



**DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

**DATE:** March 3, 2021

**TO:** Honorable Paul Holvey, Chair of the House Committee on Business and Labor

**FROM:** Kelly Harpster, Attorney-in-Charge, Consumer Protection Section

**SUBJECT:** HB 2009 –Foreclosure Moratorium and OFAP Amendments

This testimony is presented in support of HB 2009, particularly the modifications to the Oregon Foreclosure Avoidance Program (OFAP).

In 2013, in response to the last foreclosure crisis, the Legislature created OFAP, a statewide pre-foreclosure mediation program overseen by the Department of Justice. Following detailed procedures spelled out by statute and rule, OFAP allows residential trust deed beneficiaries and homeowners to exchange documents and meet with a specially trained mediator to negotiate, if possible, a loan modification or other foreclosure avoidance measure.

Not all residential trust deed beneficiaries are required to participate in the program. Under current law, participation is not required if a beneficiary submits an affidavit to the Attorney General stating that the beneficiary did not commence—or cause an affiliate, subsidiary or agent, to commence—more than 175 foreclosures in the previous calendar year. The affidavit can be submitted at any time before the beneficiary commences the first foreclosure in a calendar year. Once submitted, the exemption is effective for the remainder of the calendar year.<sup>1</sup>

Due to state and federal foreclosure moratoria in effect in 2020 and 2021, the number of beneficiaries eligible to claim the exemption is expected to increase. The table below shows the number of exemption affidavits filed in 2019, 2020, and year-to-date:

Calendar Year	Exemption Affidavits Filed	30-175 Foreclosures <sup>2</sup>	Most Foreclosures <sup>3</sup>
2019	327	14	136
2020	187	10	145
2021	158 <sup>4</sup>	3	100

<sup>1</sup> DOJ publishes data on OFAP exemptions by year at <https://www.doj.state.or.us/consumer-protection/homes-mortgages/foreclosure-avoidance-program/>.

<sup>2</sup> The number of exempt beneficiaries who reported commencing at least 30 foreclosures in the prior calendar year.

<sup>3</sup> The highest number of foreclosures commenced in the prior calendar year by an exempt beneficiary.

<sup>4</sup> Includes affidavits submitted and accepted through March 1, 2021, but excludes 17 pending submissions that are incomplete.

Because beneficiaries do not need to file an exemption affidavit until they commence the first foreclosure in a calendar year, we do not know how many beneficiaries will claim the exemption in 2021. However, due to state and federal moratoria in place during most of last year and continuing well into 2021, it is unlikely that most beneficiaries commenced more than 175 foreclosures in 2020 or will this year.

A sharp decline in the number of beneficiaries required to participate would have two significant impacts. First, consumers do not have any control over who owns or services their mortgage loans. As a result, two similarly situated consumers—including two Oregon residents with federally-backed mortgage loans serviced by companies operating nationwide—would not have the same opportunity to avoid foreclosure. The consumer with the exempt beneficiary would not be able to participate.

Second, OFAP is self-funding through fees borrowers and lenders pay to participate. If most beneficiaries are exempt, participant fees may be insufficient to sustain the program, despite the anticipated increases in need due to the pandemic.<sup>5</sup>

To mitigate these impacts, HB 2009 would temporarily reduce the exemption threshold and use a lookback period in the year prior to the moratoria to permit increased participation for borrowers facing foreclosure during or as a result of the pandemic. The Department supports making appropriate changes to the exemption to ensure that Oregon borrowers facing foreclosure have an opportunity to participate in the program.

The Department appreciates the continuing work of legislators and stakeholders to find ways to reduce the harsh negative consequences of the pandemic on Oregon consumers and to avoid another foreclosure crisis.

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<sup>5</sup> In a report issued March 1, 2021, the Consumer Financial Protection Bureau found that 1 million homeowners nationwide are more than 90 days behind on payments and “likely to experience severe financial hardship when payments resume.” See [https://files.consumerfinance.gov/f/documents/cfpb\\_Housing\\_insecurity\\_and\\_the\\_COVID-19\\_pandemic.pdf](https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf).