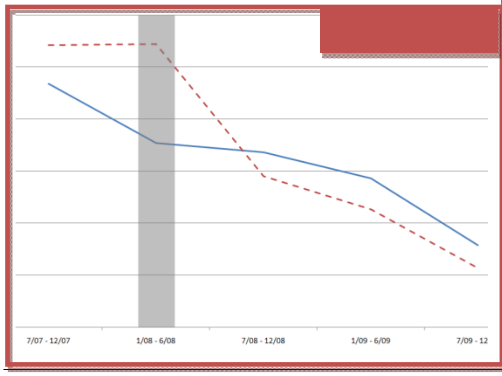
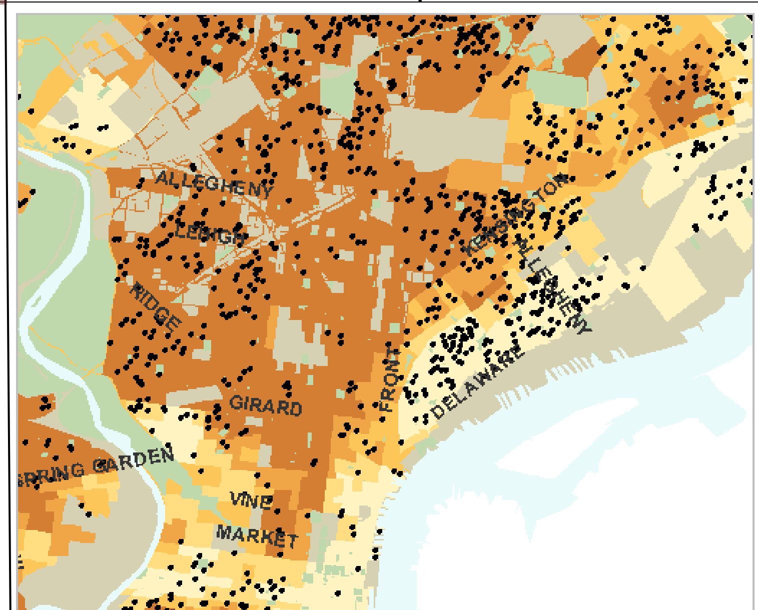


Philadelphia Residential Mortgage Foreclosure Diversion Program: Initial Report of Findings



A study by The Reinvestment Fund
of the Philadelphia Residential Mortgage
Foreclosure Diversion Program

June 2011

THE REINVESTMENT FUND
Capital at the point of impact.

I. Introduction

The National Bureau of Economic Research dates the beginning of this most recent recession at the end of calendar year 2007.[1] Homeowners, investors, governments and property markets have been and continue to be ravaged by this recession. Drawing on a variety of industry data sources, the Center for Responsible Lending estimates that 6 million homes started foreclosure since 2007 and they project another 12 million over the next five years. They also estimate that 1-in-9 homeowners is seriously delinquent and 1-in-4 owes more than their home is worth.[2]

Federal, state and local governments have responded in a variety of ways – with varying degrees of success – to address the impacts of the foreclosure crisis. One of the largest interventions in the market, the Home Affordable Modification Program (HAMP), claims 1.75 million trial modifications and 607,000 permanent modifications *issued.*[3] The General Accounting Office, in a number of reports and written testimony, suggests that HAMP has fallen well short of its intended target impact. Notably, while Treasury suggested HAMP would reach 3 to 4 million homeowners GAO reports that HAMP will not likely accomplish that goal.[4] The relative role of HAMP trial and permanent modifications is something of an unknown because many "private label" modifications and payment plans are achieved outside the purview of HAMP recordkeeping. The Office of the Comptroller of the Currency in its 2010 4th Quarter report provides statistics that suggest that "other modifications" outnumber HAMP modifications by more than 2 to 1.[5]

<u>Philadelphia – at a Glance: the demographic and economic context for the Diversion Program</u>

- The population of Philadelphia peaked in 1950 at 2.07 million and declined each Census period until 2000, ending at 1.517 million. Philadelphia's long-term population decline ended during the past decade and the 2010 Census reports Philadelphia's population at 1.526 million. (U.S. Census)
- Between 2000 and 2010, the number of housing units in Philadelphia rose 1.2% from 661,958 to 670,171 and occupied housing units rose 1.6% from 590,071 to 599,736. (U.S. Census)
- Philadelphia's homeownership rate in 2000 was 59.3%. By 2007-2009, the rate slipped to 55.6%. (Census / ACS)
- Between 2006 and 2009, the median home sale price rose from $99,900, peaking at $120,000 in 2008 and then declining to $116,000 in 2009. House price appreciation between 2009 and 2010 is estimated in Philadelphia to be -8.7%; the ten year appreciation is estimated to be 63.2%. (Policymap.com & Gillen)
- In 2000, 24.2% of homeowners spent 35% or more of their income on housing. By 2007-2009, that percent rose to 32.4%. (Census / ACS)
- Serious delinquency (i.e., loans that are 90 or more days delinquent or are in a foreclosure status) for prime fixed rate mortgages rose from 2.4% in December of 2007 to 4.5% in December of 2010. Over that same time, the seriously delinquent rate for prime ARM loans rose from 3% to 9.3%; subprime fixed from 11.6% to 25.5% and subprime ARM from 16.5% to 34.5%. (LPS Analytics)
- Philadelphia began the recession with an unemployment rate of approximately 6%. The rate rose continuously, peaking at 12.1% in July 2010. Since that time, the rate declined to 10.7% at the end of 2010. (Bureau of Labor Statistics)
- Philadelphia, PA has a judicial mortgage foreclosure process.

State and local governments also have tried a variety of interventions to address the personal and community impacts of this overwhelming number of foreclosures.[6] Court based foreclosure diversion or mediation processes or programs are an increasingly popular public policy response to the mortgage foreclosure crisis. In judicial foreclosure states, diversion serves the dual purposes of preventing avoidable foreclosures and managing overburdened court dockets. By creating a court process that temporarily halts the foreclosure action before an order to sell the property can be issued, diversion provides the parties an opportunity to resolve mortgage delinquency through a court-mandated meeting of the parties. These programs vary greatly in their rules and structure depending on the local law and economic climate, but all seem aimed at creating a moment prior to the loss of a home where alternatives (e.g., modification, short sale, leaving the home on a dignified and mutually agreeable timetable) can be explored.[7] To date, there are approximately 15 states that have implemented a diversion or mediation conference program and several localities also have initiated such programs.[8] Data on the efficacy of these programs is beginning to surface but to date it remains a public policy intervention without broad-based systematic evaluation. In Philadelphia, there is the Philadelphia Residential Mortgage Foreclosure Diversion Program (hereafter, Diversion Program) which was established in April of 2008.

> **Home Affordable Modification Program (HAMP)**
>
> **HAMP loan modifications are an agreement to reduce the homeowner's monthly payment to 31% of the front-end debt-to-income ratio; put another way the homeowner knows their payments will be at most 31% of their gross income. Theoretically this arrangement provides the homeowner with cost certainty and 69% of their income for other life essentials. To incent lenders and servicers, fees are provided for completed modifications to both lender and servicer and a standardized net present value test was created to reduce the labor intensiveness of determining if the modification would be more profitable than foreclosure.**
>
> **For a more detailed program description see: US Department of the Treasury, Making Home Affordable Updated Detailed Program Description (March 4, 2009)**

In <u>Model Methods to Evaluate Foreclosure Diversion Programs</u>, The Reinvestment Fund (TRF) outlined a methodology and set of data sources, data collection procedures, and analytic techniques to understand whether and to what extent foreclosure diversion programs are achieving their stated goals. Philadelphia's goals for its program are:[9]

- Keeping homeowners facing foreclosure in their homes;
- Preserving and protecting neighborhoods from the ravages of foreclosed properties;
- Early intervention in the processing of foreclosure cases in order to achieve a measure of judicial efficiency;
- As a case management tool, to transform a docket that is unique because of the over 90% pro se nature, and provide a support mechanism for homeowners so that they can have a substantive discussion with Plaintiff's counsel about resolution long before a case progresses to trial (that is, if a default judgment is not entered).

Along with those goals are an inherent set of questions, the answers to which allow us to understand progress toward those goals. These questions are:

1. What is the magnitude of the mortgage foreclosure problem in Philadelphia?
    a. What part of that problem is being addressed by the Diversion Program?

2. Once a case is deemed eligible (i.e., residential owner-occupied properties) for this intervention, what results are achieved?
3. Does the Diversion Program facilitate the case processing efficiency of the Court?
4. Has the Diversion Program made a difference in how foreclosure cases progress from foreclosure filing to Sheriff Sale?
5. Assuming the result is a "saved home", how sustainable is the resolution - and are there patterns (e.g., demographic, economic, spatial) reflecting that some homeowners are more likely to remain in their home than others?
6. Has the Diversion Program improved overall access to the judicial process for Philadelphia homeowners facing foreclosure? Are the outcomes equal?

In this report we explore each of these questions in order to establish whether and to what extent Philadelphia's Residential Mortgage Foreclosure Diversion Program is reaching its desired goals.

II. The Philadelphia Residential Mortgage Foreclosure Diversion Program

Under the leadership of the Honorable Annette M. Rizzo, a Steering Committee comprised of housing counselors, counsel for plaintiffs and defendants, and City/Court staff has met regularly since 2004 to provide input and guidance to the Court on issues related to mortgage foreclosure cases. In response to the rise in the number of Philadelphia homeowners facing foreclosure, on April 16, 2008, Common Pleas Court President Judge C. Darnell Jones and Trial Division Administrative Judge D. Webster Keogh issued an Order delaying Sheriff Sales (i.e., the official auction of collateral properties in satisfaction of mortgage debt) of owner occupied residential premises on the April and May 2008 Sheriff Sale list.[10] That Order required a Conciliation Conference to be scheduled between owners and the lenders/servicers that are party to the action.[11] On July 17, 2008 the original order was amended to require defendants in older mortgage foreclosure actions to file a *Certification of Premises as Residential - Owner Occupied and Request for Conciliation Conference*, creating an opt-in Diversion Program for mortgage foreclosure actions initiated before September 8, 2008.[12] Initially, the Diversion Program was set to expire on December 31, 2009,[13] although by Order dated December 17, 2009, the Diversion Program was made a permanent fixture of the Court.[14]

The Diversion Program mandates a face-to-face Conciliation Conference for all new foreclosure actions.[15] During the conference, eligible homeowners (and/or their counselors or legal representatives) and lenders/servicers explore alternatives to Sheriff Sale.[16] These alternatives include, among other things, existing federal programs (e.g., HAMP - once it became available to homeowners) and state programs (e.g., Pennsylvania's Homeowners' Emergency Mortgage Assistance Program, or "HEMAP"), loan modifications or reinstatements, forbearance plans, and the "graceful exit."[17] Eligible homeowners are sent information about the Diversion Program, including the date of their Conciliation Conference, when they are served with the mortgage foreclosure complaint.[18] Several non-profit agencies, funded by the City, conduct door-to-door outreach to homeowners; the purpose of that outreach is to educate homeowners about the Diversion Program. Homeowners are instructed to first call the SaveYourHomePhilly Hotline, staffed by Philadelphia Legal Assistance (an effort supported by both private philanthropy and the City of Philadelphia), which schedules an appointment for the homeowner to meet with a housing counselor to discuss workout options.[19,20] Homeowners are able to freely access housing counseling services as well as legal assistance from Community Legal Services, Inc., Philadelphia Legal Assistance or Philadelphia VIP (Volunteers for the Indigent Program). Once in Court, when the collective efforts of the homeowner (and her counselor or attorney) and the plaintiff do not progress, they can access one of the Judges Pro Tem (JPT) to facilitate the process. JPTs are attorneys who perform this function on a pro bono basis.

III. Data Sources

In order to evaluate the Diversion Program data were gathered from a wide variety of sources that speak to the movement of a homeowner from the filing of a foreclosure action through more than a year after the conclusion of that action. Additionally, data were gathered on the complete mortgage and sale transaction history of properties in order to understand the extent to which those pre-conditions impact (if at all) progress through the Diversion Program.

- **Foreclosure Filings** – Foreclosure actions begin in the Commonwealth of Pennsylvania when the lender/servicer attorney files a complaint with the Office of the Prothonotary (in other jurisdictions referred to as the Clerk of Courts). These are the fundamental data we use to identify cases that, assuming they are for residential owner occupied properties, should go through the Diversion Program. The Prothonotary maintains a database of foreclosure filings that includes:
    - Name(s) of parties
    - Date of filing
    - Classification of the property as owner occupied or not
    - Principal amount due
    - Interest rate
    - Interest owed
    - Penalties and fees owed
    - Book/Page of mortgage[21]

Commonwealth of Pennsylvania's Homeowners' Emergency Mortgage Assistance Program ("HEMAP")

The HEMAP program provides assistance to homeowners facing mortgage foreclosure. It was created through State Act 91 in 1983 and it is administered through the Pennsylvania Housing Finance Agency. In general, Homeowners who are facing foreclosure through no fault of their own (e.g., lost their jobs, serious medical condition, divorce) are entitled to apply for financial assistance that will either: (1) bring their mortgage current by paying any arrears – *non-continuing mortgage assistance*; or (2) provide ongoing assistance to close the gap between what the homeowner can afford and what they owe – *continuing mortgage assistance*. The assistance is not a grant; it is a loan that must be repaid. Homeowners are required to apply for HEMAP assistance through a PHFA-approved housing counseling agency.

A recent study by the Federal Reserve Bank of New York notes that since inception, some 43,000 Pennsylvania homeowners have been helped (approximately 23% of all who applied) and 80% retained their home. (See: http://www.newyorkfed.org/research/current_issues/ci17-2.pdf. Also see: http://www.phfa.org/consumers/homeowners/hemap.aspx?WT.mc_id=pHO2HEMAP for a complete HEMAP program description.)

- **RealQuest data** – RealQuest is a private vendor (a product of CoreLogic) whose fee-based national database includes the transaction history of properties, including sale and mortgage history, mortgage amount(s), and often loan terms such as the interest rate, amortization type (i.e., fixed or adjustable), type of mortgage (i.e., conventional, FHA, VA), and deed type (e.g., regular fee simple, sheriff). RealQuest data are used to examine the property histories of homeowners that reached agreements or failed to appear (i.e., participate). Through the RealQuest data we can determine a number of things such as: (a) whether the purpose of the loan in foreclosure was to purchase or refinance the home; (b) whether the loan subject to foreclosure was a fixed rate or adjustable rate mortgage; (c) how long the homeowner was in their home prior to foreclosure; (d) if the homeowner was still in their home post-Diversion Program.

- **Court Orders** –Diversion Program court orders are the primary way that progression of each case within the Diversion Program is documented. Each time there is an official contact with the court, an Order is filed by the plaintiff with the Court. On the Order, the plaintiff identifies the broad nature of the contact. Case Order outcomes are of the following varieties:
    - Not owner occupied - for cases in which the plaintiff learned the defendant does not reside in the property while attempting to serve the defendant, often because the property is vacant.
    - Failed to Appear - if the homeowner does not attend the conciliation conference when scheduled.[22]
    - No service - if the plaintiff has not properly served the defendant at least two weeks before the conference date.
    - Continued with default judgment delayed or sheriff sale postponed - if the parties need additional conferences.
    - Status - when the parties will continue to negotiate an agreement outside conciliation conferences, and only contact the Court when necessary.[23]
    - Bankruptcy - if the homeowner has filed for bankruptcy, staying sale of the property and removing the case from the Diversion Program.[24]
    - No agreement possible - when the parties have negotiated, reached no agreement, and decided to continue on a (possible) litigation track.
    - Agreement reached - when the parties have come to some mutual decision about the dispensation of the foreclosure action. Agreement reached can describe a wide variety of situations, from a loan modification (temporary or permanent), forbearance plan, trial period plan (HAMP or through the lender), reinstatement, or graceful exit (e.g., short sale, cash for keys, or deed in lieu). A change to the Order form was recently implemented so parties can characterize with greater specificity the type and nature of

the agreement on the Order, and the Prothonotary can track more of the substance underlying the procedural devices in foreclosure cases.

- Sheriff sale ordered or postponed to a specific date.

- **First Judicial District Online Civil Docket Access** – The Diversion Program inserts itself into the foreclosure process before the resolution of litigation; put another way before judgment is entered in the case. The Online Civil Docket lists all events in a case chronologically, and can be used to find how cases proceed after leaving the Diversion Program.
- **Homeowner Interviews** – Homeowners who reach agreements with lenders through a conciliation conference are recruited for interview as they exit the courtroom.[25] Of all homeowners with agreements that were contacted in the courtroom (n = 120), 116 agreed to be interviewed. As of 4/1/2011, 48 interviews have been completed. The remaining 68 families were not interviewed because they either could not be reached after three telephonic attempts, failed to appear at the agreed upon time/location at least twice, or had a family illness that precluded participation. While this is a relatively small sample of homeowners and one that may not be fully generalizable to the universe of households going through the program, the interviews do offer a unique perspective into the lives of homeowners facing foreclosure and how they believe that participating in the Diversion Program impacted their ability to stay in their homes.

- **Credit Reports** –Homeowners who agree to be interviewed are asked to grant permission to run a credit report at the time of the interview and at any follow up interview; of the 48 homeowners that agreed to be interviewed, only two declined to grant permission for us to access their credit report.

IV. Results

1. *What is the magnitude of the mortgage foreclosure problem in Philadelphia? What part of that problem is being addressed by the Philadelphia Diversion Program?*

Foreclosure filings in Philadelphia were on the rise for several years prior to the launch of the Diversion Program, with peak total volume in 2009 of 8,522; 2010 (estimated annual count = 8,089) shows a small decline (-5%) from the 2009 peak. The percent of all foreclosures associated with residential properties varied between 74% and 89% between 2005 and 2009; 2007 (the calendar year prior to launching the Diversion Program) and 2009 (the first calendar year of the Diversion Program) were anomalous with respect to the percent of all foreclosures associated with non-residential properties.

Only residential owner occupied properties are eligible for the Diversion Program. Between 2005 and 2010, peak volume of those filings is observed in 2010, with an estimated annual volume of 7,174. This rise in *residential foreclosure* volume is a result of the higher percentage of all foreclosures identified as "residential". Similarly, 2010 is the peak volume of *residential owner occupied foreclosures* (i.e., eligible), exceeding the previous peak observed in 2008.

The Diversion Program is one that over its life has had the capacity to impact between 60% and 70% of all foreclosures filed in Philadelphia.

Year	Number of Foreclosures	Philadelphia Board of Revision of Taxes (BRT) Estimated Number of Residential Foreclosures	Percent Residential of all Foreclosures	BRT Estimated Number of Residential Owner Occupied Foreclosures	Percent Owner Occupied of Residental Foreclosures	Percent Eligible all Foreclosures
2005	5,126	4,532	88.41%	3,850	85.00%	75.10%
2006	5,322	4,697	88.26%	4,097	87.20%	77.00%
2007	6,448	4,772	74.01%	3,902	81.80%	60.50%
2008	7,782	6,812	87.54%	5,387	79.10%	69.20%
2009	8,522	6,765	79.38%	5,313	78.50%	62.30%
(9/30) 2010	6,082	5,394	88.69%	4,312	79.90%	70.90%
(est ann) 2010	8,089	7,174	88.69%	5,735	79.90%	70.90%

Table 1: Frequency and Eligibility of Foreclosure Filings

Generally speaking, foreclosure filings are more frequently found in Philadelphia Census block groups with higher percentages of residents who are minority group members; in Philadelphia, numerically, minority areas are generally home to people who are African American and/or Hispanic. The distribution of eligible filings shows a decline in the concentration of foreclosures in those areas most heavily concentrated with minority group members. The decline in the share of filings in minority areas was offset by a substantial rise in the concentration of filings in areas home to fewer than 20% minority group members.

Year	> 80 % Minority	> 80 % and < 60 % Minority	> 60 % and < 40 % Minority	> 40 % and < 20 % Minority	< 20 % Minority	NA Data
2005	56.20%	15.20%	9.30%	5.40%	13.90%	0.00%
2006	55.50%	14.00%	8.50%	6.00%	16.00%	0.00%
2007	49.50%	13.50%	9.70%	7.30%	20.10%	0.00%
2008	47.70%	12.80%	9.40%	8.40%	21.50%	0.10%
2009	44.30%	13.40%	10.30%	8.00%	23.60%	0.40%
2010	44.50%	13.80%	9.70%	8.10%	23.50%	0.40%

Table 2: Distribution of Eligible Foreclosure Filings by Racial Composition of Area, 2009

Considering an area's 2009 median sale price as a means of characterizing the housing markets within which foreclosures are filed, we observe a decline in the share of foreclosure filings in Philadelphia's lower priced areas (i.e., areas with median sale prices under $50,000) and a rise in the share of filings in the higher (i.e., areas with median sale prices between $125,000 and $150,000) and highest (i.e., areas with median sale prices over $250,000) priced areas of Philadelphia.

Year	Median Sale Price < 50k	Median Sale Price > 50k < 75k	Median Sale Price > 75k < 125k	Median Sale Price > 125k < 250k	Median Sale Price > 250k	NA Data
2005	30.60%	10.20%	24.40%	18.10%	1.90%	14.90%
2006	30.40%	10.80%	22.60%	20.10%	2.50%	13.60%
2007	26.10%	9.70%	24.90%	23.70%	3.00%	12.60%
2008	25.40%	9.70%	24.70%	25.00%	3.30%	11.90%
2009	22.30%	8.50%	25.50%	27.10%	3.40%	13.10%
2010	22.20%	9.20%	25.10%	27.90%	3.70%	11.90%

Table 3: Distribution of Eligible Foreclosure Filings by Median Area Home Price, 2009

2. *Once a case is deemed eligible for this intervention, what results are achieved?*

Data were gathered on all cases that the Diversion Program processed since inception. As noted previously, the basic data on each case is the Court Order ("Order"), which memorializes a formal action taken by the court in a given case. Cases can have as few as one Order or many Orders can be issued. To date, there were 27,874 Orders issued on 15,915 unique cases. Specific Order categories are described more completely in the Data Sources section of this report. Data displayed in Table 4 reflect the last (i.e., most recent) Order issued in each case. Because the day back cases have been in the system for so long, case processing outcomes are displayed separately for this group of cases.

Aside from a case's status as day forward or day back, another critical distinction relates to whether a case is active or believed to be "closed/inactive."[26] Lastly, for purposes of calculating outcome percentages, whether the court actually processed the case is critical for understanding what happens when a homeowner/plaintiff interacts with the Diversion Program. "Processed" is operationally defined as all outcomes other than a determination that the property is not owner occupied (i.e., not eligible) and failure to appear (i.e., the defendant/homeowner did not avail themselves of the process available to them). Accordingly an accounting of case outcomes is reported separately by whether the case is day forward or back, eligible and participated, and whether it is estimated to be closed/inactive. There are instances where Orders reflect two outcomes (e.g., continued with a default delayed or default delayed and Sheriff Sale ordered).

