The Foreclosure Fairness Act

Presentation to Financial Institutions, Economic Development, and Trade Committee

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Washington State Department of Commerce

We strengthen communities

HOUSING HOMELESSNESS

INFRASTRUCTURE

BUSINESS ASSISTANCE

ENERGY

PLANNING

COMMUNITY FACILITIES

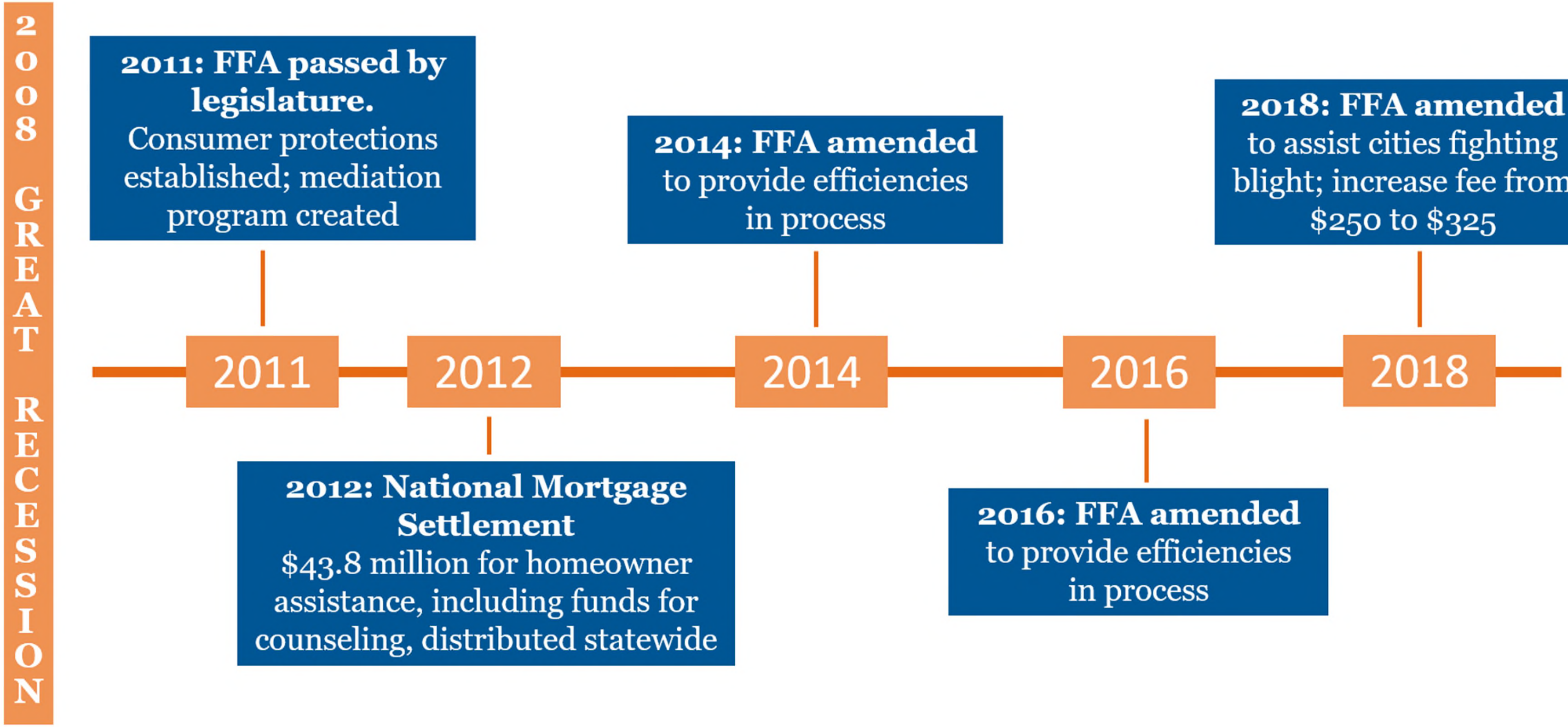
CRIME VICTIMS & PUBLIC SAFETY

COMMUNITY SERVICES

Foreclosure Fairness Program

History and Funding

Foreclosure Fairness Act Brief History



Key Components of the FFA

Financial Institutions
- Fund the FFA through fees paid on Notices of Trustee Sales; willing participant in process

Washington Homeownership Resource Center – Hotline
- Free resource to borrowers, explains timelines, options and refers to housing counselors or legal aid

Housing Counseling
- Statewide network of counseling agencies, managed by Washington State Housing Finance Commission Counselor works directly with homeowner & financial institution
- Can represent homeowner at mediation

Mediation
- Available at a homeowners request when initial negotiations do not result in an agreement
- Managed by Department of Commerce, who determines eligibility & assigns mediators

Legal Assistance
- Office of Civil Legal Aid oversees network of nonprofit providers
- Available for more difficult cases with underlying legal issues which may include representation in court

Enforcement of the FFA
- WA State Attorney General's Office enforces the rules and requirements of the act

Stakeholder Group

For nearly a decade the FFA Stakeholder Group, led by Representative Orwall has brought together a diverse partnership:

- National and Local Banks
- Credit Unions
- Foreclosure Trustees
- Auditors
- Cities
- Counties
- Legal Aid
- Housing Counselors
- Homeowner Associations
- Consumer Advocates
- Other Interested Parties

FFP Funding

Fee income:

- Bank/loan servicer pays $325 per recorded Notice of Trustee's Sale to fund program; $25 million in revenue since 2011
- The fee revenue pays
- No charge to home owner for referral into mediation program through a housing counseling agency; $600 mediation fee paid to mediator by bank and borrower equally ($300 by each party)

National settlements and federal grants (expired by 2019):

- National Mortgage Settlement
- Other national settlements
- HUD/Federal grants

Funding Distribution

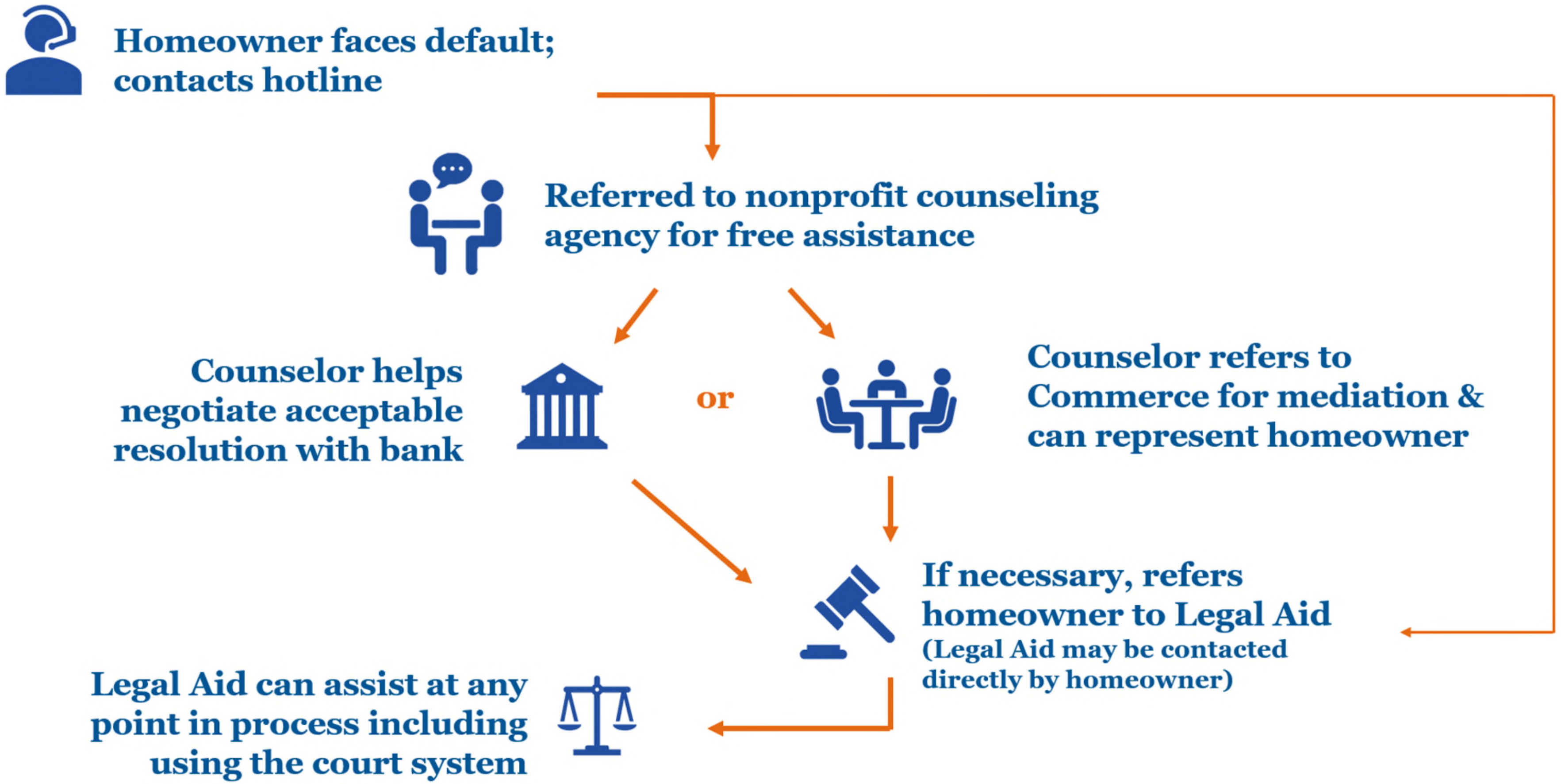
Distribution of fees collected is set forth in RCW 61.24.172 as follows:

