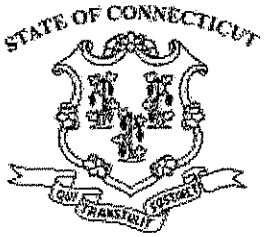



General Assembly

March 9, 2010
1:00 PM
Room 2C
Legislative Office Building

**Housing & Judiciary Committees**
**Joint Informational Forum on**
**Foreclosure Mediation**

Agenda

I. Speakers:

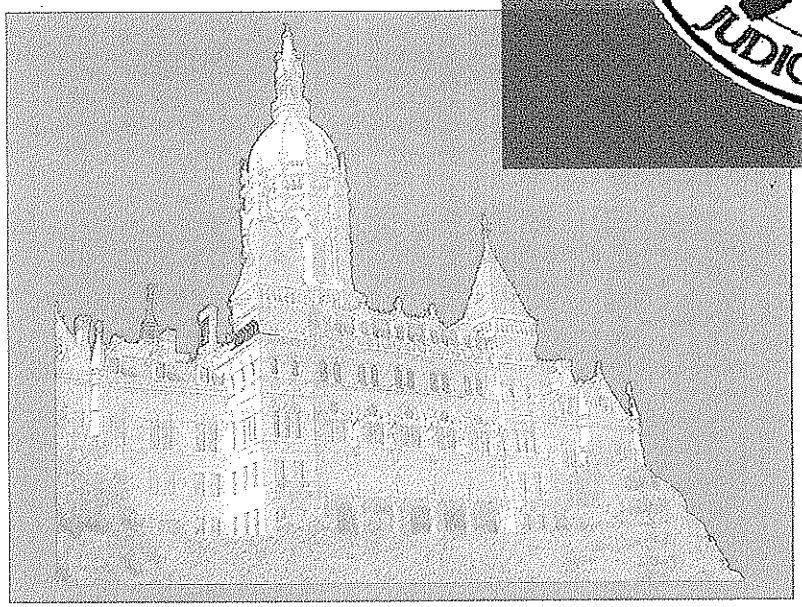
Judge Mintz, Judicial Branch Bench Bar Foreclosure Committee &
Roberta Palmer, Foreclosure Mediation Program Manager

Erin Kemple Esq., Executive Director CT Fair Housing Center &
Jeff Gentes, Foreclosure Prevention Staff Attorney

Foreclosure Mediation Program Participants:

II. Questions

# STATE OF CONNECTICUT
# JUDICIAL BRANCH
# FORECLOSURE MEDIATION PROGRAM



# Number of Foreclosures Added
# by Court Location
# Q4-2008 vs Q4-2009

| LOCATION | 10/1/008 to 12/31/08 | 10/1/009 to 12/31/09 | Percent Change |
|---|---|---|---|
| Ansonia-Milford | 273 | 363 | 33.0% |
| Danbury | 275 | 336 | 22.2% |
| Fairfield | 910 | 848 | -6.8% |
| Hartford | 819 | 920 | 12.3% |
| Litchfield | 225 | 253 | 12.4% |
| Meriden | 58 | 50 | -13.8% |
| Middlesex | 212 | 348 | 64.2% |
| New Britain | 454 | 459 | 1.1% |
| New Haven | 853 | 1085 | 27.2% |
| New London | 416 | 538 | 29.3% |
| Stamford | 366 | 584 | 59.6% |
| Tolland | 138 | 182 | 31.9% |
| Waterbury | 490 | 536 | 9.4% |
| Windham | 193 | 240 | 24.4% |
| State | 5682 | 6742 | 18.7% |

# Increase in Foreclosure Cases

- **Continuing Increase in Foreclosure Cases Filed Since July 2008**

- **Causes of the Increase**
  - Subprime, Alt A and Option Arm Mortgages
  - State and Nationwide Economic Downturn/ Increasing Unemployment/Loss of Income
  - Decreasing Property Values/Inability to Refinance

- **Predictions for the Future**
  - Additional Default of Alt A and Option Arm Mortgages with Recent and Future Reset Dates

