



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
FAX (302) 577-6630
CRIMINAL DIVISION (302) 577-8500
FAX (302) 577-2496
FRAUD DIVISION (302) 577-8600
FAX (302) 577-6499

December 21, 2021

The Honorable Jan R. Jurden
Superior Court
500 N. King Street
Wilmington, DE 19801

The Honorable David P. Sokola
Legislative Hall
P.O. Box 1401
Dover, DE 19903

The Honorable Peter C. Schwartzkopf
Legislative Hall
P.O. Box 1401
Dover, DE 19903

RE: Foreclosure Filing Data – Third Quarter 2021

Dear President Judge Jurden, President Pro Tempore Sokola and Speaker Schwartzkopf:

As the delegee of the Superior Court under 10 *Del. C.* § 5062C(t), the Department of Justice is required to periodically report relevant statistics about the proceedings of the Mediation Program. This letter serves as the Third Quarter Report for 2021. We continue to conduct all conferences virtually to avoid unnecessary in person gatherings due to the ongoing pandemic. Throughout the pandemic, we have been available to assist homeowners and answer their questions regarding the foreclosure process and the options available to them. The Federal Foreclosure Moratorium ended on July 31, 2021 and FHA extended the Eviction Moratorium for Foreclosed loans through September 30, 2021. The Consumer Financial Protection Bureau issued an additional servicing rule in late June 2021. The rule went into effect on August 31, 2021 and “establishes temporary special COVID-19 procedural safeguards that must be met for certain

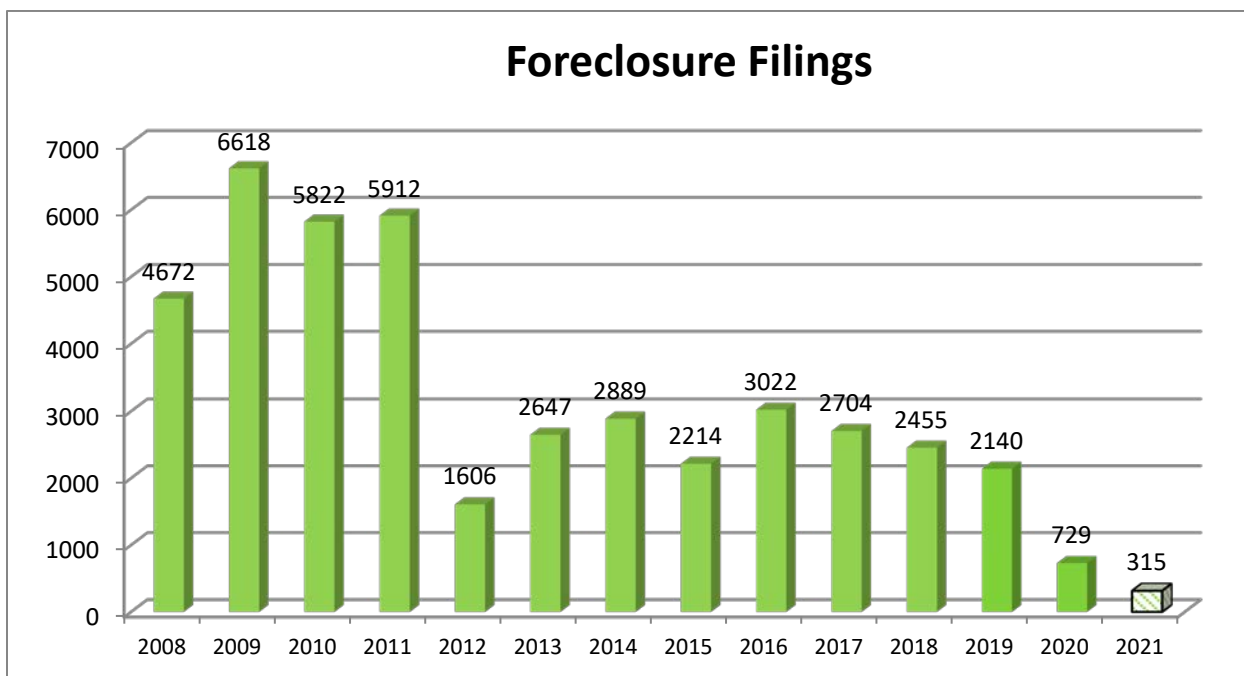
mortgages”¹ before a servicer may proceed with foreclosure. Many of the provisions expire on January 1, 2022.