- $400k per biennium for the “Hotline” – Washington Homeownership Resource Center the remaining funds are distributed by the following statutory allocation:
  - 69% – WSHFC for Contracting for Free Counseling Services
  - 17% – Commerce for Mediation and Program Administration
  - 8% – Office of the Attorney General
  - 6% – Office of Civil Legal Aid

Homeowner Support

Housing Counseling, Legal Aid, and Mediation

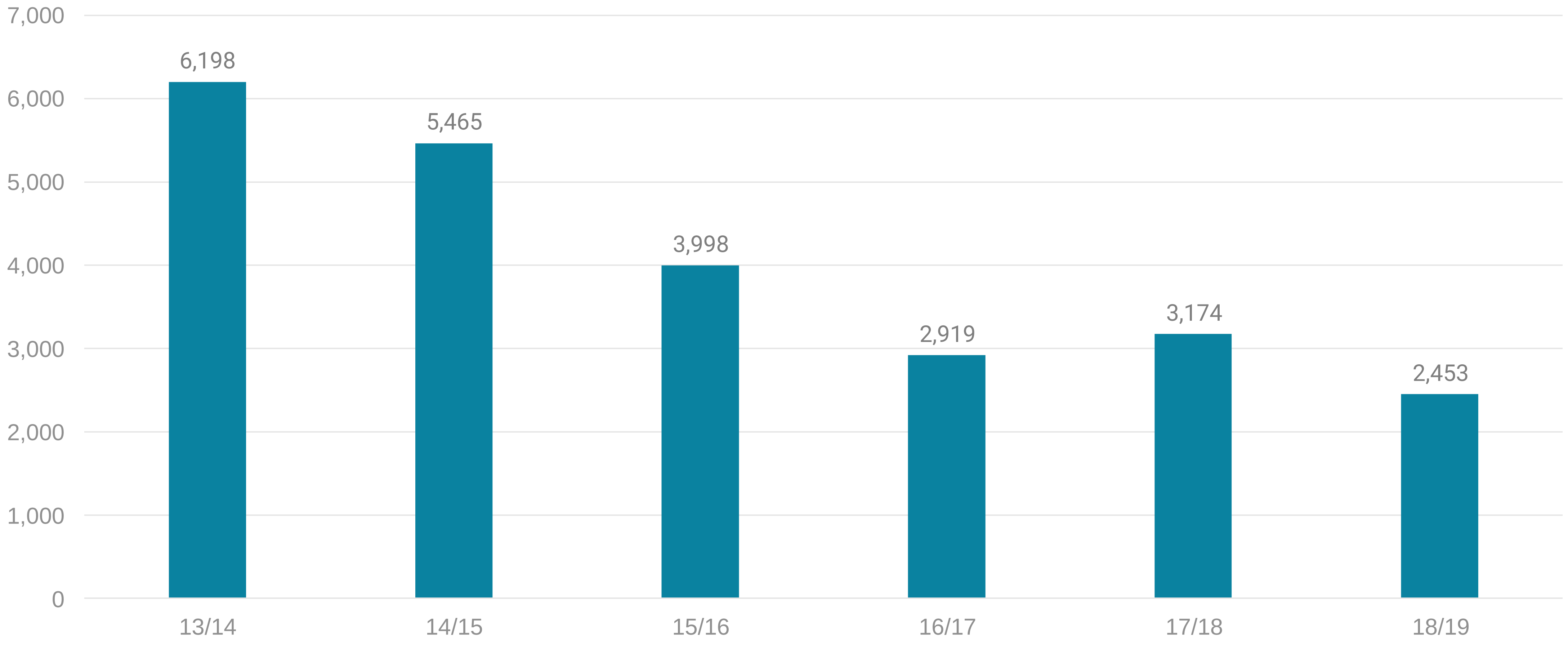
Homeowner Support Process



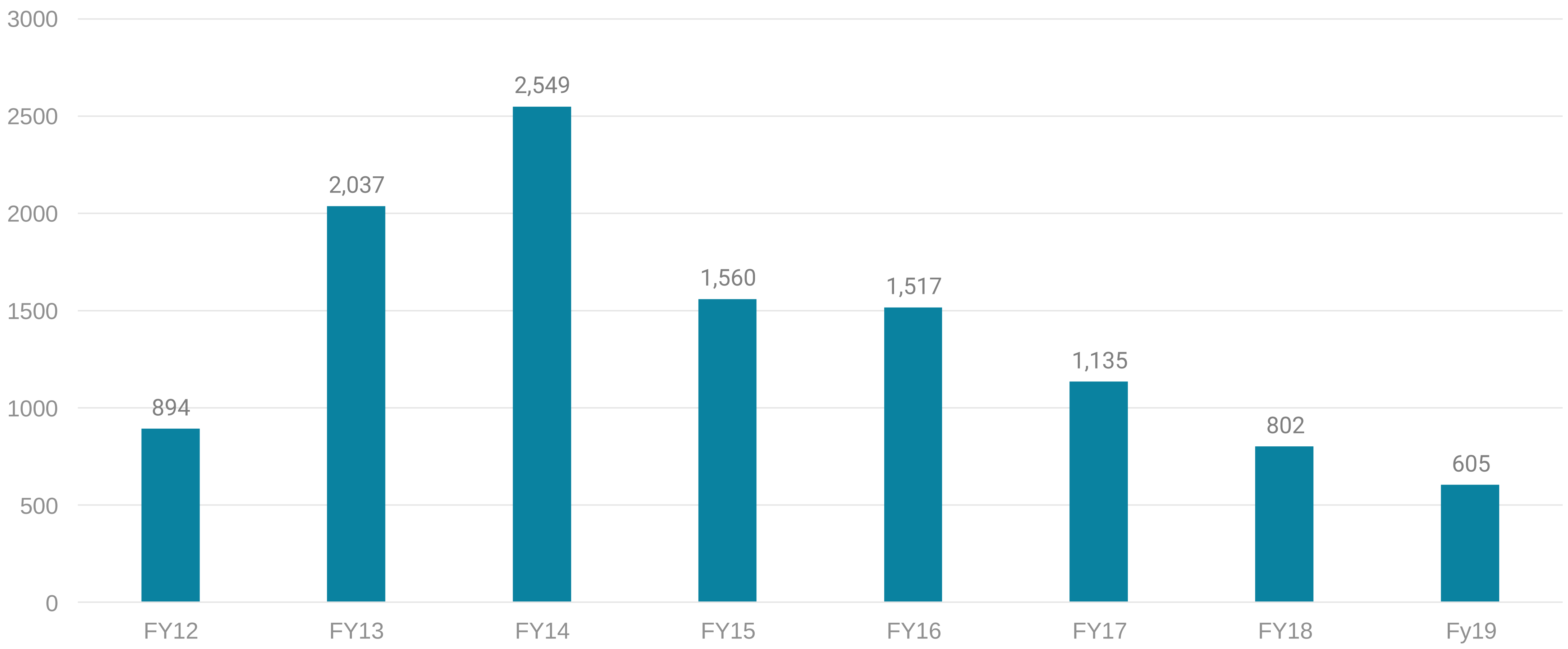
Homeowner Support Process Cont.

