP counselor, who can then send to the Servicer. Timeline for submission of documents should be established.
- vi. Borrower must be present at the mediation either in person or on the phone as applicable by State law. (Legal representation must be present for proof of authority)

b. Servicer Role

- i. Shall provide access to a qualified representative with decision-making authority or access to investors as needed. Circumstantial issues may require follow up appointments, but should be avoided when possible. In some instances, the investor will not delegate to servicers some solutions such as write offs. All mediations sessions allow the Servicer to participate by phone with designated counsel at the meeting in order to reduce program costs and increase accessibility to network systems to make real time evaluations.

- ii. Servicer is not allowed to shift servicer costs of mediation to the borrower by rolling them into the modification or other loss mitigation alternative.
- iii Servicer will provide all options to avoid foreclosure in accordance with investor requirements, regulatory requirements and applicable State and Federal programs. In addition they will offer any proprietary programs such as forbearance, repayment plans, modification plans, deed in lieu or short sale opportunities where applicable.
- iv. Servicers will provide aggregate data to a third party to assist in program evaluations to measure success. See suggested HOPE NOW definitions for data collection – template available per request.

c. Mediator Role

- i. Clear responsibility and role as a facilitator of a productive mediation based on the principle of self-determination. The role of the mediator is not one of the arbitrator, but rather to facilitate an honest and robust meeting between the borrower and the servicer. The mediator must be an impartial independent third party who will adhere to self-determination and not undermine process for reasons such as increased settlement rates or the type of settlement thereof, outside pressures from program administrators, provider organizations, the media or others
- ii. Conflict of Interest: mediator must not be attorney for borrower or servicer and act as a mediator. Mediator must not have personal or business relationship or previous personal or business relationship with servicer, unless that relationship is disclosed and agreed upon prior to mediation session.
- iii. Mediator must be well trained on financial analysis, the state’s foreclosure process, and a solid understanding of workout options for major investors, government programs, and full understanding of the options available for borrowers. The courts should identify supervised programs that require a minimum of 20 hours to certify the roles of mediators.

II. Structure

a. Pre-Mediation (Pre-Suit)

- i. If a lender chooses to offer mediation prior to the state mandated program, the second mediation should be eliminated if there is no material change of borrower circumstances and there is a certificate of pre-mediation efforts that satisfies all mediation requirements, including all consumer protections.
- ii. Work with third party *HUD-certified* counselors to assist with pre-mediation processes –
Complete a full *HUD-certified* counseling session before mediation. The *HUD-certified* may review the waterfall options and recommend to the servicer/pre-file mediator the next steps – which may be 1) Modifications, 2) sell the property, 3) short sale/Deed in lieu, 4) forbearance for the unemployed. Ultimate decision power is given to the servicer/representation, but they should provide consideration of the counselor recommendation.
- iii. Encourage incentives in the system for earlier outreach, pre-mediation, and Improved foreclosure timelines

(Refer to innovative early intervention programs such as Judge Rizzo, Philadelphia program and FNMA Florida pilot program as two strong examples of successful intervention)

b. Procedures

i. State-Administered Mediation Program:

1. The state's program office will communicate the parameters and procedures of the mediation program to the borrower.
2. The servicer must provide the state and/or borrower with a complete list of all documents needed to review the borrower for all loss mitigation options.
3. The state should be responsible for the coordination, distribution and collection of all current financial documents between the servicer and borrower, as needed to prepare for mediation date. The use of a data port, such as HOPE LoanPort, is a highly effective tool to help coordinate the timely transmission of financial documents. (See State of Maryland example)
4. States should track and report a uniform set of data to measure success of the program. This information will assist the Federal Government, States, investors and loan servicers better understand the measurements around defining success. (See attached HOPE NOW DRAFT recommended template)
5. States should be responsible for compliance of all aspects of the program and enforcement.

c. Timelines

- i. Borrower shall have thirty to sixty days from the filing of first legal action (in foreclosure mediation) or 30 days from notice of intent (in pre-suit mediation) to complete counseling and submit all necessary financial documents to the program administrator or HUD-certified counselor.
 - a) If the borrower does not respond to these requirements for mediation, then the borrower has waived their rights to mediation. Borrower must include all current financial documents that would be required to evaluate the borrower for review of all loss mitigation options. This requirement streamlines the proceedings and helps to eliminate problems with lost documents.
 - b) This allows the servicer to evaluate all loss mitigation options prior to the mediation meeting, and the servicer should be prepared at that time, to discuss on-site loss mitigation options.
 - c) The Servicer may need to follow up after a mediation session directly with an investor if the workout decision requires investor approval or the decision exceeds the servicer's delegation of authority. Under limited circumstances (Servicers shall identify potential situation prior to mediation)
- ii. Mediation shall be scheduled and held within **30 to 45** days of the receipt of the borrower's financial documents and evidence of completed counseling.
 - a) Participation in mediation does not prohibit on-going loss mitigation discussions.
 - b) If a resolution is reached prior to mediation, then the mediation meeting shall be cancelled.
- iii. Individual Mediation session should not exceed 2 hours in length unless mutually agreed upon by all parties

- iv. Mediators must prepare a final report within 5 days of the completed mediation session.
- v. Mediation shall be restricted to two meetings, preferably one, unless both parties mutually agree that follow-up sessions are necessary. A properly structured program should address all potential issues and eliminate the need for further meetings or continuances. The exchange of accurate information and working with a HUD-certified counselor prior to the meeting is essential to this requirement.
- vi. Failure of the borrower to attend the scheduled mediation meeting is a Forfeiture of their right to a mediation and authorizes foreclosure proceedings to Continue. One continuance may be allowed if agreed upon by the servicer. Note: Costs paid to the mediator should allow for two mediation sessions if agreed upon by both parties. Additional meetings must be agreed to by all parties.
- vii. Establish a commencement date of xx-days to ensure responsible and Coordinated activity of all parties involved (identify when the start date occurs).

d. Good Faith

- i. Requires lenders to be in compliance with all investor guidelines such as HAMP (when this is an option), GSE guidelines (when this is an option), FHA, or other investor guidelines when undertaking workout reviews
- ii. Notice to be sent to the second lien holder of mediation proceedings if the borrowers identified the existence of a second lien during the disclosure of their financial obligations
- iii. A clear definition of good faith is necessary to allow all parties including the mediator to act responsibly and in accordance with the established rules of the mediation program

III. Documentation

a. Borrower

The borrower shall be required to submit all documents and data required by the servicer to fully review the borrower for all loss mitigation options. The servicer shall be required to provide the state with a list of all documents at the beginning of the mediation program. Use of a data portal should be used to facilitate documentation transmittal.

b. Servicer

- Require a list of Servicer documents (ideally the documents agreed to in development of HOPE LoanPort in addition to any state required documents)
- a) Reason for denial of loan modification or loss mitigation (This should not be a document requirement prior to mediation.) This should be an explanation once determined at the mediation.
 - b) Payment history related to default including escrow account history during this period
 - c) History of account activity after the loan went into default (e.g., attempts to contact borrower)
 - d) Contact information to the servicer for purposes of the mediation.
 - e) Servicer must submit to the State all required minimum documentation (ideally the same among industry and recommended to be a uniform template)

IV. Research and Evaluation: Define, measure + track success

1. Review recommended HOPE NOW data template for information that measures success.
2. Use a subset of the Justice Department recommended data set, minimum requirements, to measure success and measure the cost of mediation based on engagement, touch points and outcomes.
3. HOPE NOW Template captures items from States and Servicers to measure success
4. Each servicer can assess the internal cost of mediation (number of meetings, timelines, and resources) based on data captured for mediation.
5. Standard metrics will allow for neutral analysis to establish success or challenges in the state programs.

