CONNECTICUT BANKERS
ASSOCIATION

Testimony by John Patrick

Chairman, President & CEO, Farmington Bank

On Behalf of the Connecticut Bankers Association

In opposition to: House Bill 6355,

An Act Concerning Homeowner Protection Rights

Numerous industry, press and governmental entities *conservatively* estimate that an average residential foreclosure in Connecticut takes almost two years. This judicial foreclosure process, and the State's foreclosure mediation program, are both clearly broken. We agree with the Bill's proponents that the process is broken, *however* we completely oppose how the bill seeks to "fix" the foreclosure delays. Indeed the bill would create a system that would further delay foreclosures, increase the cost of mortgage loans to consumers, and damage the economy – which is finally starting to make modest gains.

Since it started, most of the legislative and judicial changes to the mediation program have been at the request of the consumer advocates. Those changes have only resulted in more delays in the foreclosure process and wound up making Connecticut's foreclosure process the third slowest in the nation. The eight month moratorium on any actions against the borrower is a perfect example.

FHFA which regulates Fannie Mae and Freddie Mac recognizes this delay, after doing a careful and exhaustive study. Connecticut's average two year delay will result in a 52% surcharge on guarantee fees that Fannie Mae and Freddie Mac charge on over 70% of mortgages originated in the State. This "risk based" pricing due to the two year delay, increases costs, time, complexity and the ultimately the risks of foreclosing on a property in Connecticut.

That means new borrowers or customers who purchase or refinance homes will ultimately pay that increase, because of Connecticut's broken system.

The advocates will "dismiss" the FHFA study. That's because it's difficult to admit when you're wrong. Since the beginning of the mediation program they have pushed for moratoriums, delays, cram downs and eliminating lender rights. These costly delays hurt everyone in the State including homeowners who are in foreclosure; the neighborhoods where properties are in foreclosure; housing values; the home building industry; the State's overall economy and the economic engine of Connecticut, the Banking Industry.

House Bill 6355, An Act Concerning Homeowner Protection Rights, appears to have been proposed in an effort to address concerns with the state's foreclosure process and mediation program. As the title implies, this legislation is once again focusing on "protecting" homeowners in foreclosure from *perceived* lender or servicer misconduct *and* expanding homeowner's rights in the State's mediation program.

Unfortunately, the bill totally ignores the fact that most often, the homeowner in foreclosure, the mediators and the courts - slow the process to a crawl. Whether a bank is small or large, the result is the same across the state.

We can only assume that bill's drafters incorrectly believe that Connecticut's lengthy foreclosure process is due to a lack of tools available to borrowers, mediators and courts to fend off lenders. Furthermore, the bill assumes that lenders do not want to foreclose quickly and that they use ineffective laws to conduct themselves improperly in mediation, dragging out the process. Nothing could be further from reality.

Banks are in the business of making loans, not owning property. A foreclosure is an unfortunate last resort, usually caused by a life changing event of the borrower and that process needs to be fair to both the borrower and the lender.

In the aftermath of the housing bust, and the massive volume of new foreclosures brought on by the housing crisis and subsequent economic recession, it is understandable (though false) that some may believe that the State's failing foreclosure process is the fault of the lender/servicer community.

We believe that this is a vastly over simplistic and incorrect assumption. HB 6355, is based on this false assumption and enacting it in its current form would have a dire consequences for homeowners, home buyers, neighborhoods, the economy and lenders.

<u>The Facts</u>

- the State's Community Banks, which never participated in sub-prime lending, don't use large servicing law firms and are diligent about pursuing a fair and orderly foreclosure outcome *also experience the same devastatingly long delays in mediation.*

- the Nation's five major servicers have foreclosures in all 50 States yet when they compare the actual time it takes to come to a resolution on a foreclosure by State, Connecticut ranks as one of three slowest. *These servicers follow the same internal procedures across the country, yet Connecticut stays as one of the slowest.*

- Connecticut's mid-size regional banks, *many of whom receive high praise from the judicial mediation program administrators*, experience the same long delays in Connecticut.

We can agree on one thing, Connecticut's foreclosure system and more specifically it mediation program is broken and it needs to be fixed. Unfortunately, the approach taken in HB 6355 is not the answer. We cannot start from the premise that the lender is always wrong and the borrower is always right.

The lending industry stands ready willing and able to work with the all interested parties to find viable solutions to make the foreclosure system more effective, while maintaining fairness to both borrowers and lenders.

STATES WITH MEDIATION/JUDIC FORECLOSURE	FORECLOSURE DAYS	DAYS TO OBTAIN TITLE	FHFA TARGET	NOTES
New York	820	820	YES 30 bps	
New Jersey	750	750	YES 20 bps	
Connecticut	690	690	YES 20 bps	
Florida	660	660	YES 20 bps	
Maryland	485	605		
Hawaii	500	590		
Maine	570	570		
Illinois	480	540	YES 15 bps	
Vermont	510	540		
New Mexico	450	510		
Delaware	480	480		
Ohio	450	480		
Pennsylvania	480	480		
Kentucky	420	450		
Michigan	270	450		
Indiana	440	440		
Nevada	360	360		
Maine	350	350		
Washington	330	330		

and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–23535 Filed 9–24–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–13]

State-Level Guarantee Fee Pricing

AGENCY: Federal Housing Finance Agency.