- Homeowners can also enter the program, specifically mediation, via a private attorney
  - Historically half of all mediation referrals are made by private attorneys
  - Homeowners may have additional legal concerns for which they have already procured a private attorney
  - Some homeowners are not represented by their referring attorney, in those instances Commerce takes additional steps to ensure homeowners know free representation is available

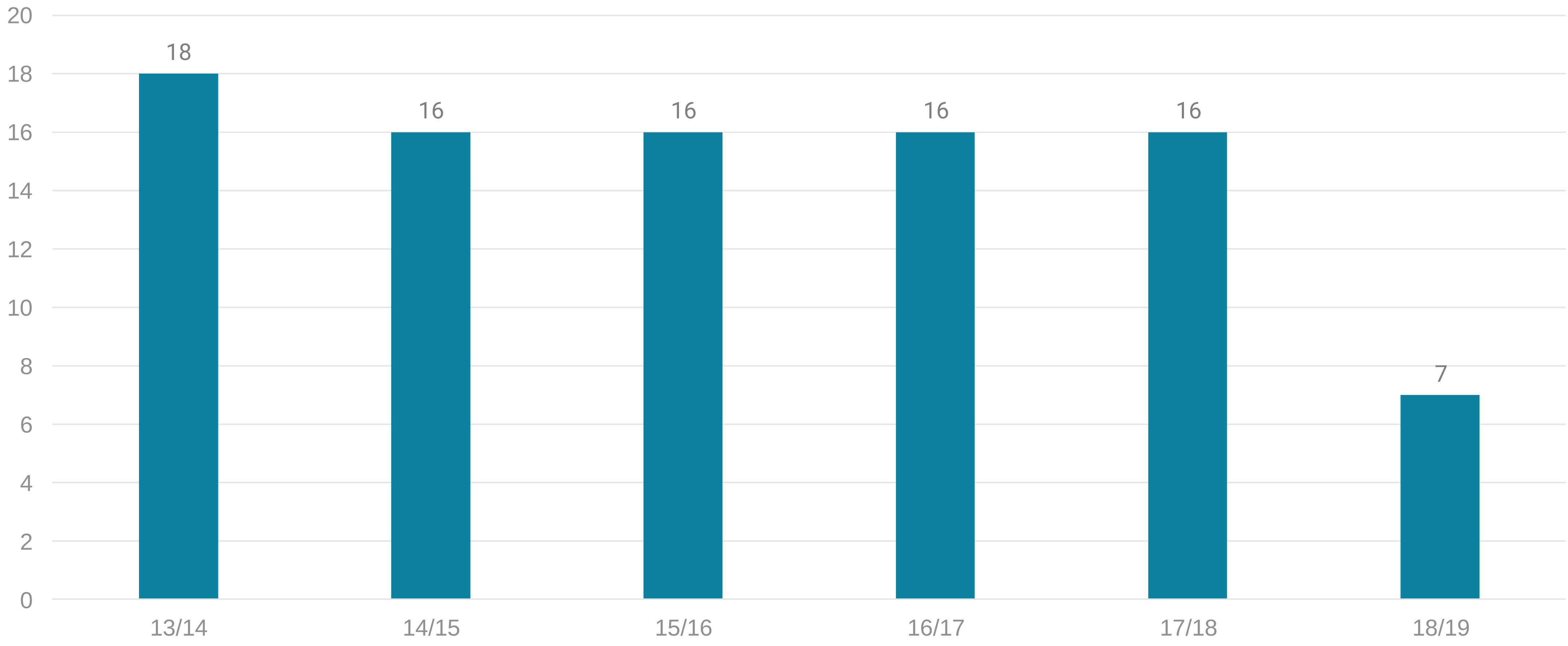
Over 24,000 Homeowners Assisted



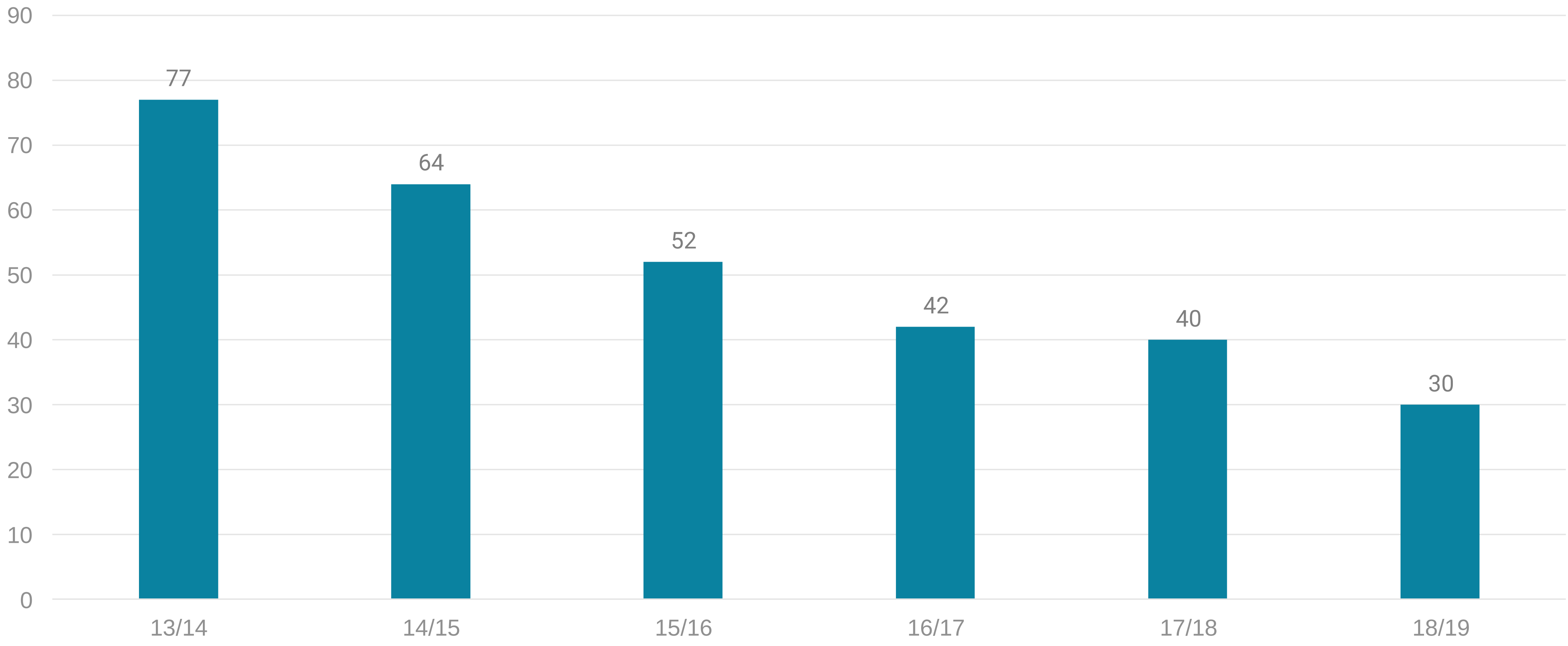
Over 11,000 Homeowners Referred to Mediation