1. Statistical Snap Shot

During the Third Quarter of 2021, 70 eligible foreclosure actions were filed with the Superior Court as well as 71 Mediation Scheduling Notices and 24 Certificates of Participation. Cumulatively since 2012, 14,606 eligible foreclosure actions have been filed, with a **57.76% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **61.77%** have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer. A more detailed overview of foreclosure statistics may be found below, as well as on the Mediation Program website at:

<http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

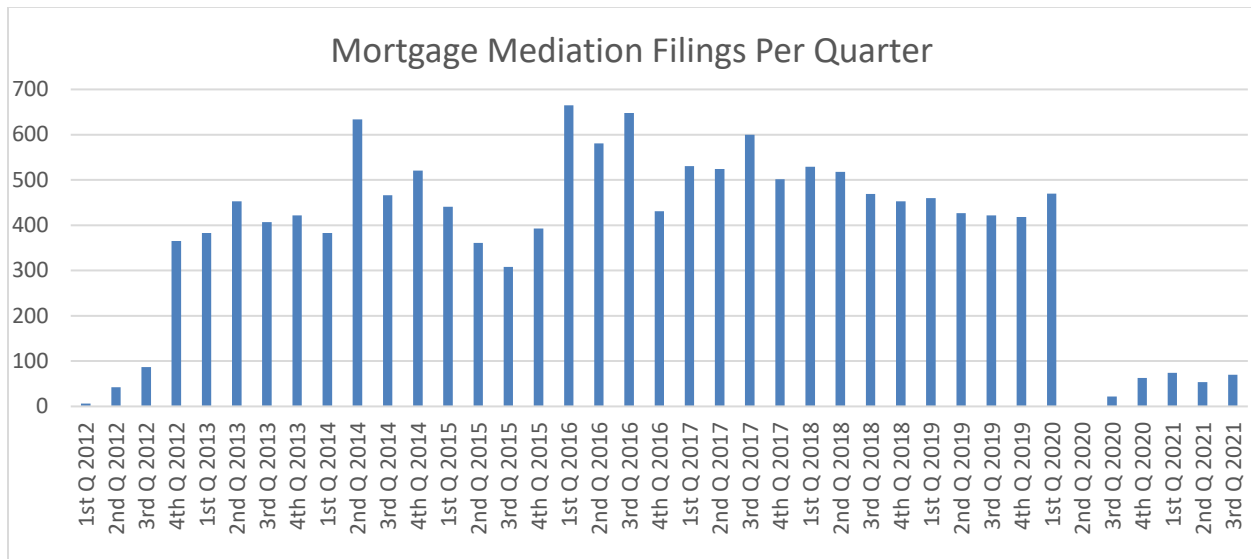
The following chart demonstrates the number of foreclosure actions² filed statewide in the calendar years indicated.



¹Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X, 86 FR 34848, at 34848 (June 30, 2021) Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/rules-policy/final-rules/protections-for-borrowers-affected-by-covid-19-under-respa/>
² This data is compiled through September 30, 2021. Additional information by county and case type is available on the Department of Justice’s website: <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