ACTION: Notice; input accepted.

The Federal Housing Finance Agency (FHFA) oversees the operations of Fannie Mae and Freddie Mac ("the Enterprises"). The Enterprises are in conservatorships, and, as Conservator, FHFA has statutory obligations in its conduct of the conservatorships, including preserving and conserving assets. Though the Enterprises are congressionally chartered and federally supervised and regulated, state laws and practices can have a significant impact on their loan default costs.

This Notice sets forth an approach to adjust the guarantee fees ("g-fees") that the Enterprises charge for mortgages that finance properties with one to four units ("single-family mortgages") in certain states to recover a portion of the exceptionally high costs that the Enterprises incur in cases of mortgage default in those states.

Background

The Enterprises charge g-fees to compensate for the credit risks they undertake when they own or guarantee mortgages. The g-fees the Enterprises currently charge on single-family mortgages vary with the type of loan product and with loan and borrower attributes that affect credit risk. FHFA has a responsibility to ensure that those fees are proper and adequate. The single-family g-fees that the Enterprises charged prior to conservatorship proved inadequate to compensate for the level of actual credit losses they experienced. This contributed directly to substantial financial support being provided to the two companies by taxpayers.

G-fee payments to Fannie Mae and Freddie Mac generally include both ongoing monthly payments and an upfront payment at the time of Enterprise loan acquisition. Current Enterprise schedules for upfront g-fees may be found at *https://www.efanniemae.com/sf/refmaterials/llpa/pdf/llpamatrix.pdf* and *http://www.freddiemac.com/singlefamily/pdf/ex19.pdf*.

Recent experience has shown a wide variation among states in the costs that the Enterprises incur from mortgage defaults. This is due, in large part, to differences among the states and territories in the requirements for lenders or other investors to manage a default, foreclose, and obtain marketable title to the property backing a single-family mortgage. Foreclosure takes longer than average in some states as a result of regulatory or judicial actions. Further, in some states the investor cannot market a property for a period after foreclosure is complete. There is also variation among the states in the per-day carrying costs that investors incur during the periods when a defaulted loan is non-performing and, in some states, when a foreclosed property cannot be marketed. Those variations in time periods and per-day carrying costs interact to contribute to state-level differences in the average total carrying cost to investors of addressing a loan default. Because the Enterprises currently set their g-fees nationally, accounting for expected default costs only in the aggregate, borrowers in states with lower default-related carrying costs are effectively subsidizing borrowers in states with higher costs.

The principal drivers of differences across states in the average total carrying costs to the Enterprises of a defaulted single-family mortgage are, in order of importance—

1. The length of time needed to secure marketable title to the property;
2. Property taxes that must be paid until marketable title is secured; and
3. Legal and operational expenses during that period.

There is a wide variation among states in all three of those variables.

In light of these cost differentials, FHFA's March 2012 Conservatorship Scorecard set forth the objective for Fannie Mae and Freddie Mac of developing appropriate risk-based guarantee fee pricing by state. FHFA's proposal described here would adjust the upfront fees that the Enterprises charge when they acquire single-family mortgages in states where Enterprise costs that are related to state foreclosure practices are statistically higher than the national average. The size of the adjustments would reflect differences in costs in those states from the average.

FHFA recognizes that the data the Enterprises have used to calculate state-level cost differences in this proposal are based on a combination of Enterprise experience and estimation. Actual costs incurred by the Enterprises in the future may vary over time and among individual defaults within a state. Because of this variability, FHFA's planned approach focuses on five states that are clear outliers among states in terms of their default-related costs.

This document outlines the approach that FHFA is considering and discusses potential additions and changes to the calculation of such fees in the future. Through this Notice, FHFA is providing an opportunity for public input on these subjects. After reviewing the public input and determining a final state-level guarantee fee pricing method, FHFA expects to direct the Enterprises to implement the pricing adjustments in 2013.

Approach to State-Level G-Fee Adjustments

The approach set forth in this Notice is based on Enterprise experience and does not include the forward-looking impact of recently-enacted state and local laws that may increase the Enterprises' costs. FHFA intends to periodically reassess state-level pricing based on updated Enterprise data. The agency may include the impact of newly-enacted laws if they clearly affect foreclosure timelines or costs, where such costs may be reasonably estimated based on relevant experience.

FHFA's approach would focus on the small number of states that have average total carrying costs that significantly exceed the national average and, therefore, impose the greatest costs on Fannie Mae, Freddie Mac, and taxpayers. Mortgages originated in these highest-cost states would have an upfront fee of between 15 and 30 basis points, which would be charged to lenders as a one-time upfront payment on each loan acquired by the Enterprises after implementation. Based on current data as described below, those five states are Connecticut, Florida, Illinois, New Jersey, and New York.

Lenders may pass an upfront fee through to a borrower as an adjustment to the interest rate on the borrower's loan. Because the upfront fee is paid only once, its impact on the annual interest rate is much smaller than the upfront fee itself. Dividing the upfront fee by five provides an approximation of the potential impact on the interest rate. To illustrate, a 15 basis point upfront fee, if fully passed through by the lender, would be roughly equivalent to an increase in the annual interest rate of three basis points. Under FHFA's planned approach, a homeowner in an affected state obtaining a 30-year, fixed-rate mortgage of $200,000 could see an increase of approximately $3.50 to $7.00 in his or her monthly mortgage payment, reflecting a range of upfront fee adjustments of 15 to 30 basis points.

The methodology used by the agency to develop the planned approach addresses only differences in the expected cost of defaults associated with single-family mortgages that will be acquired by the Enterprises in the future and are underwritten according to current standards. If FHFA had developed an approach using information on the realized default losses on loans the Enterprises acquired in the past decade, which were originated under less stringent underwriting guidelines, the increases in upfront fees in the states affected would be significantly greater, because recently acquired mortgages are expected to default at lower rates due to strengthened underwriting standards.

Methodology

The methodology used to develop the planned approach to state-level g-fee pricing relies on three key factors. The first is the expected number of days that it takes an Enterprise to foreclose and obtain marketable title to the collateral backing a mortgage in a particular state. The second is the average per-day carrying cost that the Enterprises incur in that state. The third is the expected national average default rate on single-family mortgages acquired by the Enterprises. To estimate the magnitude of the state-level differences in average total carrying cost, the estimation assumes that loans originated in each state will default at the national average default rate.

The table below, titled "Estimated Time to Obtain Marketable Title and Cost per Day Relative to the National Average," provides information on the time periods and costs used to develop the proposed fees. The column titled "Foreclosure Timeline in Days" shows, for each state, the target number of days after the last paid installment on a mortgage for a loan servicer to complete the foreclosure sales process. Those timelines are published in each Enterprise's servicing guide and are reviewed and updated as necessary every six months. The timelines shown in the column were published in June 2012 at *https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/foreclosuretimeframes.pdf* and *http://www.freddiemac.com/learn/pdfs/service/exhibit83.pdf*.

The timelines are periods within which Enterprise servicers are expected to complete the foreclosure process for mortgages that did not qualify for loan modification or other loss mitigation alternatives. The timelines are derived from an analysis of the Enterprises' actual experience with foreclosure processing in each state, adjusted for existing statutory requirements and certain changes in law or practice during the historical period. The published timelines also take into account the effects that foreclosure moratoriums or other extenuating circumstances and lender-specific delays outside the expected norms for that state may have had on actual foreclosure timelines.

ESTIMATED TIME TO OBTAIN MARKETABLE TITLE AND COST PER DAY RELATIVE TO THE NATIONAL AVERAGE

State [1]	Foreclosure timeline in days [2]	Estimated average "unable-to-market" time in days	Total time to obtain marketable title in days	Cost per day relative to the national average [3] (%)	Rank (total time * cost) [4]
AK	300	0	300	93	11
AL	270	0	270	93	2
AR	280	0	280	102	13
AZ	300	0	300	84	3
CA	300	0	300	90	7
CO	330	0	330	85	12
CT	690	0	690	109	52
DC	300	0	300	86	5
DE	480	0	480	83	27
FL	660	0	660	111	51
GA	270	0	270	101	9
GU	500	0	500	100	38
HI	500	90	590	79	35
IA	480	0	480	110	42
ID	440	0	440	88	26
IL	480	60	540	118	50
IN	480	0	480	107	40
KS	330	90	420	108	33
KY	420	30	450	97	32
LA	390	0	390	106	29
MA	350	0	350	97	22
MD	485	120	605	97	49
ME	570	0	570	95	44
MI	270	180	450	118	43
MN	270	180	450	96	30
MO	270	0	270	109	17
MS	270	0	270	107	14
MT	360	0	360	88	20
NC	300	0	300	91	10
ND	405	60	465	109	39
NE	330	0	330	114	25
NH	270	0	270	110	18

ESTIMATED TIME TO OBTAIN MARKETABLE TITLE AND COST PER DAY RELATIVE TO THE NATIONAL AVERAGE—Continued

State [1]	Foreclosure timeline in days [2]	Estimated average "unable-to-market" time in days	Total time to obtain marketable title in days	Cost per day relative to the national average [3] (%)	Rank (total time * cost) [4]
NJ	750	0	750	113	53
NM	450	60	510	91	34
NV	360	0	360	83	19
NY	820	0	820	112	54
OH	450	30	480	114	45
OK	420	0	420	104	31
OR	330	0	330	88	16
PA	480	0	480	108	41
PR	720	0	720	68	37
RI	330	0	330	107	23
SC	420	0	420	95	28
SD	360	180	540	105	46
TN	270	0	270	96	6
TX	270	0	270	132	24
UT	330	0	330	82	8
VA	270	0	270	87	1
VI	510	0	510	93	36
VT	510	30	540	105	47
WA	330	0	330	88	15
WI	480	30	510	113	48
WV	290	0	290	87	4
WY	270	120	390	86	21
National Average (UPB Weighted)	396	17	413	100	

[1] Includes the District of Columbia and certain U.S. territories. The Enterprises do not currently acquire loans in the Northern Mariana Islands or American Samoa.

[2] Foreclosure time frames are available online at: *https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/foreclosuretimeframes.pdf* and *http://www.freddiemac.com/learn/pdfs/service/exhibit83.pdf*.

[3] Cost per day is expressed as an index relative to the UPB-weighted national average, where 100% represents the average cost. It excludes HARP loans.