Day Forward & Day Back Cases

A critical distinction among cases progressing through the Diversion Program is whether the case is categorized as "Day Forward" or "Day Back."

Day Forward cases are those that enter the Diversion Program upon filing of the foreclosure. This would include all residential owner occupied cases filed after September 8, 2008.

Day Back cases currently must petition into the Diversion Program and include those that were filed prior to the inception of the Diversion Program – sometimes as much as nine or ten years earlier.

Of the 15,915 cases, day forward cases constitute the vast majority (n=13,111; 72.2%) of all cases.

These multiple outcome Orders are not frequent, but do account for the fact that a combination of the percentages in Table 4 add to slightly more than 100% across each row.

	Continued	Status	Service	Not Owner Occupied	Failure to Appear	Bankruptcy	Agreement	No Agreement Possible	Default Delayed	Default	Sheriff Sale Ordered
All Cases	7.1%	2.6%	8.8%	6.2%	30.5%	2.0%	20.7%	2.7%	9.6%	2.5%	11.9%
Day Forward	7.7%	2.7%	10.6%	7.3%	31.8%	1.4%	21.5%	3.0%	11.5%	2.9%	2.1%
Day Back	4.5%	2.1%	0.2%	1.1%	24.3%	5.2%	16.8%	1.3%	0.5%	0.3%	57.5%
Eligible and Processed	11.3%	4.1%	13.8%	NA	NA	3.2%	32.6%	4.1%	15.0%	3.8%	16.3%
Day Forward	12.6%	4.4%	17.3%	NA	NA	2.2%	35.2%	4.7%	18.8%	4.7%	3.5%
Day Back	6.0%	2.9%	0.2%	NA	NA	6.9%	22.5%	1.8%	0.7%	0.3%	65.7%
Closed/Inactive	6.6%	4.6%	12.8%	NA	NA	3.3%	34.6%	4.5%	15.8%	4.3%	17.5%
Day Forward	7.2%	5.1%	16.5%	NA	NA	2.2%	38.0%	5.2%	20.2%	5.4%	3.2%
Day Back	4.6%	3.0%	0.2%	NA	NA	7.1%	22.7%	1.8%	0.7%	0.3%	65.9%

Table 4: Case Outcomes

<u>All Cases:</u>

Among all cases, 30.5% of homeowners fail to appear at their designated session; the percentage is somewhat higher for day forward cases than for day back cases. This makes sense because day back cases required homeowners to take an affirmative step to petition into the Diversion Program. Nevertheless, this figure suggests that the mandatory nature of the Diversion Program brings forth approximately seven-out-of-ten homeowners in foreclosure. This stands in contrast to other programs that are opt-in and for which participation tends to be lower.[27]

Among all cases, regardless of an ultimate determination of ineligibility or whether the homeowner failed to appear, about 20% of cases remain in a status that is best understood as limbo or pending before the Court (i.e., continued, status, service). Although there is not much additional information on these cases, they are most likely homeowners where discussions between the parties go on for an extended period and the parties remain in loose contact with the Court.

Agreements are achieved in 20.7% of all cases; slightly higher in day forward cases and lower in those that are day back. Thus, overall, one-in-five cases proceeding through the Diversion Program end up with an agreement.

In contrast, stark differences are observed in the percentage of cases in which a Sheriff Sale is ordered. Sheriff Sales are ordered in just under 12% of cases, with a stark difference between day forward (2.1%) and day back (57.5%) cases. Given the oftentimes extraordinary age of day back cases, this is not a wholly unexpected result.

It is reasonable to think about cases with an Order of default or default delayed as reflective of situations in which the plaintiff holds the case in abeyance, leaving open the possibility of a future Sheriff Sale, short sale, cash for keys, or other "graceful exit" from the home. A review of the text section (sometimes completed) on Orders shows that this Order category is also used when the homeowner is seeking assistance through the Commonwealth's HEMAP program. Default delayed occurs in 9.6% of all cases; 11.5% of day forward cases and 0.5% of that that are day back. Default Orders appear in 2.5% of all cases; 2.9% of day forward and 0.3% of those that are day back.

Bankruptcy is observed in 2% of all cases and, as might be expected, is much more frequently found among day back (5.2%) than day forward (1.4%) cases.

The No Agreement cases involve those in which the parties cannot reach an agreement within the confines of the program. Accordingly, the cases exit the program and return to the basic foreclosure process. This is an infrequent outcome, occurring in under 3% of cases; proportionately more frequent among day forward (3%) than day back (1.3%) cases.

Cases Involving Homeowners who are Eligible and Participate:
Assuming that homeowners are eligible and participate – middle section of Table 4 – approximately 30% of cases remain in a limbo or pending status before the Court. A very small percentage of day back cases remain so, apparently a result of the fact that a final resolution (i.e., agreement or Sheriff Sale) has occurred.

Agreements are achieved in 32.6% of these cases with a higher percentage among day forward cases (35.2%) than day back (22.5%). Stated differently, among homeowners who are eligible and participate, approximately one-in-three ends up with an agreement with the plaintiff.

Sheriff sales are ordered in 16.3% of cases where there is an eligible and participating homeowner. Among day forward cases this is reasonably infrequent (3.5%) while it is a much more likely outcome for day back cases (65.7%).

Default delayed Orders occur in 15% of these cases; 18.8% of those that are day forward and 0.7% of those that are day back. Default Orders occur in just under 4% of these cases; 4.7% of those that are day forward and 0.3% of those that are day back.

Bankruptcy happens at a higher rate among cases involving homeowners who were eligible and participated in the program (compared to the universe of cases). The percentage rises to 3.2% among all such cases and, again, shows greater proportionate frequency among day back (6.9%) than day forward (2.2%) cases.

Legal Representation of Homeowners in the Diversion Program

As part of the Diversion Program, homeowners are offered access to a housing counselor and free legal assistance through Community Legal Services, Inc. (CLS), Philadelphia Legal Assistance (PLA) and Philadelphia Volunteers for the Indigent Program (VIP). The data evidencing the extent of counseling or representational assistance is, at this moment, incomplete. We do however know that of all cases progressing through the Diversion Program that 2.2% evidenced a formal appearance by CLS, PLA or VIP and 2.3% more had private counsel. We know this to be an underestimation of the percent of homeowners that received legal assistance because another significant (but unknown) number of homeowners received legal assistance that was limited in nature.

Philadelphia's VIP offered data reflecting that that they provided legal assistance to more than 1,300 homeowners in a full- and limited-representation capacity.

Future reports on the Diversion Program will focus on the role and impact of counseling assistance and legal representation.

No Agreement as an outcome is also a reasonably infrequent outcome. Essentially, these Orders reflect that the parties agree to disagree, which occurs in 4.1% of the cases; 4.7% among day forward cases and 1.8% in day back.

Cases Involving Homeowners who are Eligible and Participate and who's Cases are Closed/Inactive: Lastly, among cases involving homeowners who are eligible, participate, and for which no activity has occurred on their case in at least 120 days, approximately 25% are in the limbo or pending status – more for day forward than day back. The percent of homeowners achieving agreements reaches 38% among day forward cases and 22.7% for day back.

Bankruptcy among these closed/inactive cases is very similar to the eligible and processed group except that among day back cases, the percentage rises to 7.1%.

An inability to reach an agreement among eligible participating homeowners where the case is assumed closed/inactive rises to 4.5% of all cases; 5.2% among day forward cases and 1.8% among day back.

Sheriff sales are ordered in approximately 17.5% of all of these cases; about 3.2% among day forward cases and 65.9% of day back. Considering the default and default delayed cases as those in which a home will likely be lost, approximately three-in-ten day forward cases likely end up with a home lost compared to two-of-three among day back.

In short, approximately 70% of homeowners in foreclosure participate in the Diversion Program. Among those that do participate, 38% of homeowners with day forward cases and 23% of those with day back cases end up with an agreement between the parties.

3. Does the Diversion Program facilitate the case processing efficiency of the Court?

To understand the extent to which the Diversion Program lengthens the time or expedites foreclosure cases, the number of Orders entered per case (i.e., the number of times a case has a formal contact with the Court) and the median number of days from filing to final order are critical.[28]

Table 5 displays cases, by category, and the number of Orders issued in each case. Overall, day forward cases are averaging 1.74 Orders per case and day back are averaging 1.81; overall, 1.75 Orders have been issued in each case now or ever touched by the Diversion Program. The vast majority (63%) of cases has a single Order issued and approximately 80% have two or fewer. A minority of cases, day forward or back, have more than three Orders issued. Day forward cases, on average, have fewer Orders and, in general, tend to receive fewer Orders throughout their life in the Diversion Program.

		Number of Court Orders (Contacts) per Case											Orders per
		1	2	3	4	5	6	7	8	9	10	Total Orders	Case
Day Forward	#	8,281	2,791	912	479	255	145	91	54	43	60	13,111	1.81
	%	63.16%	21.29%	6.96%	3.65%	1.94%	1.11%	0.69%	0.41%	0.33%	0.46%	100.00%	
Day Back	#	1,765	538	229	104	56	38	20	13	12	23	2,798	1.74
	%	63.08%	19.23%	8.18%	3.72%	2.00%	1.36%	0.71%	0.46%	0.43%	0.82%	100.00%	
Total Cases	#	10,046	3,329	1,141	583	311	183	111	67	55	83	15,909	1.75
	%	63.15%	20.93%	7.17%	3.66%	1.95%	1.15%	0.70%	0.42%	0.35%	0.52%	100.00%	

Table 5: Number of Orders Issued Per Case

Table 6 displays the same data for cases estimated to be closed/inactive (i.e., cases in which more than 120 days since the last Order was issued). Closed/inactive cases tend to have about 0.10 fewer Orders issued per case than the universe of cases (open and closed/inactive). In essence, open or closed/inactive, the Diversion Program has formal contact with cases, typically, fewer than twice in the life of the case.

		Number of Court Orders (Contacts) per Case - Estimated Closed/Inactive											Orders per
		1	2	3	4	5	6	7	8	9	10	Total Orders	Case
Day Forward	#	7,546	2,480	739	387	188	94	61	36	27	27	11,585	1.64
	%	65.14%	21.41%	6.38%	3.34%	1.62%	0.81%	0.53%	0.31%	0.23%	0.23%	100.00%	
Day Back	#	1,741	528	217	102	53	36	18	12	12	19	2,738	1.78
	%	63.59%	19.28%	7.93%	3.73%	1.94%	1.31%	0.66%	0.44%	0.44%	0.69%	100.00%	
Total Cases	#	9,287	3,008	956	489	241	130	79	48	39	46	14,323	1.67
	%	64.84%	21.00%	6.67%	3.41%	1.68%	0.91%	0.55%	0.34%	0.27%	0.32%	100.00%	

Table 6: Number of Orders Issued Per Case - Estimated Closed/Inactive Cases

Assuming that a case was *processed* – defined to exclude cases in which a *failure to appear* or *non-owner occupied* order was issued – yields average Orders per case that are somewhat higher than the universe. Table 7 shows that the processed cases had, typically, 0.10 more Orders issued. This result is consistent with the administrative procedure for closing cases as ineligible or where the homeowner did not appear.