2. Foreclosure Filings Since Inception of the Mediation Program

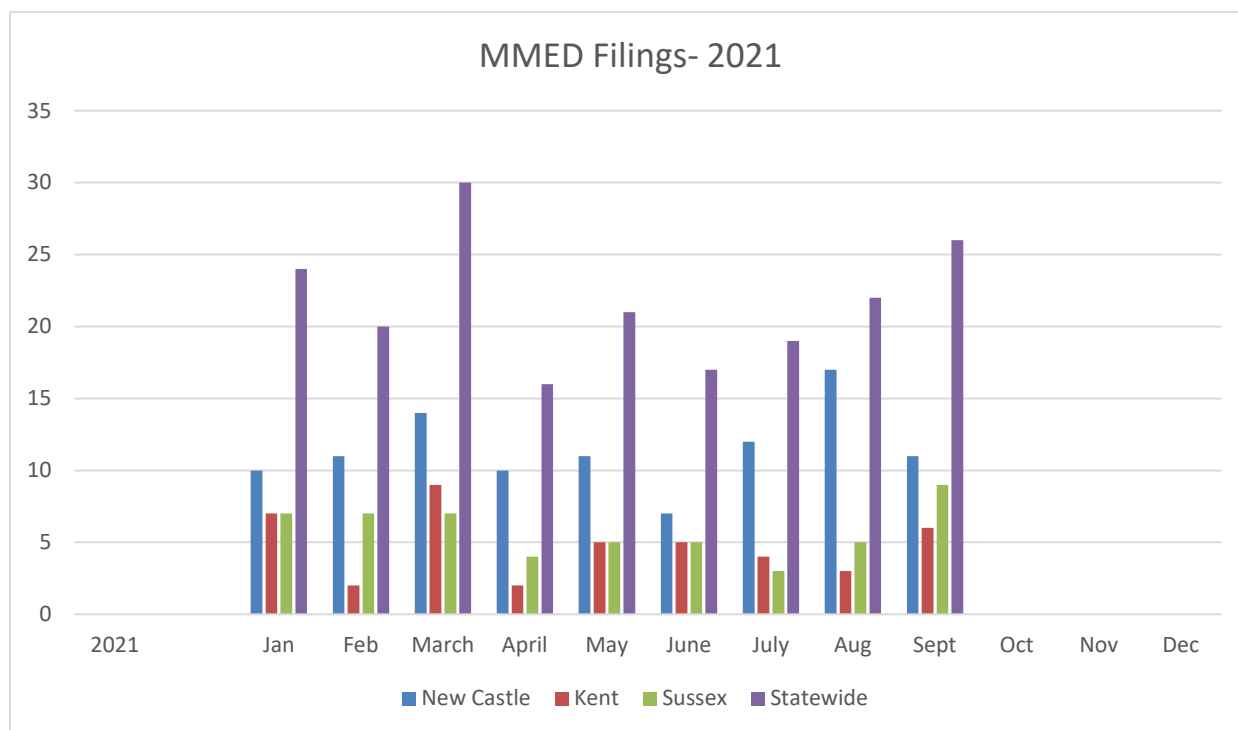
Between January 19, 2012 and September 30, 2021, there have been a total of 20,564 foreclosure filings statewide with 14,606 of those cases, or 71.03%, eligible for the Mediation Program.³ Most recently, in 2019, there were 1,727 eligible filings with an average of 432 filings per quarter. In the first quarter of 2020, there were 470 eligible filings. With the inception of the Emergency Order, all residential foreclosure filings halted. In the last two quarters of 2020, there were 155 foreclosure filings and 85 were mediation eligible. In the First Quarter of 2021, there were 114 foreclosure filings and 74 were mediation eligible. In the Second Quarter of 2021, there were 89 foreclosure filings and 54 were mediation eligible. In the Third Quarter of 2021, there were 112 foreclosure filings and 70 were mediation eligible. This compares with an average of 434 mediation eligible filings per quarter since the Program’s inception in 2012. The number of eligible foreclosure filings continues to remain low due to the extension of Federal Foreclosure Moratoriums and forbearance programs. We expect these numbers to dramatically increase in the First Quarter of 2022 as the Consumer Financial Protection Bureau amendments to the servicing rules expire on January 1, 2022. Those amendments provided short term safeguards to allow borrowers time to explore their options before a servicer may file foreclosure after the Federal Foreclosure moratorium ended.⁴ The below chart demonstrates the number of mediation-eligible filings per quarter since 2012.



³ Historically, the percentage of mediation-eligible foreclosure actions in Superior Court have been as follows: Q2-Q3 2012- 26.2%; 2013- 64.03%; 2014- 68.23%; 2015-66.47%; 2016-63.22%; 2017-66.31%; 2018-69.06%; 2019-70.48%; Q1 2020 71.20%, Q3 2020 71.20%, Q4 2020 71.15%, Q1 2021 71.12%, Q2 2021 71.07%.

⁴ "CFPB Issues Rules to Facilitate Smooth Transition as Federal Foreclosure Protections Expire," Consumer Financial Protection Bureau, June 28, 2021, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rules-to-facilitate-smooth-transition-as-federal-foreclosure-protections-expire/>.