[4] Rank is a function of the total time to obtain marketable title multiplied by the indexed cost. The product for each state is indicative of the relative total carrying cost upon which FHFA would base its adjustments to upfront fees. "1" represents the lowest-cost area and "54" the highest-cost area.

The column titled "Estimated Average 'Unable-to-Market' Time in Days" shows Enterprise estimates of the additional time after the foreclosure sale date in certain states before an Enterprise can begin to market and sell the property. These additional periods of time are often due to a statutorily set post-foreclosure "redemption period" that allows a borrower to redeem or recover the property by paying off the defaulted loan, or are due to other court-mandated procedures that otherwise prevent an Enterprise from marketing and selling the foreclosed property. These time estimates were based on recent Enterprise experience and state law.

The column titled "Total Time to Obtain Marketable Title in Days" provides the sum of the number of days shown in the two preceding columns, which equals the estimated average length of time from the date of the last mortgage payment to the date on which the foreclosed property is eligible to be marketed for sale. Although these times are based on recent data, they do not reflect changes to state laws that have not been in effect long enough to influence the foreclosure timelines published by the Enterprises.

The second factor used in the estimation is the per-day carrying cost incurred by the Enterprises on non-performing loans, which varies across the states. That cost includes property taxes, legal expenses, hazard insurance, costs related to maintenance and property repairs, and the Enterprises' costs of financing a non-performing mortgage. These costs were estimated using recent data. State and local government decisions can significantly affect the carrying cost per day, especially with respect to property taxes.

The column titled "Cost per Day Relative to the National Average" shows a state-by-state index of estimated per-day carrying costs per dollar of unpaid principal balance, where the national average equals 100 percent. Those index values were derived from separate estimates from each Enterprise, which FHFA weighted on the basis of the Enterprises' respective market shares in recent years.

The column titled "Rank" shows the total time to obtain marketable title multiplied by the indexed per-day carrying cost. For each state, this product is indicative of the relative total carrying costs upon which the agency would base its adjustments to upfront fees under the planned approach. The states, District of Columbia, and territories are ranked, with "1" representing the lowest-cost area and "54" the highest-cost area.

The first two factors—days to obtain marketable title and per-day carrying costs—provide estimates of the total carrying cost of a defaulted mortgage, by state. The third factor used in the methodology is the expected national average default rate on single-family mortgages acquired by the Enterprises. This was estimated using the national book of business acquired by Fannie Mae and Freddie Mac in the first half of 2012. Since the national average default rate is used in the estimation, the upfront fees that the Enterprises would impose on loans originated in certain states, under FHFA's planned approach, are not affected by any variation that may exist at the state level in the credit quality of loans acquired by the Enterprises, expected future house price movements, or other factors that may affect the likelihood of loan default.

The methodology combines the three factors with appropriate rates of discount to produce present-value estimates of expected total default-related carrying costs for a new mortgage in each state. Those state-level estimates were produced separately by Fannie Mae and Freddie Mac. FHFA weighted each Enterprise's estimates by its respective market share in recent years to produce a single set of estimates. FHFA then calculated the standard deviation from the mean of the state-level estimates of expected total default-related carrying costs, which was found to be 10 basis points.

The planned approach focuses on the small number of states that have expected total default-related carrying costs that significantly exceed the national average and, thus, cause the greatest increase in average loss given default. Based on current data, loans in five states would be assessed upfront fees. The state between one and one half and two standard deviations from the mean, Illinois, would have an upfront fee of 15 basis points. The states between two and three standard deviations from the mean, Florida, Connecticut, and New Jersey, would have an upfront fee of 20 basis points. The state more than three standard deviations from the mean, New York, would have an upfront fee of 30 basis points.

This approach would allow for variation in practice among the states and impose upfront fees only on those states that are statistical outliers from the rest of the country. If those states were to adjust their laws and requirements sufficiently to move their foreclosure timelines and costs more in line with the national average, the state-level, risk-based fees imposed under the planned approach would be lowered or eliminated. The approach recognizes that each state establishes legal requirements governing foreclosure processing that it judges to be appropriate for its residents. It also recognizes that unusual costs associated with practices outside of the norm in the rest of the country should be borne by the citizens of that particular state rather than absorbed by borrowers in other states or by taxpayers.

Future Changes to State-Level G-Fee Adjustments

The planned approach bases state-level adjustments to upfront fees on past experience and a limited range of cost variables. FHFA would consider, in the future, changes to its methodology to address additional variables. For example, these could include estimates of the impact of recently-enacted laws and ordinances. Such calculations would be based on experience with similar laws and ordinances and their effects on per-day carrying costs. FHFA could also include a wider range of state actions in its methodology. For example, FHFA could consider state laws and ordinances affecting the disposition of acquired real estate following a default, commonly referred to as real estate owned (REO), and address attendant costs created by state and local rules that impose charges above a certain amount or impose duties that add to the costs of the Enterprises. The Enterprises, therefore, could undertake revisions to their state-level g-fees based on experience gained with additional measurement devices.

Input

FHFA invites input from any person with views on the planned approach and on potential future changes to state-level g-fee adjustments. In particular, FHFA is interested in the following three questions:

1. Is standard deviation a reasonable basis for identifying those states that are significantly more costly than the national average?
2. Should finer distinctions be made between states than the approach described here?
3. Should an upfront fee or an upfront credit be assessed on every state based on its relationship to the national average total carrying cost, such that the net revenue effect on the Enterprises is zero?