	Orders per Case	
	All	Closed/ Inactive
Day Forward	1.97	1.84
Day Back	2.00	1.98
Total	1.98	1.87

Table 7: Average Orders per Case for Processed Cases

Table 8 displays the average (mean) number of days a case spends in the Diversion Program – including those that are in for zero days. The average case in the Diversion Program extends out over 53.7 days; day forward cases average 53.3 days and day back cases, 56 days. Cases that are estimated to be closed/inactive spend an average 115 days (or just under four months). For day forward cases, the average is 109 days and for day back, 297 days. These data reflect that cases that are older when entering the system take substantially longer to come to closure.

	Mean Days in Diversion Program		
	All Cases	Day Forward	Day Back
Open	46.94	46.01	51.17
Closed / Inactive	115.06	108.91	296.27
Total	53.74	53.28	56.00

Table 8: Mean Number of Days in the Diversion Program

Historically, there is a reported ten month time frame from date of filing to Sheriff Sale in Philadelphia. That assume no actions taken by the homeowner to contest the process, and if lender/servicer timely follows through with all the legal requirements of the foreclosure process as they were legally permitted to pre-Diversion. [29]

4. ***Has the Diversion Court made a difference in how foreclosure cases progress from foreclosure filing to Sheriff Sale?***

In order to examine this question, foreclosure filings were matched against Sheriff Deeds. In essence, this matching allows for an analysis of the progression of a foreclosure, from inception to Sheriff Sale. Complicating this analysis are a number of factors to consider: (1) foreclosures filed prior to the inception of the Diversion Program could petition in and be processed under the rules and purview of the Diversion Program; (2) it takes some time for the Court to officially order a Sheriff Sale; (3) it takes additional time for the Sheriff to sell a property and record the deed; (4) any estimation of the percent sold at Sheriff's auction are for an "as of" date, which in this instance is 3/31/2011. With respect to numbers two and three above, we therefore expect that with less time available post foreclosure there would be a reduction in the percent of cases ending with a Sheriff Sale. However there is no a priori reason to expect that the reduction would be other than gradual over time.

Having said that, for the six and twelve month periods prior to the inception of the Diversion Program (i.e., January through June, 2008 and July through December, 2007), of all foreclosures filed in that period, 17.7% and 23.4% ended up being sold; of those proceeding through the Diversion Program, 27.2% and 27.1% sold and of those not proceeding through the Diversion Program, 14.1% and 22.4% sold. Once the Diversion Program was initiated, the percentages overall declined slightly to 16.8%, but of those going through the Diversion Program, the percent sold declined from 27.2% to 14.5%.[30] Among those not going through, the percent sold rose from 14.1% to 21.1%. *It thus appears that, notwithstanding the aforementioned complications, the passage of cases pre- and post-initiation of the Diversion Program suggests a clear change (i.e., inflection point). That inflection point reflects a substantial decrease in homeowners losing their homes to Sheriff Sale since the inception of the Diversion Program.*

	Percent of Foreclosures Sold		
	All Cases	Div Prog	Not Div Prog
7/07 - 12/07	23.4%	27.1%	22.4%
1/08 - 6/08	17.7%	27.2%	14.1%
7/08 - 12/08	16.8%	14.5%	21.1%
1/09 - 6/09	14.3%	11.3%	30.4%
7/09 - 12/09	7.9%	5.7%	20.5%

Table 9: Percent of Foreclosure Filings Ending with a Sheriff Deed Filed

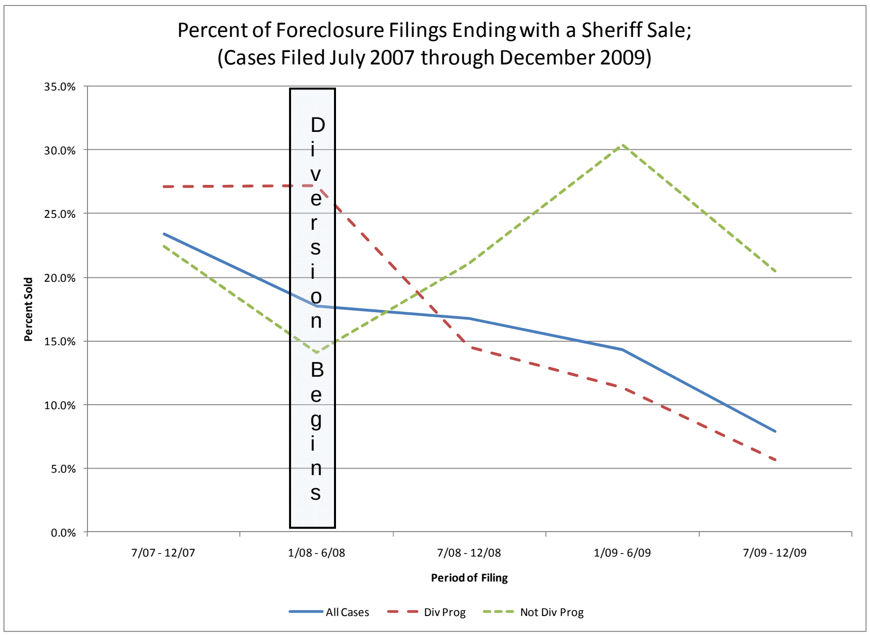


Figure 1: Impact of Diversion Program on Progression of Foreclosure Cases

5. ***Assuming the result is a "saved home", how sustainable is the resolution - and are there patterns (e.g., demographic, economic, spatial) reflecting that some homeowners are more likely to remain in their home than others?***

In order to examine this question, we reviewed all cases with an Agreement achieved from the inception of the Diversion Program through June 30, 2009 – that is, agreements achieved during the first year of the Diversion Program's existence. Public record searches were performed on the owner/address of homeowners with Agreements; public records searched include subsequent foreclosures, Sheriff Sale deeds, subsequent judgments and sales. The purpose of this look-back is to assess the sustainability of the agreements achieved. This look-back was undertaken against records filed as of March 31, 2011; accordingly the agreements are as *young* as approximately 21 months or as old as approximately 33 months.

Of those homes for which an agreement was reached, 733 (84.6%) of 866 homeowners were still in their homes at the time of the public record review. There are an additional 242 agreements prior to a conciliation conference, but during the time when the Diversion Program was an option for the homeowners ("prior to conference") in foreclosure; 87.6% of the homeowners in these cases remain in their home. Overall, 85.3% of homeowners achieving an Agreement with their lender/servicer remain in their homes.[31]

Among those cases classified as day forward and with Agreements achieved with conference, 87.6% remain in their homes 21+ months post-Agreement; 79.4% of those that are day back with Agreements within the program remain in their homes. There are too few day back Agreements achieved prior to conference to report, however, day forward cases with Agreements prior to conference show 87.5% remaining in their home 21+ months post-Agreement.

Several homeowners among the group achieving an Agreement have had subsequent foreclosure filings, re-started foreclosures, or liens and/or judgments (typically a public utility or tax lien) filed against them.

Of those still in their homes post-Agreement and who achieved the Agreement with conference, 9.7% had a foreclosure action restarted. The percentage is somewhat lower for homeowners that achieved their Agreements prior to conference (5.7%).

Of those that are still in their homes post-Agreement and who achieved the Agreement with conference, 18.7% have had subsequent foreclosure filings; of those that achieved the Agreement prior to conference, the percentage is 18.9%.

Of those still in their homes post-Agreement and who achieved the Agreement with conference, 30.2% have had subsequent liens or judgments; of those that achieved the Agreement prior to conference, the percentage is 25.9%.

Homeowner Interview Summary

HO is a first time homebuyer who lived in her home for six years. Due to her "poor credit rating" and lack of down payment, HO secured an 80/20 mortgage. HO stated that she received a fixed interest rate but a private data source indicates HO's interest rate was fixed only for loan constituting 20% of the total indebtedness. The other 80% had an adjustable rate starting at 6.99%. At the time of the mortgage, HO found the monthly payments of $900 to be affordable. She refinanced four years ago with XYZ Bank. HO used the proceeds from the mortgage refinance to settle credit card debts while taking care of a disabled mom, a niece, and a nephew.

In order to make up for her late payments and secure a payment modification with the bank, HO employed the services of an individual who claimed to be an expert at working with banks to modify loans. HO indicated that this individual told her he was in contact with her bank, but refused to accompany her to court for the conciliation conference when she received her Act 91 Notice. HO thus arrived in court without a counselor. Once in court, HO was given information on how to get a counselor to help with her case. With the help of her counselor, HO applied for HAMP and is awaiting a response. HO admits to being "confused with all the different kinds of modifications." HO however notes that the counselor was helpful, and that she "felt a little bit of relief when the housing counselor took charge and faxed all [her] materials to the bank." With the help of the counselor, HO has taken steps to be more prudent on what and how she spends her money. After meetings and interactions with her housing counselor, HO feels she is "getting back on track." HO is thankful for the opportunity to save her home but is anxious to know the exact details of her agreement. At the time of the interview, HO had not received the details of the permanent agreement. She believes her new payment will be around $1,048 per month. HO's take-home pay is approximately $2,225.00 per month, and therefore the proposed agreement would have a front-end debt-to-income ratio of over 50%. HO is also unclear on the treatment of fees and penalties in the agreement, believing they will be added to the back end but unsure what the amounts are or how they will be treated. HO feels she must accept the agreement because saving her home is her highest priority.

Update: A month and three weeks (12/29/2010) after our initial interview with HO, HO was contacted again and stated that she had received the agreement package. HO got a HAMP modification with a new fixed interest rate of 4 percent. HO's new monthly payment is $930.00, down from $1219.00. HO indicated she was really satisfied with the new mortgage agreement and "thankful" for the program.

Homeowner Interview Summary

HO purchased his home in 1986 for $11,100. He refinanced most recently in 2006 with ABC Mortgage Corporation for $70,200; HO believes the interest rate was 8.8%. His contracting work slowed in 2008, and he used his 401(k) savings to pay the mortgage until December of 2009. At that point, he paid an organization $1,300 to assist him, but they did not appear at his conciliation conferences. He was referred to XYZ Counseling Agency at his first conciliation conference. After five conferences, he agreed to a HAMP trial modification with trial period payments of $476.20 then a permanent payment of $513. The principal will be $70,000 with a balloon payment of $40,000 due at the end of the term.

HO recommended the program because he "…tried to talk to the bank directly, but they wouldn't deal with me. This forced them to negotiate and that's all I asked of them."

Among all homeowners who achieved an Agreement, the following describes their pre-foreclosure circumstance:

- The median move-in date is 2003; 72.9% moved into their home before 2004.
- 44% of this group experienced a foreclosure on a loan used to purchase their home.
- The median loan amount was $69,900 at origination; 25% of the loans were valued less than $46,000 and 25% more than $114,500.
- 84% of the loans were conventional.
- 38.9% of the loans had adjustable interest rates.
- For those purchase loans in foreclosure, the median loan-to-value ratio (LTV) at the time of purchase was 99.2%.

As previously noted, there are two groups of homeowners with Agreements: those who achieved through the Diversion Program and those that achieved Agreements prior to the conciliation conference. Comparing these two groups, we observe the following:

- Median move-in dates of 2003 for those in the Diversion Program compared to 2000 for those during its pendency but prior to a conference.
- 38% of this group experienced a foreclosure on a loan used to purchase their home.
- Median loan amounts of $68,000 for those in the Diversion Program compared to $76,500 during its pendency but prior to a conference.
- 84% conventional mortgages for those in the Diversion Program compared to 84.2% during its pendency but prior to a conference.
- 32.3% adjustable rate mortgages for those in the Diversion Program compared to 58.5% during its pendency but prior to a conference.
- For purchase money mortgages in foreclosure, a median LTV of 99% for those in the Diversion Program compared to 99.6% during its pendency prior to a conference.