Number of Counseling Agencies



Number of Housing Counselors



Challenges Facing the FFP

Funding and Effects of COVID-19

COVID – 19 Implications

- CARES Act - Federally backed mortgages holders (Fannie Mae, Freddie Mac, FHA, VA, and USDA) directly or indirectly affected by the pandemic are able to seek a 180-day forbearance and an additional 180-day forbearance.
  - The length of the forbearance can only be limited by the borrower.
  - The Department of Financial Institutions estimates over 90% of WA residential mortgages are covered by the CARES Act.
  - The remaining 10% of residential mortgages have no mandated protection mechanism. Borrowers are provided only voluntary protections.

COVID-19 Implications Cont.

- Forbearance is a misunderstood concept to many- if not most- borrowers.
  - Specifically, under a traditional forbearance, once the forbearance ends, all payments- including the current payment- are due.
  - As an example: if a borrower with a $1,500 mortgage payment entered forbearance for the months of April, May and June, a payment of $6,000 would be due in July to avoid default.
  - On May 13 the Federal Housing Finance Agency announced payment deferral as an option for borrowers exiting forbearance with a Fannie Mae or Freddie Mac loan.
    - This option only applies to borrowers "who are able to return to making their normal monthly mortgage payment." If traditional underwriting standards are used it may be nearly impossible for borrowers to qualify.

COVID-19 Implications Cont.

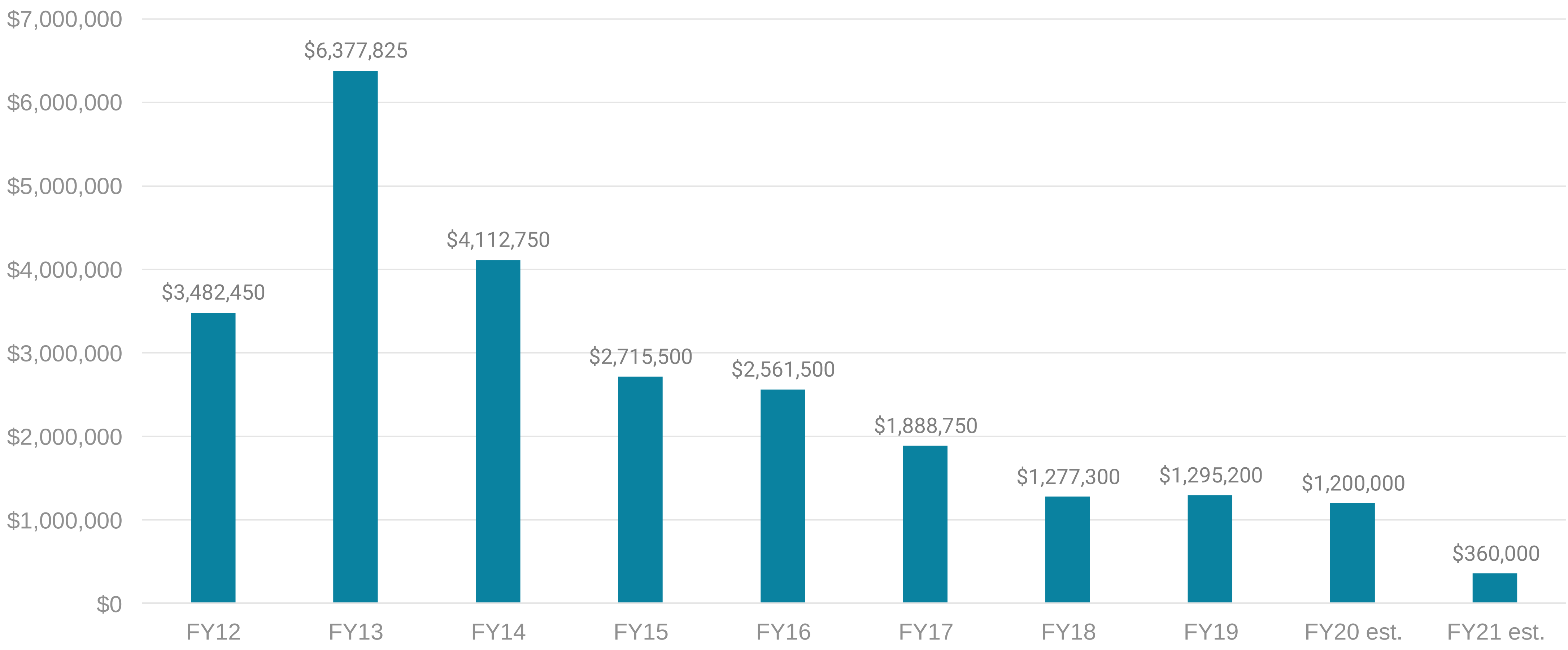
- The CARES Act did not address how the forbearance would be exited and provides no guidance for loan modification options.
- During a stakeholder call on May 5, 2020 a banking representative indicated approximately 6% of mortgage clients had contacted their financial institution clients about their mortgage.
- For context, 6% of residential mortgages in WA state translates to approximately 62,500 mortgages. This number is also likely to rise.