FHFA will accept public input through its Office of Policy Analysis and Research (OPAR), no later than November 26, 2012, as the agency moves forward with its deliberations on appropriate action. Communications may be addressed to FHFA OPAR, 400 Seventh Street SW., Ninth Floor, Washington, DC 20024, or emailed to *gfeeinput@fhfa.gov*. Communications to FHFA may be made public and would include any personal information provided.

Dated: September 19, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–23531 Filed 9–24–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget ("OMB") to extend through November 30, 2015, the current Paperwork Reduction Act ("PRA") clearance for the information collection requirements in the FTC Red Flags/Card Issuers/Address Discrepancies Rules[1] ("Rules"). That clearance expires on November 30, 2012.

DATES: Comments must be submitted by October 25, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Red Flags Rule, PRA2 Comment, Project No. P095406" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/RedFlagsPRA2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Steven Toporoff, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., NJ–3158, Washington, DC 20580. Telephone: (202) 326–2252.

SUPPLEMENTARY INFORMATION:

Title: Red Flags Rule, 16 CFR 681.1; Card Issuers Rule, 16 CFR 681.2; Address Discrepancy Rule, 16 CFR Part 641.

OMB Control Number: 3084–0137.

Type of Review: Extension of currently approved collection.

Abstract: The Red Flags Rule requires financial institutions and certain creditors to develop and implement written Identity Theft Prevention Programs. The Card Issuers Rule requires credit and debit card issuers to assess the validity of notifications of address changes under certain circumstances. The Address Discrepancy Rule provides guidance on what users of consumer reports must do when they receive a notice of address discrepancy from a nationwide consumer reporting agency. Collectively, these three anti-identity theft provisions are intended to prevent impostures from misusing another

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[1] 16 CFR 681.1; 16 CFR 681.2; 16 CFR Part 641.

The New York Times

Mortgages – Upshot of the Foreclosure Backlog – NYTimes.com - Excerpt

December 6, 2012

Upshot of the Foreclosure Backlog

By LISA PREVOST

FORECLOSURES are taking significantly longer in states where lenders must go through the courts, and the delay may or may not be good for borrowers, depending on their circumstances. But some researchers say that dragging the process out hurts society at large.

About half of the 50 states have judicial foreclosure systems. The housing market crash so bogged down the systems in New York and New Jersey that foreclosures there have routinely dragged on for two or three years; their timelines are among the longest in the country. The national average, which factors in nonjudicial states, is about one year, according to RealtyTrac, which monitors foreclosures nationwide.

The sluggish process has caused a backlog of loans in foreclosure and is slowing the housing market recovery in judicial states, says Michael Fratantoni, the vice president for research and economics at the Mortgage Bankers Association. As of the end of the third quarter, according to the association, 6.6 percent of all loans were in foreclosure in judicial states, compared with 2.4 percent in nonjudicial states.

A study released last summer by researchers at the Federal Reserve Banks in Boston and Atlanta found that the longer properties languish in delinquency or under a bank's ownership, the greater the negative effect on the value of surrounding properties.

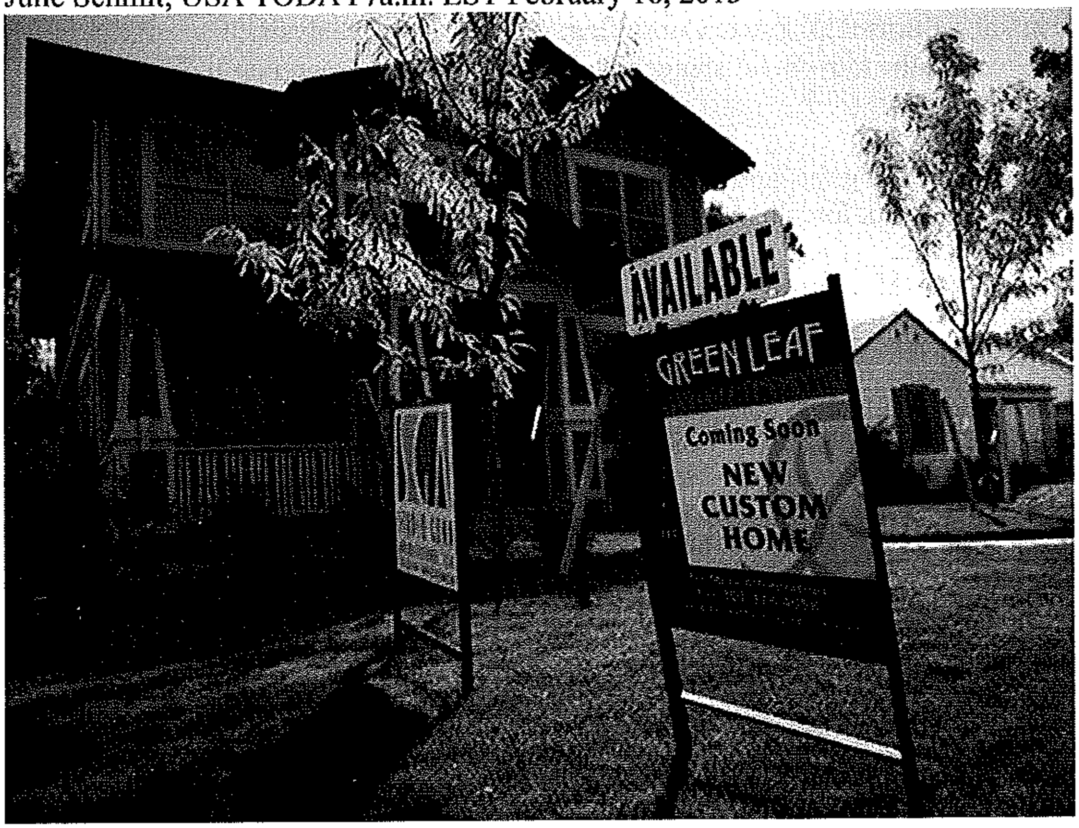
"The best outcome is to prevent the foreclosure," said Paul S. Willen, an economist and policy adviser at the Boston Fed. "But if it's clear that can't be done, it's in society's interest to get the foreclosure done as soon as possible."