Both groups of cases seem quite similar except that Diversion Program participants more recently moved into their homes. There is also a remarkably higher percent of adjustable loans involved for homeowners who achieved their agreements during the pendency of the Diversion Program and modestly higher average loan amounts.

By way of comparison, among cases for which homeowners failed to appear in the Diversion Program, 50% of these homeowners are no longer in their homes – most frequently evidenced by a Sheriff Sale deed. Among those homeowners for whom the final outcome with the Diversion Program was a failure to appear, the following represents their circumstance:

- The median move-in date is 2004; 47.2% moved into their home before 2004
- 58.3% of this group experienced a foreclosure on a loan used to purchase their home
- The median loan amount was $80,800 at origination; 25% of the loans were valued less than $49,900 and 25% more than $136,500
- 84.8% of the loans were conventional
- 62.3% of the loans were adjustable
- For those purchase loans in foreclosure, the median loan-to-value ratio was 98%

6. Has the Diversion Program improved overall access to the judicial process for Philadelphia homeowners facing foreclosure? Are the outcomes equal?

There are many ways that access to the judicial foreclosure process can be measured (e.g., is the likelihood of a default judgment in a foreclosure case reduced?). Further, once the process is accessed, a critical next question focuses on the equity with which different groups are able to achieve an equally beneficial (or adverse) outcome. In this section, the *access* and *outcome* questions are addressed.

Philadelphia is a city, like many others, in which residential location within the city relates strongly to the economic and demographic characteristics of its residents. Stated differently, we are (and have been) a residentially segregated city along racial, ethnic and economic dimensions for many decades. Given the segregated pattern, the access and equality issues can be presented as follows:

1. If the Diversion Program is operating in a manner that provides equal access to the judicial (foreclosure) process then we should not observe differences in the extent to which people in foreclosure across the city make use of the Program.
2. If the Diversion Program is operating in a manner that provides equality of outcome then we should not observe differences in the extent to which people facing the foreclosure, using the Program, are able to achieve an agreement that saves their home.

Figures 2 and 3 depict cases ending with a “failure to appear” outcome from the beginning of the Diversion Program until June 30, 2009. Failure to appear is treated as representative of homeowners who chose not to avail themselves of the Diversion Program. Figures 4 and 5 depict cases ending with an “agreement” for the same time period. Agreement is treated as an outcome in which homeowners were able to save their homes. A review of these figures shows that there is no obvious pattern suggesting that areas of higher or lower home prices, or greater or lesser concentrations of minority group members, were either accessing the program or getting less favorable results. The measure of spatial autocorrelation (i.e., Moran’s I) for the percent of all eligible cases ending with a failure to appear or percent of participating cases ending with an agreement are: (1) 0.10 for failure to appear and (2) 0.03 for agreements.[32] Accordingly, these statistics suggest a reasonable measure of equality of access and outcome as those relate to residential location across the City of Philadelphia.

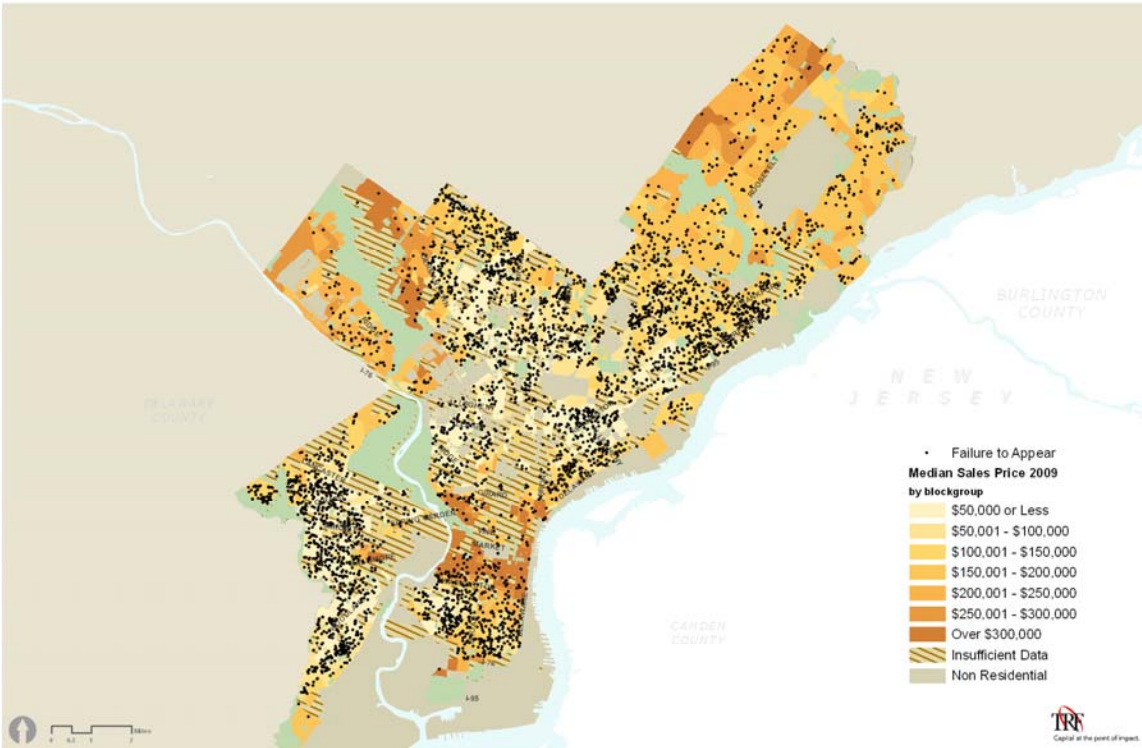


Figure 2: Location of Failure to Appear through Diversion Program (inception through June, 2009) and Median Sale Price

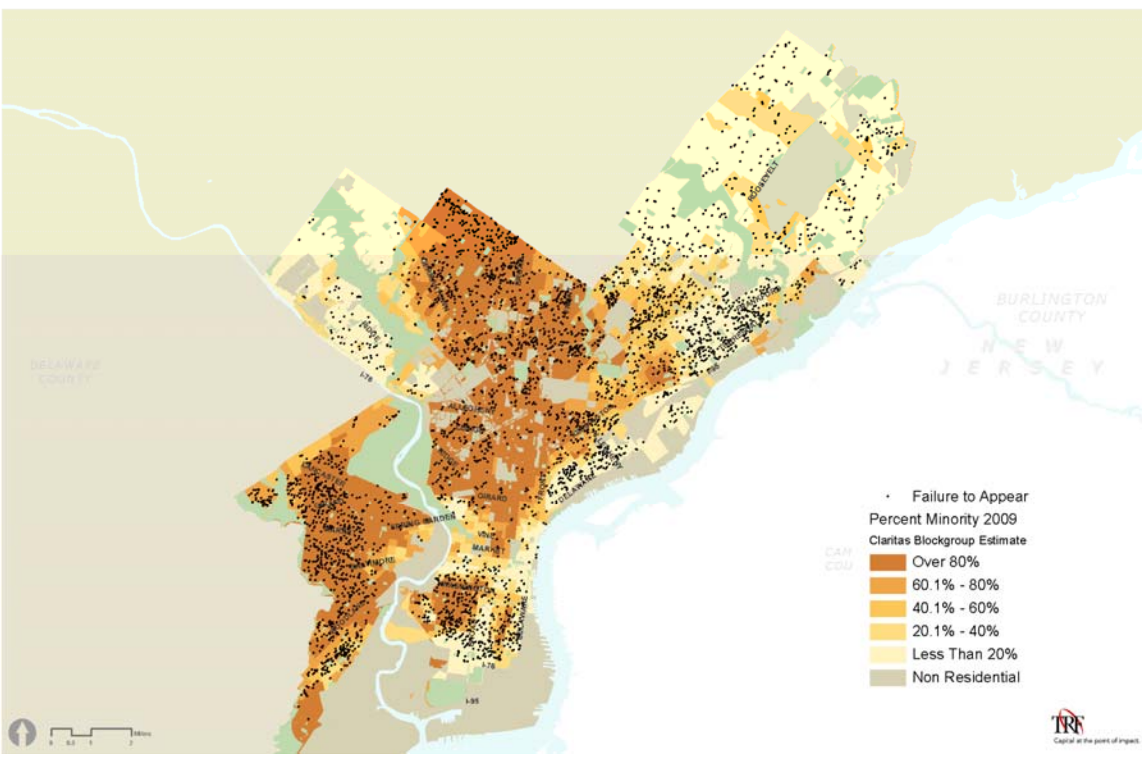


Figure 3: Location of Failure to Appear through Diversion Program (inception through June, 2009) and Racial Composition of Area

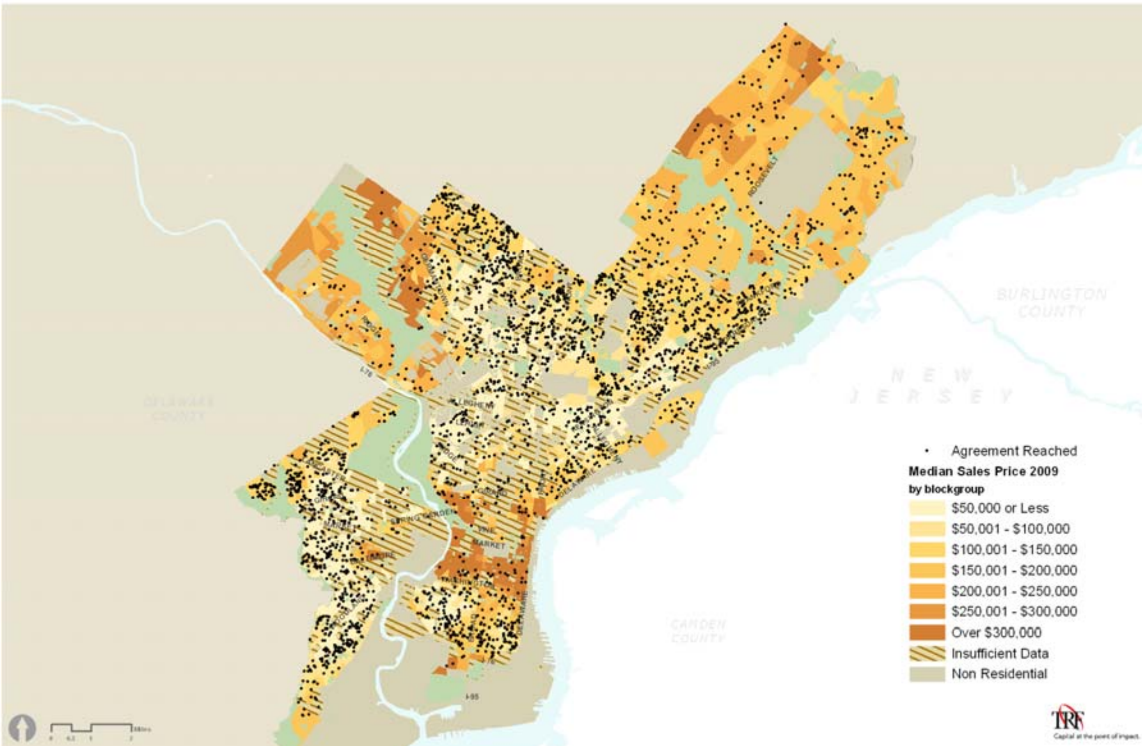


Figure 4: Location of Agreements Reached through Diversion Program (inception through June, 2009) and Median Sale Price

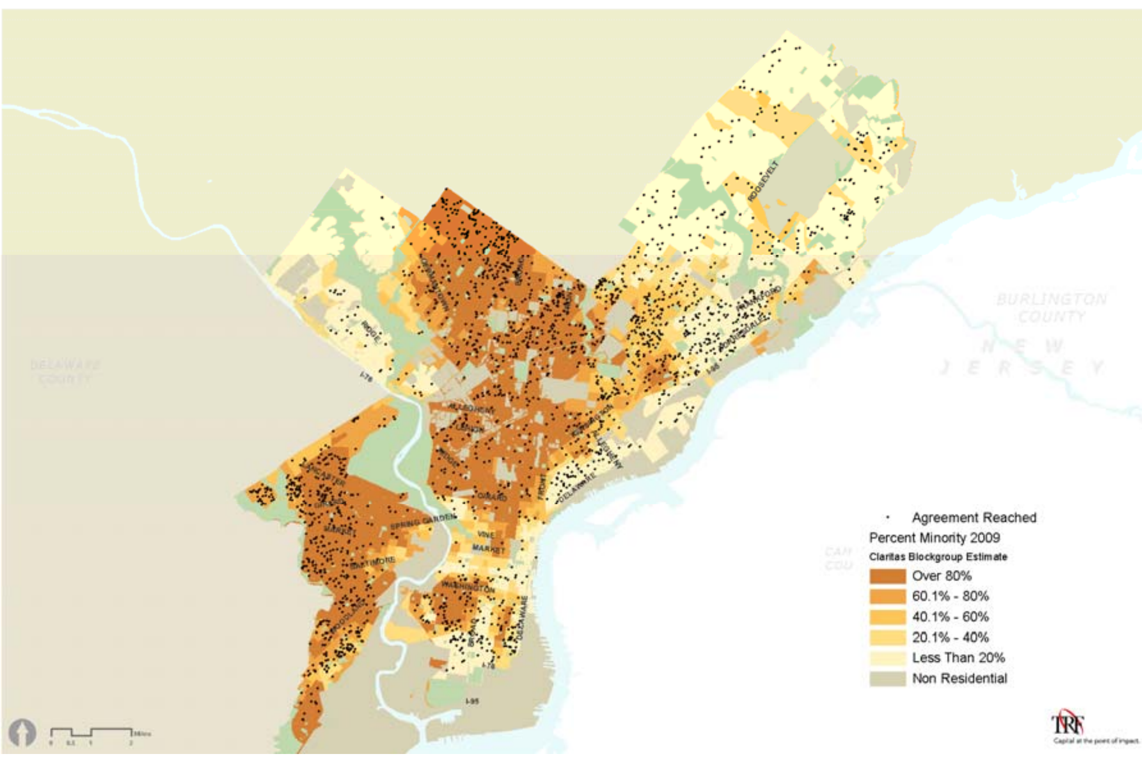


Figure 5: Location of Agreements Reached through Diversion Program (inception through June, 2009) and Racial Composition of Area

A more precise evaluation of the equality of access and outcome questions assesses the independent contribution of area home prices and racial composition, net of a set of market predictors of foreclosure activity. Specifically, we performed an ordinary least squares ("OLS") regression analysis predicting: (1) Census tract percent of eligible cases for which a failure to appear occurred; (2) Census tract percent of participants that achieved an agreement. Predictors of these two outcome measures (i.e., dependent variables) include:

Percent White not Hispanic, 2010
Percent Owner Occupied, 2009
Median Sales Price, 2009 (Log)
Percent Change in Price, 2007-2009
Percent Vacant of Residential Properties, 2007
Percent Foreign Born, 2005-2009
Percent Moved in Last Year, 2005-2009
Distance (meters) to Nearest Housing Counseling Location (Log)
Foreclosures as a Percent of Owner Occupied Properties

Correlations among the variables show that the percent of foreclosures of residential owner occupied properties is negatively associated with percent White not Hispanic (i.e., areas with lower percentages White not Hispanic tend to have higher percentages of owner occupied properties in foreclosure). [See Appendix 2] Similarly, there is a negative correlation with home price and change in home price. There are also smaller albeit statistically significant correlations (i.e., these correlations, although small, did not likely occur due to random chance) with percent foreign born (negative) and percent of residents that recently moved (positive). There is also a statistically significant negative correlation with distance to a housing counseling agency. None of the zero order correlations with percent failure to appear or percent achieving an agreement are statistically significant.

An OLS regression equation for failure to appear (see Table 10) shows that only percent White not Hispanic is statistically significant (albeit a small positive effect) and an overall $R^2 = 0.07$. The significant coefficient for percent White not Hispanic suggests that there is a small tendency for areas with higher percentages White not Hispanic residents have higher percentages of foreclosure filings where the homeowners failed to appear for the Diversion Program. The OLS regression equation for agreements (See Table 11) has no statistically significant predictors and an overall $R^2 = 0.03$. A test for spatial dependence in both equations reveals no adjustments are necessary.

Accordingly, these equations suggest that, there is no spatial pattern associated with race, ethnicity or economics to suggest that one or another group of Philadelphia homeowners is either availing themselves of the process or obtaining an equally advantageous set of results. To the extent that any inequity exists, it appears that areas with higher percentages White not Hispanic are slightly less likely to access the program. However once the Diversion Program is accessed, there are no observable differences in the quality of the outcomes achieved.

Variable	Coefficient	Std.Error	t-Statistic	Probability
Constant	0.504	0.271	1.859	0.064
% Wht not Hispanic	**0.136**	0.039	3.514	0.001
% Owner Occupied, 2009	-0.072	0.074	-0.976	0.330
Median Sale Price, 2009 (Log)	-0.016	0.052	-0.303	0.762
% Change in Price, 2007-2009	-0.040	0.058	-0.698	0.486
% Vacant of Residential Properties, 2007	0.498	0.362	1.373	0.171
% Foreign Born, 2005-2009	-0.021	0.106	-0.201	0.841
% Moved, 2005-2009	0.049	0.150	0.329	0.742
Distance to Nearest Counselor (Log)	-0.037	0.029	-1.294	0.197
% Foreclosed	0.652	0.651	1.001	0.318
R-squared	0.069	F-statistic	1.868	
Adjusted R Squared	0.032	Prob(F-statistic)	0.058	

Table 10: OLS Regression Equation - Percent Failure to Appear

Variable	Coefficient	Std.Error	t-Statistic	Probability
Constant	0.297	0.363	0.818	0.414
% Wht not Hispanic	-0.006	0.049	-0.124	0.901
% Owner Occupied, 2009	0.025	0.103	0.247	0.805
Median Sale Price, 2009 (Log)	0.071	0.071	1.007	0.315
% Change in Price, 2007-2009	-0.113	0.076	-1.492	0.137
% Vacant of Residential Properties, 2007	-0.194	0.472	-0.412	0.681
% Foreign Born, 2005-2009	-0.005	0.138	-0.037	0.970
% Moved, 2005-2009	-0.193	0.202	-0.954	0.341
Distance to Nearest Counselor (Log)	-0.044	0.037	-1.192	0.235
% Foreclosed	-0.867	0.871	-0.996	0.321
R-squared	0.034	F-statistic	0.751	
Adjusted R Squared	-0.011	Prob(F-statistic)	0.662	

Table 11: OLS Regression Equation - Percent Agreement

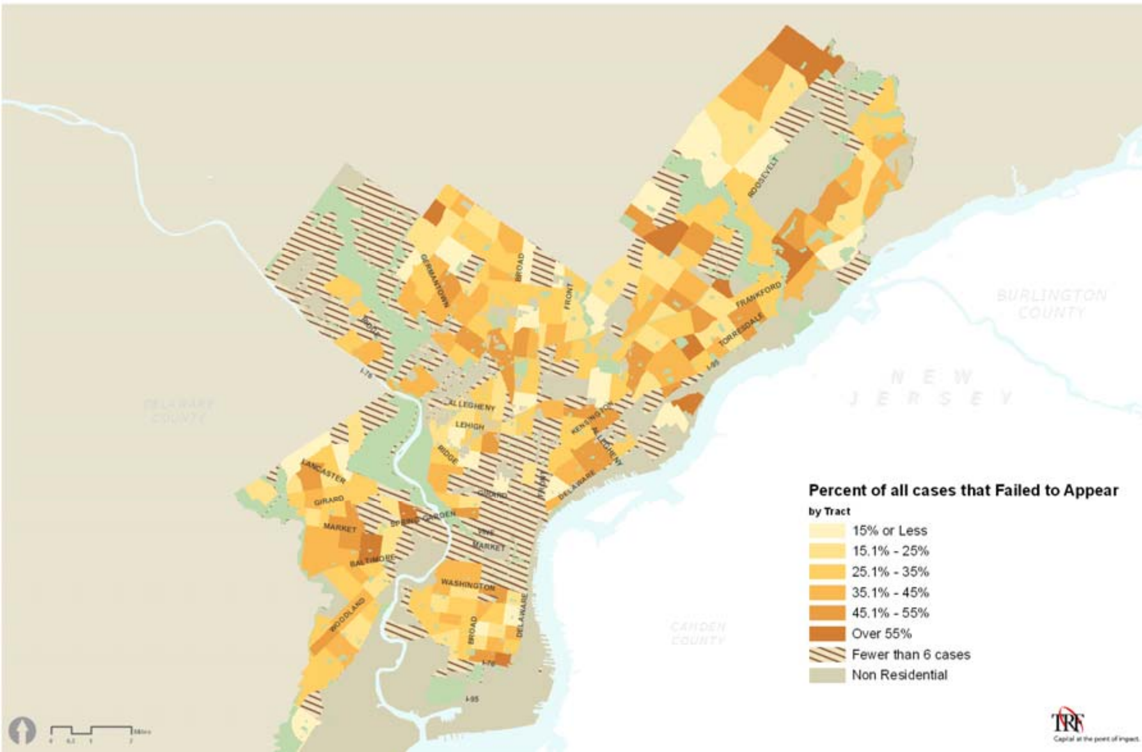


Figure 6: Percent of Cases Concluding with a Failure to Appear (inception through June 30, 2009)