This chart demonstrates the number of foreclosures filed in each county from January 1, 2021 through September 30, 2021. New Castle County continues to have the highest number of filings while Kent and Sussex are about equal. The Twenty-Third Modification to the State of Emergency Order lifted the moratorium on foreclosure filings on July 1, 2021.



3. Mediation Conferences and Participation Data

Through the Mediation Program, the Department of Justice administers and oversees conciliation-style mediations for each case in which the homeowner has been served with process. Prior to the pandemic, we were able to accommodate up to 120 cases per conference day in each county, with each lender's counsel holding up to 50 conferences per day. With the resumption of mediations virtually, we can accommodate up to 64 conferences per day with each lender's counsel holding up to 16 conferences per day. Conferences are scheduled each half hour and the conferences are spaced by counsel and housing counselor. This has eliminated the occasionally lengthy waits for some homeowners but has increased the length of the mediation day for counsel with larger volumes, the mediator, and staff. In the Third Quarter of 2021, we hosted 12 online mediation days. Despite the lower daily volume of conferences online, we have still been able to accommodate mediation scheduling requests and schedule initial conferences within 45 to 75 days of completion of service.

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New Castle County averaged 24 mediations per conference day, Kent County averaged 18 mediations and Sussex County averaged 10 mediations per conference day during the Third Quarter of 2021. We expect to continue to hold mediation conferences virtually through the Winter of 2022. We have revised our scheduling letter to include tips for using Zoom and our office has guided numerous homeowners through the process. Those homeowners who do not have access to a computer or smart phone are able to call in to the conference. Many housing counselors have also participated in conferences with the homeowner on speaker phone while the housing counselor is connected virtually. The virtual conferences have allowed homeowners to continue to pursue loss mitigation while remaining safe from possible exposure to COVID-19. Many have expressed a preference for the virtual format as it eliminated travel time and taking time off from work. Homeowners can schedule conferences during their lunch hour or before or after work.

During the Third Quarter of 2021, 71 Mediation Scheduling Notices and 24 Certificates of Participation were filed with the Superior Court. Overall, the Mediation Program has a **57.76% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **61.77%** have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer.⁵ The remaining 38.23% have resumed court proceedings due to unemployment, severe delinquency, failure to participate in the Mediation Program, failure to reach an agreement on the terms of the loss mitigation offered by the lender/servicer, and/or a failure to work with a housing counselor.⁶ The high success rate of the Mediation Program thus far owes a great deal to the support of knowledgeable HUD-approved housing counselors.

The participation data provides a snapshot of the cases in the Mediation Program through September 30, 2021. Our program participation overview chart captures those matters that were dismissed or cancelled prior to mediation and those that were dismissed or cancelled following the scheduling of mediation. Those cases that achieve a non-foreclosure resolution and those that remain in mediation are separated. Additionally, we detailed those cases which have been dismissed outside of mediation.⁷ Those matters where an amended complaint was filed changing the matter to a MORT case or where the matter was transferred to a different Court are also separated.