In a separate study last year, Mr. Willen and his colleagues question the basis for giving borrowers more time to try to fix mortgage problems. The study found that avoiding foreclosure was no more likely for borrowers subject to either judicial foreclosure, or laws forcing lenders to wait 90 days before beginning foreclosure proceedings, than it was for other borrowers.

Consumer advocates agree that foreclosures are taking too long in some states. High concentrations of vacant properties have taken a heavy toll on certain neighborhoods, said Michael D. Calhoun, the president of the Center for Responsible Lending in Washington. "We agree that borrowers should be considered quickly for loan modifications," he said. "They're more successful if they're done early on."

States' foreclosure pace affects home prices

Julie Schmit, USA TODAY7a.m. EST February 16, 2013



A home for sale in the Denver area.(Photo: David Zalubowski, AP file)

Story Highlights

- Home prices are up more in states with faster foreclosure processes
- Bloated supplies of foreclosed homes may hold down price gains
- Job growth and other factors affect prices too, experts say

Many states with faster foreclosure processes are seeing sharper increases in home prices than states where foreclosures take longer to get done.

There are exceptions, and other factors — such as job growth — are likely stronger drivers of home price trends, economists say.

But home price data generally show stronger price increases in states where courts don't have to approve foreclosures than in states where they do. Foreclosures are completed faster where court approval isn't necessary.

Last year, home values tracked by Zillow, a web-based real estate tracker, rose an average 5.4% in the 24 states where foreclosures don't go through the courts, according to Zillow. Where they do, the average increase was 3.2%.

Asking prices, a leading indicator of price trends, show a similar pattern.

In January, asking prices in non-judicial states were up an average of 7.3% year-over-year vs. 3.1% for judicial foreclosure states, show data from real estate website Trulia.

Non-judicial foreclosure states have tended to clear out distressed home inventory quicker, which is helping prices, says John Burns, CEO of John Burns Real Estate Consulting. Its home price analysis shows that the 10 major metropolitan areas that have seen the most rapid appreciation in the past year are in non-judicial foreclosure states.

Job growth and how far prices dropped during the housing bust are probably stronger drivers of home price trends, says Trulia economist Jed Kolko. But foreclosure speeds are a contributing factor, he and others say.

In Florida, New York and New Jersey — all judicial foreclosure states — the average loan in foreclosure was past due for more than 31 months before the process was completed, according to December data from Lender Processing Services.

In California, Arizona and Nevada — all non-judicial foreclosure states — that average was fewer than 22 months, LPS data show.

Those three states were among the top seven in terms of home value gains last year, Zillow's data show.

Homes lingering in foreclosure "creates real uncertainty," which hurts prices, and inhibits investor buyers, says Stan Humphries, Zillow's chief economist.

Investors have played a big role in driving prices higher in Arizona, Nevada and California, he adds.

As of December, 10% of Florida's home loans were still in some stage of foreclosure, the highest percentage in the nation. Behind it were New Jersey, at 7%, and New York, at 5%, according to CoreLogic.

The overhang of distressed homes in the market "is absolutely contributing" to smaller price gains in judicial foreclosure states, says Mike Fratantoni, economist with the Mortgage Bankers Association.

Florida home values, up 6.4% last year, bested the national rise of 5.9%, Zillow's data show. But values rose less than 1% last year in New York and New Jersey, Zillow says.

Florida values would probably have risen more last year if more of its foreclosures were behind it, says Kolko.

That's because Florida, like Arizona, California and Nevada, saw home prices fall more than 40% from its peak before the housing bust. It's also a market that attracts investor and second-home buyers.

Exceptions to the trends in price gains between judicial and non-judicial foreclosure states underscore that many factors influence home values, Kolko says.

For instance, Zillow's data show strong price gains last year in Indiana, a judicial state. On the other hand, Rhode Island had the greatest price depreciation last year, the data show, and it's a non-judicial state.

Burns' data show that five of the top 20 housing markets for price gains were cities with full or partial court oversight of foreclosures, including Washington, D.C., New York and Miami.

Wall Street Journal Article

THE STREET
Shanthi Bharatway 11/30/2012

NEW YORK (TheStreet) --A large and growing backlog of foreclosures threaten the housing recovery in New York and New Jersey, according to economists at the New York Federal Reserve.

