



## **New York Jumps Ahead of Feds With Law Holding Mortgage Companies Accountable on Mods**

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Homeowners sit with counselors to help them modify their mortgages on Dec. 11, 2009 in New York City. State regulators have written new laws that give the state authority to punish mortgage servicers. (Chris Hondros/Getty Images)

New York regulators have crafted new laws to give the state authority to punish mortgage servicers -- something the Treasury Department, in administering its struggling mortgage modification program [1], has so far failed to do. The new rules set clear standards for how servicers must handle homeowners seeking a modification.

"We will not hesitate to bring an enforcement action or to refer an enforcement action," said Richard Neiman, the New York superintendent of banks. "In fact, we'll be looking for that case in the event of any wrongdoing, because we know the message it will send to the entire industry."

The delays that hundreds of thousands of homeowners have encountered [2] in the administration's mortgage modification program have highlighted the poor performance by many mortgage servicers -- the companies that process mortgage payments and foreclosures -- particularly the largest: Bank of America, JPMorgan Chase, Wells Fargo and Citigroup. Struggling homeowners seeking a modification frequently wait months, even years, for an answer.

The New York laws [3], which go into effect Oct. 1, lay out how servicers should handle homeowners in danger of foreclosure. Within 10 days of a homeowner's applying for a modification, for example, the servicer is required to acknowledge the request and specify what additional information is needed. Within 30 days of receiving all of the required information, the servicer is required to render its decision and respond with either a written offer or a denial in writing.

Those rules are precisely the same as those for the administration's modification program, but as we've reported, servicers often break [2] the [4] rules [5]. New York's Neiman, who also sits on the Congressional Oversight Panel for the TARP and has

frequently been critical of the administration's program, said some of the laws were consciously modeled on it, but with one crucial difference: "These are not guidelines, these are not voluntary programs, these are laws and regulations that are now enforceable by our department, by the state attorney general, and by federal supervisory agencies."

Treasury has repeatedly threatened [2] to punish servicers, but hasn't yet followed through. One unanswered question is just what form that punishment might take, since Treasury's authority is based on the contracts that servicers signed to join the program. Under those contracts, Treasury could withhold incentive payments from noncompliant servicers, but it has not said just how that might work. The servicers are paid incentives for completed modifications, of which there have been relatively few [1].

The New York laws will apply to all the major servicers doing business there, said Jane Azia, the state banking agency's director of consumer protection. In the case of a major, national bank breaking the laws, New York's banking agency would refer the matter to the state attorney general, she said. "The attorney general would have authority to prosecute any entity for repeated violations of the law." Whatever penalties or fines might result would then be up to the attorney general.

The new laws also require servicers to have adequate staffing and systems to ensure that homeowners "are not required to submit multiple copies of required documents," a frequent problem. In another section, they prohibit servicers from continuing foreclosure proceedings if the homeowner is being evaluated for a modification. As we've reported, foreclosures occurring during the modification process [6] have been a persistent problem [5].

The regulations are an important step in bringing transparency and accountability to an industry that has long avoided regulation despite a history of abusive practices [7], said Josh Zinner, an attorney and co-director of the nonprofit Neighborhood Economic Development Advocacy Project in New York. "The regulations set important standards," he said, adding that the Consumer Financial Protection Bureau, newly created by the financial regulation bill, will have jurisdiction over servicers and could set similar rules.

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