Funding Challenges

Revenue from fees and external sources have been drastically reduced or have been exhausted.

- One unintended consequence of the CARES act is the reduction in Notice of Trustee Sale recordings. This eliminates the sole fee source for the program.
- In the six most populous counties, NOTS recordings were 71% lower in April 2020 than April 2019 (dropped from 313 to 92 recordings).
- National Mortgage Settlement funds, grants and other federal funds all ended by 2019
- Prior to COVID-19 the program already faced a funding deficit of $1.5M to maintain a base level of statewide homeowner support.

Annual Funding



Funding cont.

- For perspective entering the height of the foreclosure crisis in 2013 there was approximately $50M in funding from program and other sources to support foreclosure prevention services.
- Entering this crisis there is approximately $1M in funding to support the estimated 60,000 borrowers who contacted their financial institution in April alone, a one-month total that surpasses all of 2013.
- The success of the program will prevent a "catching up" once the forbearances have ended.

Funding Options/Alternatives

- $607,000 was provided in the FY21 Supplemental Budget for foreclosure prevention services. This will fund some services for approximately 2-3 months.
- Commerce is requesting $20M in CARES Act funding to solidify the infrastructure of the foreclosure services in the state.
  - $20M could support over 11,000 households with foreclosure counseling and legal assistance.
    - 50 counselors carrying a caseload of 72 clients annually over 3 years = 10,800 households served
    - 12 legal aid attorneys carrying a caseload of 40 clients annually over 3 years = 360 households served

Legislative Improvements

Legislative Improvements

- Address funding mechanism to align fee with services
  - Working with stakeholders to address the disconnect between a homeowners need for the program and the revenue source
- Achieve better insight into default/foreclosure activity
  - The program would benefit from more complete and earlier identification of homeowners facing default action, while protecting their identity from public disclosure and potential scams

Conclusions

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- The economic crisis related to COVID-19 will have lasting effects on many WA residents.
- There are currently no programs outside of the FFP to help borrowers navigate their financial situation
- Without outside financial intervention the FFP will have no ability to meet the needs of WA citizens facing foreclosure.

Thank you for your time.

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