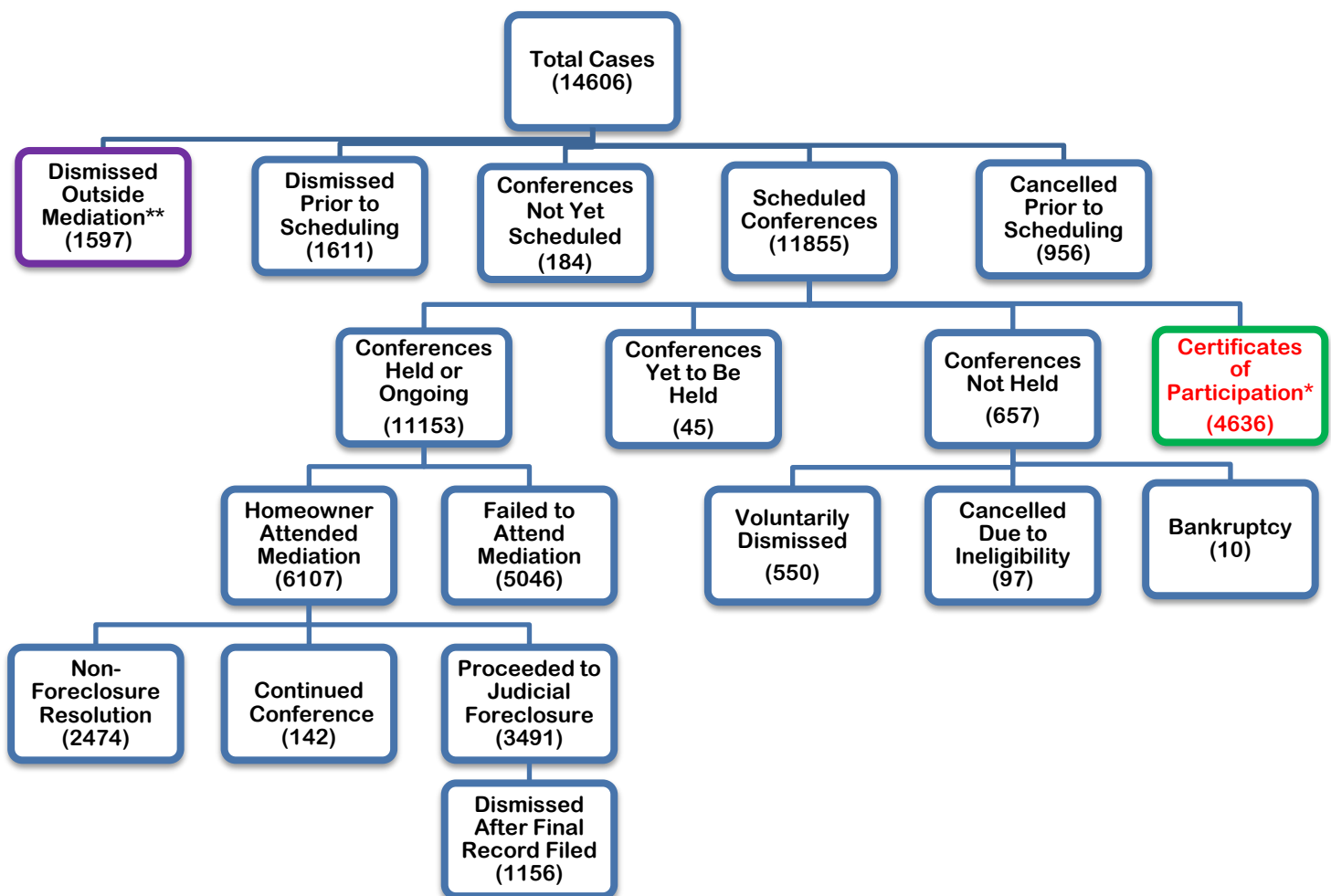
⁵ “Successful mediation” is defined as any conference where the homeowner achieves a non-foreclosure resolution to avoid a Sheriff’s Sale of the property, or where the parties remain engaged in negotiations and the homeowner is granted a subsequent mediation conference date.

⁶ For those 5,018 homeowners who failed to participate in the Mediation Program, our data indicate that they often have vacated their homes prior to the foreclosure case being filed in the Superior Court. Therefore, they may not receive the information about the Mediation Program which is sent by the Department of Justice. Further, they would not be eligible for mediation if they no longer occupy the home.

⁷ Cases dismissed outside of mediation are any cases dismissed without a mediation conference being held, including those matters where a defendant failed to appear for mediation or the matter was cancelled as non-mediation eligible, and the case was subsequently dismissed.

We have also examined the participation rate for the Program for those matters filed since January 1, 2020. The current participation rate for these matters is **56.89%** and the success rate for those who participate is **65.02%**. The majority of these matters have been scheduled since we returned to virtual mediations in August of 2021. The above numbers reflect that the participation rate for virtual mediations remains as high as the rate for in person mediations.⁸

Mortgage Mediation Program: Cumulative Participation as of September 30, 2021



⁸ A detailed overview of the January 2020 through September 2021 participation numbers is available on the Department of Justice's website. <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>.