# Foreclosure Mediation Staff
# Mediation Specialists

**4 mediators in each of the following Judicial Districts:**

- Fairfield (Bridgeport)
- Hartford

**3 mediators in each of the following Judicial Districts**

- New Haven

**2 mediators in each of the following Judicial Districts:**

- New Britain
- New London
- Stamford-Norwalk
- Tolland (also covers Windham JD)
- Waterbury (also covers Litchfield JD)

**1 mediator in each of the following Judicial Districts:**

- Middlesex (also covers Meriden JD)
- Danbury
- Ansonia-Milford

# Foreclosure Mediation Staff Caseflow Coordinators

## 9 staff members covering 14 Judicial Districts

- Fairfield (Bridgeport)
- Ansonia-Milford
- Hartford
- New Haven
- New Britain, Middlesex and Meriden
- New London
- Tolland and Windham
- Stamford-Norwalk and Danbury
- Waterbury and Litchfield

# Foreclosure Mediation Staff Office Clerks

**17 staff members within the following Judicial Districts:**

- Ansonia-Milford JD
- Fairfield (Bridgeport) JD
- Danbury JD
- Hartford JD
- Litchfield JD
- Middlesex JD
- New Britain JD
- New Haven JD
- New London JD
- Stamford-Norwalk JD
- Tolland JD
- Waterbury JD
- Windham

# Staff Training and Outreach

- **Continuous Review and Application of Federal Guidelines in Mediation Process**
- **Participation in Online Classes for HAMP and FHA Underwriting Process**
- **Education Through Outreach Programs**
  - HUD, CHFA, Housing Counselors, Legal Exchange, CT Fair Housing Center, Community Interest Groups
- **Attendance at Monthly Training Sessions with Presentations from Outside Agencies**
  - HUD, CHFA, Housing Counselors, Workplace, Inc., CT Fair Housing Center, Fannie Mae

# Settlement Options Available in Mediation

**Homeowner Remains in Home**

- Home Affordable Modification Program (HAMP)
- Internal Modification With Lender
- CHFA (EMAP; CT FAMLIES)
- Partial Claim (FHA Loan for Arrearage)
- Forbearance Plan
- Reinstatement
- Repayment Plan

**"Graceful Exits"***

- Short Sale (HAFA in April)
- Deed In Lieu of Foreclosure (HAFA in April)
- Extended Sale Date or Law Day
- Sale

* The Center for American Progress Report, "It's Time We Talked, Mandatory Mediation in the Foreclosure Process", June 2009

# Home Affordable Modification Program (HAMP)

- **Guidelines Issued 3/4/2009 for Participating Lenders**
  - Participation is Voluntary for Lenders Except: Fannie Mae/Freddie Mac Loans, FHA Loans and Lenders in Receipt of TARP Funds
  - Mortgage Payment May Be Lowered to 31% of Borrower's Gross Income (PITI)
  - Lender May: Reduce Interest Rate, Fix Interest Rate, Extend Term of Loan and/or Reduce Principal Balance
- **Provides Incentive for Lenders to Modify Loans**

# Obstacles to HAMP Implementation

- Guidelines Issued in March 2009 But Not Implemented Until May 2009
- Lengthy Review Process (Minimum of 30 Days, With Many Cases Taking Significantly Longer)
- No Oversight For Servicers in Review Process
- New Guidelines Are Released and Improperly Applied by Servicers
- 3 Month Trial Plans Being Extended (As Long As 9 Months)
- Borrowers Denied For Trivial or Wrong Reasons (No Returned Phone Call; No Profit & Loss For Borrower Not Self-Employed)

# Mediator Role in Achieving Settlement

- Provide Oversight for Implementation and Application of Federal Guidelines
- Apply Knowledge About Programs and Guidelines to Mediations
- Keep Trial Plans in Mediation Until Permanent Approval or Legitimate Denial
- Provide Encouragement and Explanation to Borrowers in Arduous Resolution Process
- Refer to Outside Agencies for Possible Assistance (CHFA, HUD, HUD Counselor, Workplace, Inc.)