The industry needs to agree on one method tracking success and denials

- a. Servicer/State Data Collection
 1. Tagging loans in Mediation
 2. Capturing Mediation outcomes
 3. Tracking ongoing performance
 4. Sharing with HOPE NOW, or like efforts, to review aggregate impacts of mediation.
- b. State or third party Data Collection
 1. Program data may include:
 - i. Profiles – Description of borrower, loan, agency or servicer (Loan balance, counselor name)
 - ii. Status – Status of loan or loan modification (Interest rate frozen, foreclosure status, principal deferred amount)
 - iii. Factors – Elements which influence a borrower’s decision (Owner occupancy, default reason, bankruptcy indicator)
 - iv. Use of third party counseling group, tagged and identified.
 2. Substance of Agreement
 - i. Period for achieving resolution
 - ii. Follow-up on performance (3, 6, 9, 12 months after solution)
 - iii. Report aggregate industry findings to the public



High Level Stratification

1. Opt-in Program
2. Opt-out Program

Data Fields Based on Opt-in and Opt-out

1. Total Foreclosure Starts (Total Denominator)
2. Mediations Scheduled (Mediation Denominator)
3. Pre_Mediation Scheduled
4. Delinquency Status – at initiation of FC or first meeting?
5. Forfeiture Sale
6. Counselor Assistance
7. Mediation Occurrences
8. Resolution Timeline
9. Foreclosure Sales
10. Short Sale - Deed in lieu
11. Modification
12. HAMP Trials
13. FHA/VA/MI Claim Advance
14. Mediation Inventory
15. Active Mediation Inventory

1. Total Foreclosure Starts – The total number of owner occupied, 1st lien loans (including unknown) referred to an attorney to initiate the legal process of foreclosure within mediation jurisdictions during the month.
2. Mediations Scheduled – The total number of loans in which borrowers or courts have scheduled mediation meetings.
3. Pre_Mediation Scheduled – Number of loans that are scheduled for a pre-mediation program
4. Delinquency – Delinquency status of loan at initiation to foreclosure
5. Forfeiture Sale – Number of loans in which the defendant forfeited or was ineligible for the right to mediation due to: failure to appear to summons, the property is non-residential or non-owner occupied, ineligible due to bankruptcy, participant neglected to provide necessary documentation, did not comply with the binding timelines. Only include those cases in which mediation has been scheduled, exclude those who opt-out or do not opt-in.
6. Counselor Assistance – The number of loans using counseling assistance in mediation.
7. Mediation Occurrences – The number of times that the case is mediated. A mediation occurs when a scheduled physical or teleconference meeting *where both* the borrower and servicer (or representation) meet to mediate (SPOC phone calls without pre-determined date/time do not qualify).

8. Resolution Timeline: Number of days from the date of notification to the date of resolution, positive or negative.
9. Mediated Foreclosure Sales – Number of cases mediated where both parties agreed that the foreclosure sale will proceed, excluding those who forfeited their right to mediation (field 4)
10. Short Sale – Deed-in-lieu -- Number of mortgages allowed to pay off paying less than the contractual principal balance or mortgages satisfied by the acceptance of the properties in Deed-in-Lieu of foreclosure action
11. Modifications -- Non-HAMP modified, renegotiated or restructured loans during the month. Anything that alters the terms of the contract between the borrower and the lender that assists the borrower to maintain the home and that the loan is retained.
12. HAMP Trials – Number of HAMP trials initiated during the month
13. Forbearance/Repayment Plan Initiated – Formal or informal repayment plan agreed upon during the month. HAMP trial period mods should be excluded from this field.
14. FHA/VA/MI Claim Advance
15. Mediation Inventory –The number of loans that have completed a mediation retention option (Sum of 10,11,12) in the last 12 months regardless of current status.
16. Active Mediation Inventory – The number of loans that received mediation retention option and fell out of their program, referred to foreclosure sale again, filed for bankruptcy or negatively liquidated.