While home prices have recovered and other measures of housing activity have stabilized, the share of mortgages in foreclosure in the two states exceed the national average.

In Northern New Jersey the share of homeowners in foreclosure rose to nearly 8% in 2012, while at the national level the rate has dropped to about 4%. In downstate New York, which includes New York City metro area, Long Island and Fairfield County, Connecticut, the rate hovered above 7%.

The increasing rate of foreclosures "creates challenges in sustaining and broadening the recovery we have in the region," said Jaison Abel, senior economist at the New York Fed. He said downward pressure on the market is likely as these foreclosures work their way through the courts.

New York and New Jersey are among the 26 states that have adopted a judicial foreclosure process, where the bank is required to prove in court that the borrower is in default in order to foreclose.

In the aftermath of the housing bust, the flood of foreclosures overwhelmed the courts in these states. New foreclosure cases in New York, for instance, are projected to reach roughly 24,000 by the end of 2012, a 43% increase from 2011, according to a recent report on foreclosures submitted to lawmakers, as reported by *Reuters*.

That is still well short of the peak in 2009 and 2010, before the robo-signing scandal, when officials at big banks including Bank of America, JPMorgan Chase, Citigroup and Wells Fargo signed off on a huge number of foreclosures without verifying documents and following required procedures.

Post the scandal, the number of foreclosures across the country have reduced, but courts have heightened their scrutiny of foreclosure cases, while states have toughened laws to protect borrowers from improper foreclosure practices.

New York now requires banks that initiate a foreclosure action to file an affirmation certifying the accuracy of supporting court documents, something that some banks have had difficulty complying with, according to an annual report on foreclosures submitted to lawmakers

More borrowers now challenge foreclosures, adding to the caseload. Mediation agreements further prolong the process.

The average number of days a mortgage is in foreclosure from the notice of default to completion stood at 1072 days in New York and more than 900 days in Jersey in the third quarter, according to *RealtyTrac.*

While the record timelines give borrowers more options in seeking out an alternative to foreclosure, the strong borrower protection laws have become somewhat of a double-edged sword for home buyers in these states.

The longer a home stays in the foreclosure process, the greater the chances of the property deteriorating as the homeowners lose the incentive to maintain it. So not only does a foreclosed home sell at distressed prices, it drags down neighborhood prices as well.

The inventory of homes yet to hit the market also casts a shadow on the housing outlook in the region.

Recent data already points to big differences in the performance of markets where foreclosures are processed quickly and those that are processed through courts.

In Arizona for instance, home prices are up 20% year over year, according to the FHFA Home Price Index. While overall foreclosure levels in Arizona are still high, foreclosure activity is on the decline. In contrast, in New York and New Jersey, prices are down 0.4% and 1.7% respectively over the same period.

There are also concerns that foreclosure delays may raise the cost of mortgage credit in the region.

One impact of the foreclosure delays that is yet to be studied is whether it causes underwater borrowers to default. "Delays can influence how long someone chooses to stay in their home," according to Joseph Tracy, senior adviser to NY Fed President William Dudley. "You could see an increase in delinquencies. It is a real risk. But it[the excessive foreclosure delays] is such a novel experience that we don't have data to quantify that risk."

That perceived risk could be why housing giants **Fannie Mae** (FNMA) and **Freddie Mac** (FMCC) are proposing to raise guarantee fees in five states which the agencies believe have higher foreclosure costs due to their legal process, including New York and New Jersey. The proposal, if implemented, could lead to a rise in mortgage rates.

Recent academic research have faulted the judicial foreclosure laws for the lengthy timelines and the adverse impact on the housing market.

"The laws across states use different legal theories as the basis for mortgages, and they balance the rights of creditors and borrowers very differently," explains Assistant Professor of Real Estate Andra Ghent of the W. P. Carey School of Business in a recent papercalling for a unified regime. "The variations started early in America's history, and they're not really based on economic reasons, but they're still having a major influence on what's happening now with the housing market."

An earlier research paper in December 2011 by Federal Reserve Officials found that these borrower-friendly laws delay but do not prevent foreclosures.

More recently, however, research at Federal Reserve of Boston has found that foreclosure mediation efforts adopted by a handful of states including New York and New Jersey have seen some success.

"For homeowners, the home is the biggest investment they have. It is not surprising that states want to make sure that all steps are taken to ensure that they remain in their homes," said the Fed's Tracy.

"Many systems work well under normal circumstances when they are not stressed. But it is difficult to scale up in rare situations when there is a huge demand on resources and this is a resource-intensive process," he said in response to critics of the process.

Todd Soloway, a real estate attorney with Pryor Cashman, says that while the majority of the borrowers do end up losing their home to foreclosures anyway, the courts ensure a sounder financial system. "The judicial process puts the onus on bankers to make sure everything is in order. Ultimately it would benefit both the borrower and the lender. It will not only keep the borrower in their homes, but also force lenders to be more responsible in their lending."

Others argue that the delays in foreclosure process have actually helped the housing market by slowing the foreclosure frenzy on the part of banks. "Banks were competing to foreclose the fastest. Now the market is more resilient,"says Peter Ticktin, of Ticktin Law Group that uncovered the robosigning scandal in Florida. "Maybe we have greater costs and time, but there are more people in their homes, less inventory to depress the markets and the law is sacrosanct."