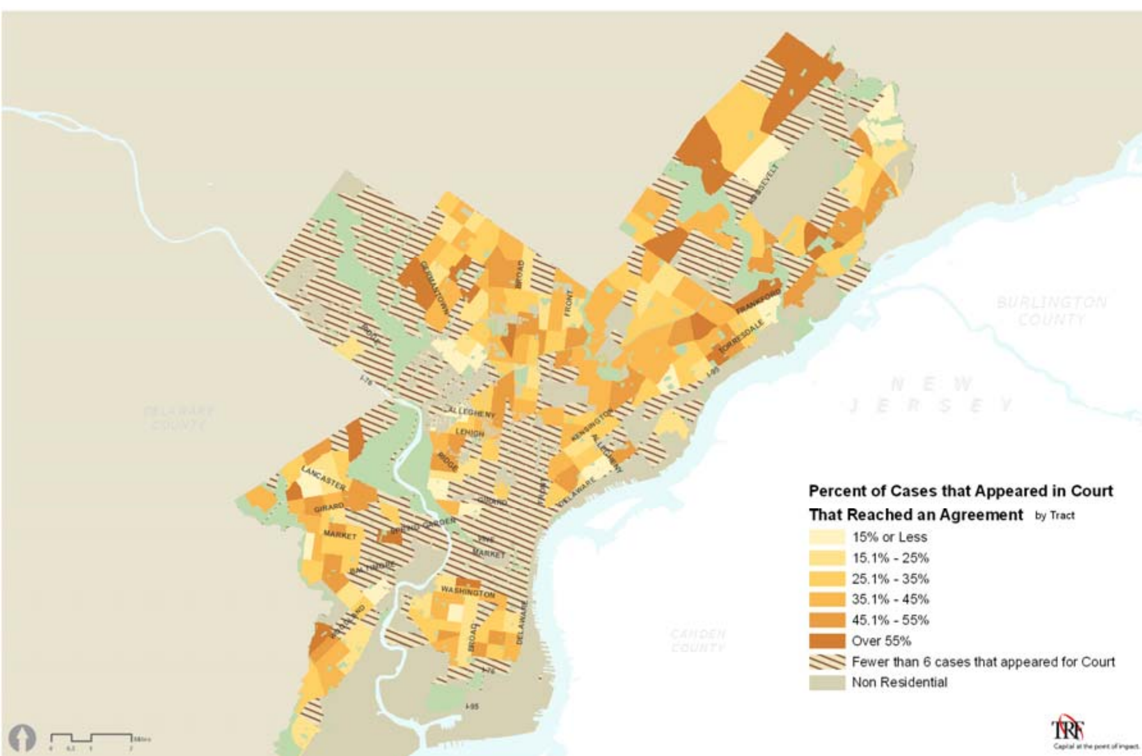


Figure 7: Percent of Eligible and Non-FTA Cases Ending with Agreements (inception through June 30, 2009)

V. Conclusions

The Philadelphia Residential Mortgage Foreclosure Diversion Program was born at a moment in Philadelphia's history when the housing and mortgage markets were under severe pressure and foreclosures were high and on the rise. Owing to the actions of the First Judicial District, City of Philadelphia, housing counselors and legal representatives of homeowners and plaintiffs, Philadelphia launched the Diversion Program. Philadelphia's program is among the first in the country and has been featured in news stories locally, nationally and internationally.

With grants from the Open Society Institute and the William Penn Foundation, we set out to answer a set of basic questions about the outcomes and impacts of this program. After gathering Court Orders on nearly 16,000 cases handled by the Diversion Program from inception through March of 2011, conducting interviews with homeowners and "ground-truthing" our results with experts, we conclude the following:

1. **What is the magnitude of the foreclosure problem in Philadelphia and what part of that problem will the Diversion Program address?**

During the pendency of the program, there were in excess of 8,000 foreclosure filings per year and the Diversion Program addressed between 60% and 70% of that caseload in each year of its existence.

2. **Once a case is deemed eligible, what results are achieved?**

Approximately 70% of all eligible homeowners in foreclosure avail themselves of the Diversion Program (i.e., approximately 30% fail to appear). Of those that are eligible and participate, approximately 35% end up with an Agreement between the plaintiff and the homeowner. Sheriff sales are ordered in approximately 16% of the cases and those are, more frequently, among the cases oldest (day back) at the time of entry into the Diversion Program.

3. **Does the Diversion Program facilitate the case processing efficiency of the Court?**

Evidence suggests that participants in the Diversion Program touch the court, on average, fewer than two times. The average (mean) case spends 54 days in the Diversion Program. Duration in the Diversion Program is heavily influenced by its status as day forward or day back, open and closed/inactive. Closed/inactive day back cases spend, on average, about nine months; closed/inactive day forward cases, three months. Given what we know about the ideal typical time for a case to move from foreclosure filing to final resolution – not counting when active litigation is involved – the average is well within the range of what was previously typical for residential foreclosure cases.

4. **Has the Diversion Program made a difference in how foreclosure cases progress from foreclosure filing to Sheriff Sale?**

Although this analysis is complex and the data are incomplete, it appears that the trajectory of a case from foreclosure filing to Sheriff Deed filing is substantially impacted. There is an inflection point in that trajectory that corresponds to the inception of the Diversion Program showing that for the year prior to the Diversion Program 27% of "eligible cases" ended up with Sheriff Deeds filed – meaning that 27% of homeowners were losing their homes. The inception of the Diversion Program immediately dropped that percentage to 14.5% and then to 5.7% thereafter.

Confidence in this finding must be tempered somewhat by the fact that there were several changes in the housing market environment and business practice of the Court and Sheriff of Philadelphia that could produce a reduction. Yet, the temporal correspondence with the inception of the Diversion Program is suggestive that it - not just business practices - did have a positive impact on the likelihood that a homeowner in foreclosure would keep their home.

5. **Assuming the result is a "saved home", how sustainable is the resolution – and are there patterns (e.g., demographic, economic, spatial) reflecting that some homeowners are more likely to remain in their home than others?**

Using data representing the first year's worth of Agreements – giving these Agreements time to "age" – we observe that 85% of those homeowners are still in their home more than 18 months later. Approximately 30% of all homeowners with Agreements have had subsequent foreclosure activity, but those have not yet forced people from their homes. Is the 85% remaining in the home unusual? Among those that did not avail themselves of the benefits of the Diversion Program (i.e., failed to appear), 50% of them are no longer in their homes.

6. **Has the Diversion Program improved overall access to the judicial process for Philadelphia homeowners facing foreclosure? Are the outcomes equal?**

Our best albeit indirect evidence is that it has improved access. Foreclosures in Philadelphia are clustered in lower income and minority areas; that spatial pattern has weakened somewhat in the last few years. Nevertheless, a spatial analysis of participation in the Diversion program reveals that aside from a small effect of the percent White not Hispanic in a Census tract (showing that areas that higher percentages White not Hispanic have slightly higher percentages failure to appear outcomes) there is no discernable pattern suggestive that lower income communities or communities of color are unable to access the system. Moreover, assuming homeowners participate, there is absolutely no evidence that lower income communities or communities of color are unable to achieve agreements than higher income communities or majority race/ethnicity communities. This suggests that the Diversion Program is offering its benefits to Philadelphia homeowners on an even-handed basis.

This report provides data that show that the Diversion Program has made progress in meeting its initial goals and has done so in an equitable manner. There are however a number of questions that we have not been able to address.

<u>On Counseling:</u>

All homeowners are assigned a case manager and will typically have a counselor or other representative when they appear in Court. However we are unable to reliably estimate the frequency with which housing counselors assist homeowners in the Diversion Program; nor, for that matter, can we systematically quantify the intensity of the counselors' work with homeowners. This data deficiency was raised with the City of Philadelphia's Office of Housing and Community Development (i.e., the agency that provides funding and oversight to the City's 26 counseling agencies). The City took a variety of steps to correct this data deficiency going forward.

To overcome this information deficit, especially for the early Diversion Program cases, we have been working with one of the City's housing counseling agencies that provides counseling services to a significant portion of all Diversion Program cases. Future reports on the Diversion Program will document both the frequency with which counselors are involved and whether their involvement produces outcomes that are different than homeowners could achieve on their own. We will also be able to characterize the demographics and economics of families in the Diversion Program with an eye towards understanding the impact of these factors on case outcomes.

One thing that observers and commenters have noted is that elderly homeowners are uniquely impacted by the foreclosure problem and further that these homeowners present complex problems for resolution. Unfortunately, the data collection issue referenced above does not enable us to analyze issues unique to the elderly or to estimate the number of cases involving elderly homeowners.

On Legal Representation of Homeowners:

We are also unable to reliably identify cases involving legal representation – especially those cases in which limited representation is provided. In large measure, this gap in our report is a result of the privilege between a client and her representative. We recently made progress in gaining access to data from some of the legal services cases and in future reports, we will include that analysis.

On Agreements:

Until quite recently, Orders did not contain much detail on the nature of the agreements between the parties. The Court recently changed the Order to capture additional detail on the Agreement Order including whether a modification was HAMP or proprietary and the basic terms of the pre- and post-modification loan. So that we do not lose all information on the first two-plus years of agreements, we are gathering these data from the above-referenced counseling agency. Future reports will detail these data.

On the Costs and Benefits of the Diversion Program:

This report has focused generally on the outputs and outcomes of the Diversion Program. There are a wide variety of costs and benefits associated with this program. For example, a review of Philadelphia's last five Consolidated Plans prepared for the U.S. Department of Housing and Urban Development shows that it dedicates between $3.5 and $4.0 million per year of its federal block grant allocation to housing counseling. Additional funds are also dedicated to legal representation and to the SaveYourHomePhilly Hotline. Not all of these funds directly support homeowners going through the Diversion Program, but a significant portion does. A comprehensive cost-benefit analysis of the Philadelphia program and other programs around the country should detail the variety of costs (and who bears those costs) as well as the benefits (individual, corporate and municipal) in an effort to understand the extent to which programs such as Philadelphia's Diversion Program provide a net community benefit.

On Justice and Equity:

While homeowners may benefit from the more transparent and informal procedures of the Diversion Program, there are tradeoffs. Unexamined to a full degree is whether justice for homeowners (and lender/servicers) is achieved through the Diversion Program. For example: Are homeowners having a voice in the face-to-face discussion with the lender's/servicer's representative? Are all defenses to the foreclosure being identified and pursued? On a related note, where there are affirmative defenses (e.g., TILA or RESPA violations) are they being identified and pursued? Are lenders/servicers being unnecessarily delayed in exercising their rights to reclaim the collateral property? Answers to each of these and other such questions are necessary to fully understand the extent to which this public policy intervention is fully meeting its objectives.

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Appendix 1
Distribution of Foreclosure Filings

Year	> 80 % Minority	> 80 % and < 60 % Minority	> 60 % and < 40 % Minority	> 40 % and < 20 % Minority	< 20 % Minority	NA Data
2005	57.10%	14.50%	8.80%	5.10%	12.80%	0.00%
2006	56.30%	13.10%	7.80%	5.60%	14.60%	0.00%
2007	52.60%	13.30%	8.00%	6.20%	17.50%	0.00%
2008	50.90%	12.70%	8.80%	7.50%	18.20%	0.10%
2009	44.00%	12.10%	8.70%	7.00%	18.60%	0.30%
2010	47.90%	13.60%	9.20%	7.60%	20.80%	0.30%

Table 1- 1: Distribution of All Foreclosure Filings by Racial Composition of Area; 2009

Year	Median Sale Price < 50k	Median Sale Price > 50k < 75k	Median Sale Price > 75k < 125k	Median Sale Price > 125k < 250k	Median Sale Price > 250k	NA Data
2005	30.90%	9.70%	22.60%	17.20%	2.10%	17.40%
2006	30.60%	10.00%	20.20%	19.20%	2.60%	17.50%
2007	27.50%	9.30%	21.50%	21.40%	3.10%	17.20%
2008	28.50%	9.20%	21.30%	22.20%	3.40%	15.50%
2009	23.60%	7.90%	20.10%	21.60%	3.80%	23.00%
2010	24.20%	9.30%	22.90%	25.00%	4.00%	14.50%

Table 1- 2: Distribution of All Foreclosure Filings by Median Area Home Price, 2009