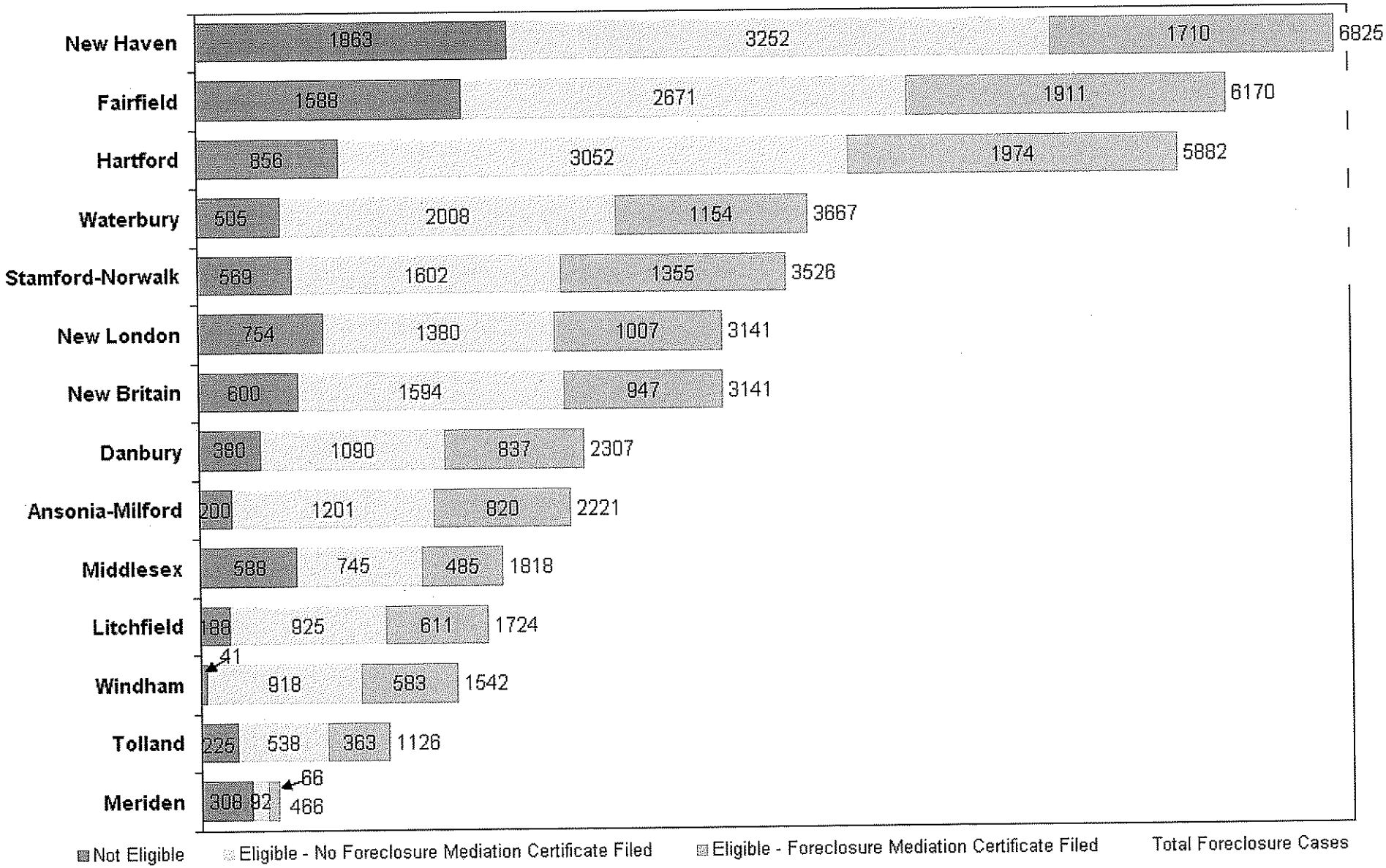
# Alternative Solutions to HAMP

- **Internal Modification**
  - No Independent Regulation
  - Ranging From Stringent Repayment Plan to Full Modification With Lower Interest Rate
- **CHFA**
  - EMAP: Loan to Reinstate or Monthly Assistance
  - CT FAMLIES: Refinance
- **Short Sale**
  - No Current Regulations (HAFA in April)
  - Lengthy Review Process
- **Deed In Lieu of Foreclosure**
  - No Current Regulations (HAFA in April)
  - Lengthy Review Process
- **Extended Sale Date or Law Day**

