
FEDERAL HOUSING FINANCE AGENCY



STATEMENT

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Statement By FHFA Acting Director Edward J. DeMarco On Servicer Financial Affidavit Issues

“On October 1, FHFA announced that Fannie Mae and Freddie Mac are working with their respective servicers to identify foreclosure process deficiencies and that where deficiencies are identified, will work together with FHFA to develop a consistent approach to address the problems. Since then, additional mortgage servicers have disclosed shortcomings in their processes and public concern has increased.

Today, I am directing the Enterprises to implement a four-point policy framework detailing FHFA’s plan, including guidance for consistent remediation of identified foreclosure process deficiencies. This framework envisions an orderly and expeditious resolution of foreclosure process issues that will provide greater certainty to homeowners, lenders, investors, and communities alike.

In developing this framework, FHFA has benefitted from close consultation with the Administration and other federal financial regulators.

The country’s housing finance system remains fragile and I intend to maintain our focus on addressing this issue in a manner that is fair to delinquent households, but also fair to servicers, mortgage investors, neighborhoods and most of all, is in the best interest of taxpayers and housing markets.”

(Attachment follows)

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.

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Four-Point Policy Framework For Dealing with Possible Foreclosure Process Deficiencies

1. **Verify Process** -- Mortgage servicers must review their processes and procedures and verify that all documents, including affidavits and verifications, are completed in compliance with legal requirements. Requests for such reviews have already been made by FHFA, the Enterprises, the Federal Housing Administration, and the Office of the Comptroller of the Currency, among others. In the event a servicer's review reveals deficiencies, the servicer must take immediate corrective action as described below.
2. **Remediate Actual Problems** -- When a servicer identifies a foreclosure process deficiency, it must be remediated in an appropriate and timely way and be sustainable. In particular, when a servicer identifies shortcomings with foreclosure affidavits, whether due to affidavits signed without appropriate knowledge and review of the documents, or improperly notarized, the following steps should be taken, as appropriate to the particular mortgage:
 - a. **Pre-judgment foreclosure actions:** Servicers must review any filed affidavits to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to take appropriate remedial actions, which may include preparing and filing a properly prepared and executed replacement affidavit before proceeding to judgment.
 - b. **Post-judgment foreclosure actions (prior to foreclosure sale):** Before a foreclosure sale can proceed, servicers must review any affidavits relied upon in the proceedings to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures. Potential remedial measures could include filing an appropriate motion to substitute a properly completed replacement affidavit with the court and to ratify or amend the foreclosure judgment.

c. **Post-foreclosure sale (Enterprise owns the property):**

- **Eviction actions:** Before an eviction can proceed, servicers with deficiencies must confirm that the information contained in any affidavits relied upon in the foreclosure proceeding was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures before the eviction proceeds. Potential remedial measures could include seeking an order to substitute a properly prepared affidavit and to ratify the foreclosure judgment and/or confirm the foreclosure sale.
- **Real Estate Owned (REO):** With respect to the clearing of title for REO properties, servicers must confirm that the information contained in any affidavits relied upon in the foreclosure proceeding was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures and take actions as may be required to ensure that title insurance is available to the purchaser for the subject property in light of the facts surrounding the foreclosure actions.

d. **Bankruptcy Cases:** Servicers must review any filed affidavits in pending cases to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with bankruptcy counsel to take appropriate remedial actions.

3. **Refer Suspicion of Fraudulent Activity** -- Servicers are reminded that in any foreclosure processing situation involving possible fraudulent activity, they should meet applicable legal reporting obligations.

4. **Avoid Delay** -- In the absence of identified process problems, foreclosures on mortgages for which the borrower has stopped payment, and for which foreclosure alternatives have been unsuccessful, should proceed without delay. Delays in foreclosures add cost and other burdens for communities, investors, and taxpayers. For Enterprise loans, delay means that taxpayers must continue to support the Enterprises' financing of mortgages without the benefit of payment and neighborhoods are left with more vacant properties. Therefore, a servicer that has identified no deficiencies in its foreclosure processes should not postpone its foreclosure activities.

FHFA will provide additional guidance should it become necessary.