Appendix 2

		% Failure to Appear	% Wht, Not Hispanic, 2009	% Owner Occupied, 2009	Median Sale Price, 2009 (Log)	% Change in Price, 2007-2009	% Vacant of Residential Properties, 2007	% Foreign Born, 2005-2009	% Moved, 2005-2009	Distance to Nearest Counselor (Log)	% Foreclosed
% Failure to Appear	Pearson Correlation	1.000	0.101	-0.049	-0.021	-0.075	0.072	-0.051	0.075	-0.020	-0.010
	Sig. (2-tailed)		0.121	0.455	0.750	0.251	0.272	0.434	0.250	0.756	0.881
% Wht, Not Hispanic, 2009	Pearson Correlation		1.000	**0.325**	**0.599**	**0.355**	**-0.588**	**0.276**	-0.013	**0.481**	**-0.419**
	Sig. (2-tailed)			0.000	0.000	0.000	0.000	0.000	0.847	0.000	0.000
% Owner Occupied, 2009	Pearson Correlation			1.000	-0.074	0.038	**-0.329**	0.040	**-0.353**	**0.225**	0.107
	Sig. (2-tailed)				0.259	0.557	0.000	0.535	0.000	0.000	0.102
Median Sale Price, 2009 (Log)	Pearson Correlation				1.000	**0.568**	**-0.572**	**0.256**	0.067	**0.382**	**-0.503**
	Sig. (2-tailed)					0.000	0.000	0.000	0.306	0.000	0.000
% Change in Price, 2007-2009	Pearson Correlation					1.000	**-0.319**	**0.223**	-0.045	**0.181**	**-0.338**
	Sig. (2-tailed)						0.000	0.001	0.491	0.005	0.000
% Vacant of Residential Properties, 2007	Pearson Correlation						1.000	**-0.394**	-0.006	**-0.315**	-0.016
	Sig. (2-tailed)							0.000	0.925	0.000	0.801
% Foreign Born, 2005-2009	Pearson Correlation							1.000	**0.056**	**0.290**	**-0.159**
	Sig. (2-tailed)								0.389	0.000	0.014
% Moved, 2005-2009	Pearson Correlation								1.000	**-0.256**	0.046
	Sig. (2-tailed)									0.000	0.480
Distance to Nearest Counselor (Log)	Pearson Correlation									1.000	**-0.346**
	Sig. (2-tailed)										0.000
% Foreclosed	Pearson Correlation										1.000
	Sig. (2-tailed)										

Figure 2- 1: Zero Order Correlations for Universe of Census Tracts with 5+ Foreclosures - Failure to Appear

		% Agreement	% Wht, Not Hispanic, 2009	% Owner Occupied, 2009	Median Sale Price, 2009 (Log)	% Change in Price, 2007-2009	% Vacant of Residential Properties, 2007	% Foreign Born, 2005-2009	% Moved, 2005-2009	Distance to Nearest Counselor (Log)	% Foreclosed
% Agreement	Pearson Correlation	1.000	0.075	0.056	0.125	-0.010	-0.096	0.024	-0.074	0.050	-0.066
	Sig. (2-tailed)		0.292	0.431	0.077	0.884	0.177	0.733	0.295	0.478	0.350
% Wht, Not Hispanic, 2009	Pearson Correlation		1.000	**0.371**	**0.633**	**0.369**	**-0.568**	**0.281**	-0.072	**0.499**	**-0.409**
	Sig. (2-tailed)			0.000	0.000	0.000	0.000	0.000	0.312	0.000	0.000
% Owner Occupied, 2009	Pearson Correlation			1.000	0.074	0.078	**-0.406**	0.081	**-0.282**	**0.207**	0.007
	Sig. (2-tailed)				0.297	0.269	0.000	0.256	0.000	0.003	0.926
Median Sale Price, 2009 (Log)	Pearson Correlation				1.000	**0.601**	**-0.600**	**0.294**	-0.097	**0.502**	**-0.445**
	Sig. (2-tailed)					0.000	0.000	0.000	0.172	0.000	0.000
% Change in Price, 2007-2009	Pearson Correlation					1.000	**-0.337**	**0.280**	-0.096	**0.194**	**-0.308**
	Sig. (2-tailed)						0.000	0.000	0.177	0.006	0.000
% Vacant of Residential Properties, 2007	Pearson Correlation						1.000	**-0.404**	0.033	**-0.311**	-0.039
	Sig. (2-tailed)							0.000	0.639	0.000	0.582
% Foreign Born, 2005-2009	Pearson Correlation						-0.404	1.000	0.024	**0.258**	-0.166
	Sig. (2-tailed)								0.733	0.000	0.019
% Moved, 2005-2009	Pearson Correlation								1.000	**-0.277**	**0.196**
	Sig. (2-tailed)									0.000	0.005
Distance to Nearest Counselor (Log)	Pearson Correlation									1.000	**-0.398**
	Sig. (2-tailed)										0.000
% Foreclosed	Pearson Correlation										1.000
	Sig. (2-tailed)										

Figure 2- 2: Zero Order Correlations for Universe of Census Tracts with 5+ Foreclosures - Percent Agreement

Endnotes:

[1] A recession, by definition, is: "*… a significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in production, employment, real income, and other indicators. A recession begins when the economy reaches a peak of activity and ends when the economy reaches its trough. Between trough and peak, the economy is in an expansion … Because a recession is a broad contraction of the economy, not confined to one sector, the committee emphasizes economy-wide measures of economic activity."* See: http://www.nber.org/cycles/dec2008.html

[2] See: http://www.responsiblelending.org/mortgage-lending/research-analysis/snapshot-of-a-foreclosure-crisis.html

[3] See: http://www.treasury.gov/initiatives/financial-stability/results/MHA-Reports/Documents/Jan_2011_MHA_Report_FINAL.PDF

[4] See, for example: http://www.gao.gov/new.items/d11288.pdf or http://www.gao.gov/new.items/d11338t.pdf.

[5] See: http://www.ots.treas.gov/_files/490069.pdf

[6] See Immergluck, et al. (2011) for a very recent review of state interventions in states without a judicial foreclosure process.

[7] For a description of the various foreclosure mediation efforts across the country, see Geoffry Walsh, 2009. "State and Local Foreclosure Mediation Programs: Can they save homes?" National Consumer Law Center. http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/report-state-mediation-programs.pdf

[8] See: http://www.nclc.org/images/pdf/conferences_and_webinars/other_webinars/2011/presentations/final_philadelphia_foreclosure_diversion_program_webinar.pdf

[9] See: http://www.trfund.com/diversionstudymethods.pdf

[10] Id.

[11] Id.

[12] See: http://fjd.phila.gov/pdf/regs/2008/2008-01-Order-Re-aug-5-sept-9-2008-Sheriff-Sale.pdf. Accessed 10/20/2010.

[13] Joint General Court Regulation No. 2008-01, op. cit.

[14] See: http://fjd.phila.gov/pdf/regs/2009/order-JGCR-2008-01.pdf. Accessed 10/20/2010.

[15] Id.

[16] Generally, homeowners are eligible if they occupy the property subject to the foreclosure action as their primary residence. In re: Joint General Court Regulation No. 2008-01. See: http://fjd.phila.gov/pdf/regs/2008/2008-01-Order-Re-aug-5-sept-9-2008-Sheriff-Sale.pdf.

[17] For a description of the various approaches and the conditions in which they are appropriate, see: http://courts.phila.gov/pdf/forms/civil/Residential-Mortgage-Foreclosure-Diversion-Pilot-Program-Materials.pdf. Accessed 10/20/2010.

[18] See: http://courts.phila.gov/pdf/forms/civil/Residential-Mortgage-Foreclosure-Diversion-Pilot-Program-Materials.pdf. Accessed 10/20/2010.

[19] Id.

[20] Jeff Shields. "Nutter goes on foreclosure offensive". The Philadelphia Inquirer. June 4, 208. Available at: http://www.philly.com/philly/blogs/heardinthehall/19532959.html. Accessed 10/20/2010. See also: http://www.saveyourhomephilly.org/.

[21] The phrase *book and page* is a reference to the way, historically, property deeds and mortgages were stored. Deeds and mortgages are now assigned a document id number when filed with the Recorders Office. Each unique identification number is important because it is the most certain means to link the foreclosure filing to other databases in order to identify the lending institution associated with the mortgage at the time of origination.

[22] There is no comparable Order to "Failed to Appear" if the lender's attorney does not attend the conciliation conference or if the lender or their attorney is unprepared for the conference.

[23] "Status" is a code that is no longer accepted by the Court.

[24] When a bankruptcy is filed, the Diversion Program loses jurisdiction of the case.

[25] Homeowners who express a willingness to be part of the study were provided forms to indicate what day, time, and place they wanted the interview to take place. Before the start of the interview, homeowners had to read and sign a confidentiality agreement indicating their participation was both knowing and willing, and permitting TRF to obtain their credit reports to ascertain their financial health during the time they participated in the Diversion Program. Not all homeowners we contacted were interviewed: some homeowners were just not interested in sharing their story. Others agreed to the interview but later opted out. There were still others whose work schedules and other demands on their time made it impossible to participate in the study. A few homeowners could not be interviewed after they had initially expressed interest in participating because of medical concerns. Homeowners who agreed to be involved in the study but could not be contacted by phone after three trials were not pursued further.

[26] The "closed/inactive/inactive" status of a case is one that is very difficult to determine in the Diversion Program. That is because there is a long lag between the effective end of a case and when an Order is issued and recorded to close the case. Accordingly, a rule for estimating a closed/inactive case is when there is no activity 120 or more days after the last known Order has been issued in a case. This is admittedly imperfect as evidenced by the fact that a number of cases remain in a *limbo* status (e.g., continued, status, etc.).

[27] Participation rates vary greatly by jurisdiction, legal structure and program design. For example, the NY state program initially applied only to residential foreclosures associated with certain subprime loans (and now applies to all residential foreclosures) reports a default rate of 25.5%. In CT, all homeowners are eligible but must respond in order to preserve that right. CT reports an approximate 38% participation rate. RI's program allows for automatic homeowner eligibility and has an estimated 10% participation rate. Marion County, IN allows all homeowners to participate in their program. A reported 30-40% participates in mediation. http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/rpt-mediation-2011.pdf.

[28] The Prothonotary assigns a Case ID number to each case that includes the month and year of filing. Estimating from the 15th of that month, we can measure the length of time from filing to the end of Diversion, and in some cases to the resolution of the foreclosure action.

[29] There is no stated time outlined for completing of foreclosure process, from time of filing to the eventual sale of the property. A ten-month period is the minimum time period from filing to competing of foreclosure absent any defense mounted by the homeowner. For a chart detailing the entire process as it existed before the introduction of the Diversion Program, see chart prepared by GPUAC, accessed via http://www.gpuac.org/media/documents/ForeclosurePreventionResourceGuideWinter_Spring2011Edition_000.pdf.

[30] Cases not going through the Diversion Program represent something of an open question. We believe that this pool of cases includes a mixture of the following: (1) cases that may be officially "residential" but not actually so; (2) cases that are estimated to be owner occupied, but are actually not; (3) property owners that, for one reason or another did not petition into the Diversion Program and any selection bias that may attach to these cases; (4) cases that the Court and Prothonotary failed to properly identify as eligible and the homeowners did not come forward and petition into the Diversion Program.

[31] Stated differently, the latter group would have been eligible for the Diversion Program and thus its presence was likely influential on the substance of the negotiated agreement. For whatever reason, however, the homeowners and plaintiffs in this group achieved their agreement prior to a conference.

[32] Moran's I ranges from 0.00 to 1.00; values near zero reflect a lack of spatial autocorrelation (i.e., the degree to which values of a variable are similar in neighboring spaces). A positive spatial autocorrelation would exist if, for example, areas with high numbers of foreclosures have neighboring areas also having high numbers of foreclosures. In this instance, the computed Moran's I values are essentially zero.

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