4. Delinquency Rates and Foreclosure Filings

Delaware's delinquency rates and percentage of loans in foreclosure continue to track with the national numbers or slightly higher. For the 3rd Quarter of 2021, the total percentage of loans past due for Delaware was 5.39% and the national loans past due rate is 5.04%.⁹ The Mortgage Bankers Association reported an estimated 1 million homeowners in the United States were on forbearance plans as of October 31, 2021.¹⁰

For the 3rd Quarter of 2021, Delaware had a seriously delinquent rate of 3.80%, a foreclosure inventory of 0.60% and total foreclosure starts of 0.03%.¹¹ For comparison, the national seriously delinquent rate is 3.40%.¹² The national non-seasonally adjusted foreclosure inventory was 0.46% and the national non-seasonally adjusted foreclosure starts was 0.03%.¹³ Delaware continued to also rank relatively high among other states in delinquency measures (14th in percent of loans in foreclosure, 23rd in foreclosure starts, and 18th in 90+ days delinquent).¹⁴ The percentage of loans in foreclosure in Delaware decreased 10 basis points from last quarter. and the 90 + day delinquency rate decreased 53 basis points from last quarter. In the 4th Quarter of 2019, the total number of loans past due was 4.77%, this Quarter, the total number of loans past due is 5.39%.¹⁵

5. Going Forward

While the number of mediation eligible filings continues to remain low this quarter, the threat of losing one's home continues to be a painful reality for many Delawareans. We anticipate that the current financial crisis caused by the COVID-19 pandemic will only increase the need for homeowners and lenders to find non-foreclosure resolutions to the rise in mortgage delinquencies. The Mediation Program is ready and able to address this need. As it has in the past, as the number of foreclosure filings increases, the Mediation Program will help avoid foreclosure for homeowners who work with a HUD-approved housing counselor and actively participate in their mediation conferences.

The Department of Justice's Office of Foreclosure Prevention and Financial Education (the "OFP") has been an important complement to the Mediation Program through its community outreach and education seminars, servicer events, and the day-to-day assistance provided to homeowners via the foreclosure hotline. OFP has continued to reach out to homeowners and provide resources and information to assist them in navigating the foreclosure process and avoiding unnecessary sheriff's sales. The OFP continues to monitor the media for forbearances, loan modifications and other alternatives to

⁹ Mortgage Bankers Association, National Delinquency Survey, Q3 2021(November 10, 2021) at 4.

¹⁰ Mortgage Bankers Association, Press Release, Q3 2021 (November 10, 2021) at 2.

¹¹ Mortgage Bankers Association, National Delinquency Survey, Q3 2021(November 10, 2021) at 4.

¹² Id.

¹³ Id.

¹⁴ Mortgage Bankers Association, National Delinquency Survey Briefing Materials, Q3 2021(November 10, 2021) at 16-22.

¹⁵ Mortgage Bankers Association, National Delinquency Survey, Q3 2021(November 10, 2021) at 4.

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foreclosure that are being made available to Delawareans to ensure that the department is ready to handle any questions or complaints that may arise. The OFP's work has served many Delaware homeowners who face this difficult life event and, in many cases, helped to prevent the filing of foreclosure actions against these homeowners.

The Department of Justice is ready to meet the dramatic increase in demand we expect to occur this Winter now that the Federal Foreclosure Moratoriums has expired and some of the temporary CFPB regulations expire on December 31, 2021. The continuing COVID-19 crisis and ensuing economic consequences have affected many Delaware homeowners. The Mediation Program and OFP are ready to assist all affected homeowners.

Having drafted the bill creating Delaware's Mediation Program early last decade, it is heartbreaking to now see our State on the brink of a new foreclosure crisis. But I am comforted by the fact that the Mediation Program is up to the task of preventing unnecessary foreclosures. DOJ stands ready and able willing to help ensure borrowers have the opportunity to have a meaningful conversation with their lender/servicer before the judicial foreclosure proceeds. Increasing participation and success rates of the Mediation Program will save many more Delaware homeowners from unnecessary foreclosures, increase the stability of our neighborhoods, and improve the housing market in Delaware.

Respectfully,

A handwritten signature in blue ink, appearing to read "Owen Lefkon". The signature is fluid and cursive, with a large initial "O" and "L".

Owen P. Lefkon, Director
Fraud and Consumer Protection Division
Delaware Department of Justice

cc: Hon. John C. Carney, Jr.
Hon. Thomas R. Carper
Hon. Christopher A. Coons
Hon. Lisa Blunt Rochester
Sec. Eugene R. Young, Jr.