Fed Reserve
Boston

5 Policy Implications

Do judicial intervention and the interposition of a right-to-cure period in the foreclosure process produce better outcomes? The answer to this question depends on how one defines outcomes. To analyze this, we first focus on the narrow goals of the laws – prevention of unjust or unnecessary foreclosures – and then consider the broader effect on the housing market and affected communities.

On their narrow goals, one has to conclude that both judicial foreclosure and right-to-cure statutes are policy failures. We have shown that neither approach has any effect on the number of borrowers who cure their delinquencies. If the laws allowed borrowers to escape from unjust or unnecessary foreclosures, we would see more cures and more modifications, neither of which occurs. Of course, a finding that borrowers *were* more likely to cure would not necessarily imply that either law was effective policy, because both laws exact high costs in terms of delayed foreclosures; the lack of any appreciable benefit saves us the trouble of conducting such a cost-benefit analysis.

In a sense, the failure of judicial foreclosure to affect outcomes is not so surprising. Legal scholars have long argued that the power-of-sale procedure can replicate the protections of the judicial process at much lower cost. Nelson and Whitman (1985, 536), for example, write that

> The underlying theory of power of sale foreclosure is simple. It is that by complying with the above type statutory requirements the [lender] accomplishes the same purposes achieved by judicial foreclosure without the substantial additional burdens that the latter type of foreclosure entails. Those purposes are to terminate all interests junior to the mortgage being foreclosed and to provide the sale purchaser with a title identical to that of the mortgagor as of the time the mortgage being foreclosed was executed.

It is important to understand that, despite the absence of direct supervision by the courts, the lender in a power-of-sale foreclosure has a strong incentive to follow the rules of law because any failure to do so clouds the title and reduces the value of the property. *U.S. Bank v. Ibanez supra*, illustrates this point: a title insurer raised questions about whether the lender had followed proper procedures, which led the lender to go to land court to get a judicial stamp of approval. Some even argue that, in some cases, the fact that the courts have rendered a final judgment when a judicial foreclosure occurs precludes the borrower from raising issues that he or she might be able to after a power-of-sale foreclosure.

Our results show that lenders already do exactly what the lawmakers want them to do. In Section 3.2, we argued that the hazard rates implied that lenders foreclose more intensively on the borrowers least likely to cure. In other words, borrowers who stand to benefit the most from additional time already get it. In Section 4, we showed that implementing a 90-day right-to-cure period had a big effect on the timing of foreclosure petitions but not on the timing of foreclosure sales, meaning, effectively, that borrowers already got a 90-day period to cure default.

But the laws obviously have broader effects and judging those effects is a far more nuanced task. At the crudest level, delaying the foreclosure process causes a wealth transfer from lender to borrower. The borrower lives rent-free while the lender loses interest income from the capital in the property and cannot get reimbursed for the depreciation. But there are other potential effects for the community as a whole.

Mian, Sufi, and Trebbi (2011) have argued that foreclosures depress house prices so therefore the judicial foreclosure process, which slows the pace of foreclosures, benefits the economy. Our results show that one must interpret any such claim with great caution. We have shown that the judicial procedure alters the timing but not the number of foreclosures. Thus, any test of the effect of different legal regimes on house prices is a joint test of the hypothesis that foreclosures drive down prices *and* that market participants are myopic and do not realize that there is a glut of foreclosed properties looming in judicial states. In fact, market commentators are equally as likely to attribute the weakness in the housing market to foreclosures as they are to "foreclosure overhang," the mass of what we call "persistently delinquent" borrowers for whom foreclosure is more or less inevitable.

Taking Mian, Sufi, and Trebbi's argument at face value, one might think that legal protections indirectly prevent foreclosures by slowing price declines and thus preventing delinquencies—that is, even if the laws do not prevent delinquencies from turning into foreclosures, they might prevent delinquencies from occurring in the first place. However, Mian, Sufi, and Trebbi (2011, 3) argue against this hypothesis, finding that "the rate at which homeowners default on their homes is almost identical in states that do and do not require judicial foreclosure. But the rate at which delinquencies progress into foreclosures is substantially lower in judicial requirement states."

The unambiguous effect of delaying foreclosure is that it lengthens the period for separation of ownership and control of residential property. As prominent housing economist Edward Glaeser writes:

> Delinquent homeowners want to inhabit and to control their homes. Lenders want to get them out and to limit the damage done to the property. During the foreclosure process, home occupants have no reason to invest in their homes. Indeed, spite sometimes pushes them to abuse the property. [This] logic suggests that such periods ensure an abuse of the housing stock, which is one reason why

homes often lose close to half of their value when they go through foreclosure.[37]

Indeed, of the 200 properties New York City cited in 2008 as the worst maintained, 77 were in the foreclosure process.[38] Policies designed to protect borrowers from foreclosure may have the unintended consequence of aggravating the externalities – crime, vandalism, and inhumane living conditions for tenants among them – associated with failed home ownerships.

[37] Edward Glaeser, "Foreclosing the Crisis," *The New Republic*, February 4, 2009.

[38] Manny Fernandez and Jennifer Lee, "Struggling Landlords Leaving Repairs Undone," *New York Times*, July 14, 2009.

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