# Mediator Caseload

- As of February 28, 2010, 5629 Cases Have Completed the Mediation Process
- To Date, 9610 Cases are Pending in the Foreclosure Mediation Program
- Judges Have Referred Over 1400 Cases to the Mediation Program from Short Calendar
- Majority of Cases Require Multiple Mediation Sessions (average 4-5 but as many as 12)

# Foreclosure Mediation Program (FMP) Statistics
## As of February 28, 2010




- Statewide, there were 43,556 foreclosure cases filed between July 1, 2008 and February 28, 2010.
- Foreclosure mediation certificates(13,823) have been filed in 40% of the 34,891 eligible cases.

# Eligibility of Foreclosure Cases for Mediation

## What does Eligibility Mean?

Cases are deemed eligible and included in the bar graph based on two criteria only:

1. The return date is on or after July 1, 2009
2. It is a mortgage foreclosure action

***These are the only criteria for the program that can be determined from the foreclosure papers that are filed in court.**

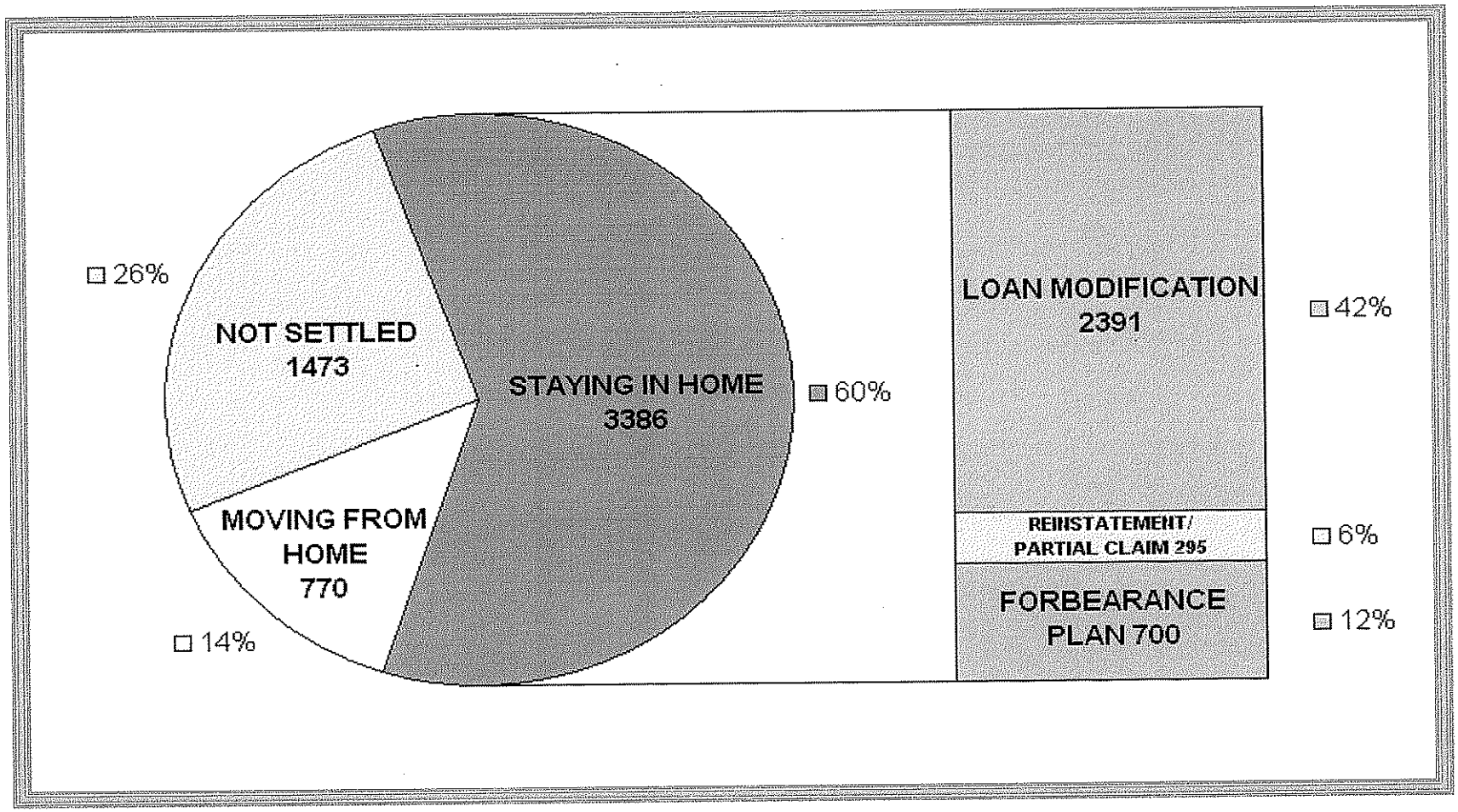
# Why does the participation rate seem low?

Mortgage foreclosure cases with a return date of July 1, 2009 or after may never participate in Foreclosure Mediation because the property is not:

- Residential
- 1-4 Units
- Owner Occupied
- Primary Residence

*** This information cannot be determined from the foreclosure papers that are filed in court.**

# Foreclosure Mediation Program (FMP) Results
## As of February 28, 2010




- STATEWIDE, 5,629 CASES HAVE COMPLETED MEDIATION AS OF FEBRUARY 28, 2010. THIS CHART ILLUSTRATES THE OUTCOME OF THESE CASES.
- THE CATEGORY "MOVING FROM HOME" INCLUDES AGREEMENTS FOR A SHORT SALE, A DEED IN LIEU, OR AN EXTENSION OF THE LAW DAY OR SALE DATE.
- THE CATEGORIES "MOVING FROM HOME" AND "STAYING IN HOME" WHEN ADDED TOGETHER RESULT IN A **SETTLEMENT RATE OF 74%.**

# Foreclosure Mediation Program

- First and Most Successful Statewide Foreclosure Mediation Program in the Nation
- Heralded as the National Model (many other states look to us for guidance)
- Extensive Media Coverage and Acclaim
- Success of Mediation Program has Prompted Proposed Federal Legislation Requiring Foreclosure Mediation

# Foreclosure Mediation Program

Success stories...

CT FAIR HOUSING CENTER

**STATEMENT OF JEFF GENTES OF THE CONNECTICUT FAIR HOUSING CENTER REGARDING THE FORECLOSURE MEDIATION PROGRAM**

Members of the Committees: thank you for inviting the Connecticut Fair Housing Center to speak today. My name is Jeff Gentes, and I am the Foreclosure Prevention Staff Attorney at the Center. The Connecticut Fair Housing Center is a non-profit organization providing, among other things, legal resources and assistance to homeowners facing foreclosure. We strongly support reauthorizing and updating the successful Foreclosure Mediation Program.

At the Center we are on the front lines of the foreclosure crisis. We help homeowners resolve their mortgage difficulties by working with their housing counselors, providing advice, representing them in court and in mediation, supporting pro bono attorneys, presenting at homeowner clinics, and publishing and distributing a guide for self-representation. Too often we see a path to keep people in their homes in a way that makes more financial sense for the lender than moving to foreclosure – but getting to that solution is more difficult than it should be. For many homeowners, hiring a lawyer is impractical when they are already struggling financially, the court system is intimidating, and it is not easy to deal with mortgage servicers whose incentive is to push forward with foreclosures.

While everyone knows failing to resolve mortgage difficulties through the courts leads to a foreclosure, and foreclosures cost homeowners their homes, the costs to cities and towns is not as obvious. Towns often spend more than $19,000 in police, fire, and maintenance costs per foreclosure while neighbors, depending on the study, see their property values plummet from $2,000 to $6,800 per foreclosure in Connecticut.

The Connecticut Legislature recognized these obstacles and costs and reacted to the growing foreclosure crisis two years ago by creating the Foreclosure Mediation Program. The Program offers borrowers a way to talk to someone representing the servicer and helps ensure that homeowners have a chance to keep their homes. Being in a small conference room with a servicer's attorney and an impartial mediator is also far less intimidating than a courtroom with only the servicer's attorney and a judge. The Program has kept more than 7,400 people in their homes by helping them navigate the court system and reach their servicer, leading to more than $140 million in savings for our towns.

Even though two years have passed since the Program was enacted, we see few signs that the foreclosure crisis will disappear – if anything, it will get worse. The number of Connecticut homeowners who are more than 90 days late on their mortgage has risen to 1 out of 12 – a new

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high. The job market's outlook remains dismal, and today's job losses are tomorrow's foreclosure filings. We also expect another tranche of toxic loans – this time "resetting" Payment Option ARMs – to lead to new filings. And while helpful, the federal government's loan modification program, which most national mortgage servicers have joined, is not the solution.

Given that the foreclosure crisis isn't going away anytime soon, we applaud the bills introduced in the Housing Committee that would reauthorize the Program. Given that reducing foreclosures will continue to make sense, even after the crisis passes, we support eliminating the Program's sunset date altogether.

While we are in this crisis we need to ensure that the Program has the resources to accomplish its goals. Increased foreclosure filings are one burden. Extended mediations caused by mortgage servicers present another challenge. Foreclosures are more profitable for servicers than modifications, and servicers will act accordingly unless they have incentives to mediate. And while the Program is helpful in facilitating communication, that communication is often unproductive. The Judicial Branch issued Standing Orders in January 2010 which state what should be obvious – for instance, parties must mediate in good faith, or else face sanctions. The Orders should be codified, as House Bill 5369 would do. But the Orders are not enough: courts and mediators should have guidance on what constitutes good faith and what are appropriate sanctions.

House Bill 5410 has that guidance, and helps counter the incentives the servicer has to move towards foreclosure. It also codifies the Standing Orders, and eliminates the Program's sunset date. And while the Mediation Program was innovative when first created, states which used the Program as a model have added improvements of their own. House Bill 5410 reflects recent innovations from states like Indiana and Maine.

House Bill 5410 does contain a glitch – as drafted, it would only apply to mediations for cases that started during the Program's first year. Before enacted, it must be amended to apply to all mediations and we would be happy to work on an amendment to this bill which would address this drafting error.

There are other good ideas for reducing the strain on the Program, and for reducing foreclosures. Mediation is not the only forum for resolving mortgage difficulties. Borrowers must continue to stay in contact with their servicer until the process is complete. One of the most common frustrations our clients face – especially pre-mediation – is the inability to talk to someone who is responsible for their mortgage account. Each phone call leads to a new person, and the lack of consistent information compounds the frustration. Senate Bill 225, which has bi-partisan support from the Judiciary Committee, would help reduce the delay inherent in dealing with the inexperienced, undertrained, and overwhelmed servicer staff by requiring that homeowners be provided, at the time foreclosure begins, with contact information of someone responsible for and with authority to resolve their account. Homeowners would be able to start the process before mediation begins and, perhaps, not need mediation – this would mean fewer mediation sessions and less strain on the Foreclosure Mediation Program.

We can build on the Program's success so far. Roberta Palmer discussed three groups of cases earlier this afternoon – homeowners who have stayed in their homes, homeowners who have not, and those whose mediation sessions are pending. If we enacted the reforms we discussed, we could move more homeowners from the latter two groups – especially the homeowners who have been wrongfully denied loan modifications, and homeowners who have been stuck in limbo – into the Program's success stories.

We at the Connecticut Fair Housing Center strongly support removing the Foreclosure Mediation Program's sunset clause and updating the Program. You have before you several bills that would collectively accomplish that goal. The ideal bill or collection of bills would eliminate the sunset date, codify the Standing Orders, provide for disclosure of servicer contact information earlier in the foreclosure process, and update the Program. Homeowners facing foreclosure will always be at a disadvantage – they lack the resources of the servicer and the experience of the servicers' attorneys. But we can make the playing field more level, and hold servicers who abuse the mediation system accountable.

The Center strongly supports the Foreclosure Mediation Program, and will work to ensure that it is reauthorized and updated. Thank you for your time. I am happy to answer any questions you may have.