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GOVERNOR SPITZER PROPOSES LEGISLATION TO ADDRESS SUBPRIME MORTGAGE CRISIS

Bill Adds New Protections for Homeowners; Requires Registration of Mortgage Servicers and Enhances Penalties for Mortgage Fraud; Administration Renews Call for a Comprehensive Federal Plan to Assist Homeowners

Governor Eliot Spitzer today unveiled a far-reaching proposal to address the current mortgage crisis and bring relief to thousands of New York homeowners who have fallen victim to predatory lending and the proliferation of subprime loans. With the federal government failing to reach agreement on a meaningful package to remedy the problem, New York and other states have stepped in to provide solutions.

The Governor's proposed legislation is designed to offer meaningful assistance to New Yorkers who are at risk of losing their homes. It would also enhance the protections in New York's Anti-Predatory Lending statutes to prevent a similar crisis in the future while limiting regulatory impacts that could restrict the availability of mortgage options for qualified borrowers.

The Governor's proposal will assist people at risk of foreclosure by helping open a dialogue between the borrower and lender to discuss loan modification or repayment plans. This is a critical step since homeowners in this position rarely embark on such discussions. The bill would also make it easier for law enforcement to prosecute mortgage fraud and target foreclosure rescue scams operated by those who seek to take advantage of homeowners in default.

The proposal was developed with input from industry groups, non-profit organizations and government agencies to ensure the legislation reflects the current lending landscape and gives consideration to possible impacts on the industry and consumers.

"With thousands of New Yorkers impacted by this crisis, we must enhance protections against predatory lending practices while continuing to make credit available to borrowers who have the ability to repay," said Governor Spitzer. "This proposal strengthens consumer protections, gives law enforcement the tools it needs, and also recognizes that we must retain the vitality of the mortgage financing industry."

The proposal also requires increased due diligence by lenders in assessing a borrower's ability to repay a mortgage loan. Lenders would have to make efforts to determine whether borrowers can repay their loans, including principal, interest, taxes, insurance, assessments, points and fees in the context of income level, employment status and other financial resources.

The Governor reiterated his call for the federal government to expand its proposal instead of leaving states to design a patchwork of initiatives throughout the country. Last month, during a meeting of the National Governor's Association, Governor Spitzer and ten other governors called on the federal government to offer substantive relief to the majority of distressed homeowners and challenged Washington to improve those efforts.

The two plans offered by the Bush Administration fall short of delivering a comprehensive solution because they exclude the majority of homeowners who need help. One plan includes only homeowners who are at least 90-days delinquent but who are not within 30 days of home sale in the foreclosure process. The other plan makes no provisions for homeowners who are more than 30 days in default, close to foreclosure, or who are in. Unfortunately, these plans cover only 15 to 20 percent of those in need.

“In this increasingly difficult economic downturn, the federal government's failure to offer comprehensive answers to this crisis has become a national embarrassment,” said Governor Spitzer. “This is not only a responsibility, but a moral imperative. We must keep the pressure on Washington to provide a true safety net that would capture the majority of homeowners in need. I want to thank Senators Schumer and Clinton, Congresswoman Maloney, and the entire New York Delegation for continuing to press this issue at the federal level and I look forward to working with them to find a comprehensive federal solution.”

The proposed legislation includes the following provisions:

- **Mandatory Pre-Foreclosure Notice:** Requires lenders to send a pre-foreclosure notice to homeowners at least 60 days before initiating legal action against the homeowner. The notice must include a list of HUD-approved housing counselors in the homeowner's area, who may be able to help homeowner reach resolution with their lender as an alternative to foreclosure. If the homeowner reaches out to the lender to work out a resolution within 30 days of receiving the notice, the lender will be precluded from initiating a foreclosure action against the borrower for 60 days in order to facilitate a resolution.
- **Mandatory Settlement Conferences:** Requires borrowers and lenders to participate in a settlement conference at the beginning of the foreclosure process. For those homeowners who do not appear in court with an attorney, the court may waive certain procedural requirements or even assign counsel.
- **Expansion of Consumer Protections:** Expands and strengthens the New York State Anti-Predatory Lending Law to protect a greater number of borrowers from evolving predatory lending practices. Under the bill, lenders would be required to make a determination of the borrower's reasonable ability to repay the loan when making lending decisions. The bill would also establish a set of responsibilities and duties for mortgage brokers in their dealings with borrowers.
- **Registration of Servicers:** Requires mortgage loan servicers servicing loans on residential property in New York State to be registered with the Banking Department.

- Residential Mortgage Fraud: Defines the crime of mortgage fraud under the Penal Law to make it easier for prosecutors to prosecute this type of fraud.
- Rescue Scams: Establishes measures to protect distressed homeowners from falling prey to rescue scams by, among other things, requiring that all contracts to be in writing, providing homeowners with the right to cancel the contract under certain circumstances, and prohibiting payment prior to the performance of promised services.

New York State Attorney General Andrew Cuomo said: “Governor Spitzer’s proposal will help put an end to lenders offering unaffordable mortgages and require them to work with at-risk borrowers before being able to foreclose on their homes. Struggling homeowners need immediate assistance. This initiative raises industry standards, protects New York families and provides tough sanctions for lawbreakers. The rationale underlying all of these moves is that lenders and mortgage brokers must treat borrowers fairly and reasonably, and no one can object to that.”

New York State Comptroller Thomas P. DiNapoli said: “Early on in this crisis, I called upon lenders to reach out to at-risk borrowers before they fall delinquent or default on their mortgage. Today’s initiative makes this outreach a requirement in New York State. It also helps future borrowers by eliminating certain lending practices that put borrowers into unaffordable mortgage products. Everyone loses in foreclosure. Families lose their homes. Neighborhoods deteriorate. And lenders take financial hits that hurt the company and its investors. Today, with Governor Spitzer’s announcement, we’ve taken an important step toward restoring stability in our housing markets, protecting New York families, and ensuring that we avoid these problems in the future.”

Banking Superintendent Richard Neiman said: “The reach of the subprime mortgage crisis is wide and deep, impacting both local communities and the global economy. While the impact may be global, the collateral is undeniably local. That’s why the efforts of the State are so critical to addressing the needs of homeowners in a timely fashion.”

Sarah Ludwig, Co-Director of the Neighborhood Economic Development Advocacy Project (NEDAP) and a leader of New Yorkers for Responsible Lending, a coalition of 138 organizations from throughout New York State said: “We thank the Governor for his leadership, and look forward to working with his office to ensure that New York’s responsible lending legislation protects borrowers from abusive and discriminatory lending practices that have plagued our state.”

Bertha Lewis, Executive Director of New York ACORN, said: “These proposals will help thousands of New Yorkers avoid foreclosure and keep their homes. By mandating pre-foreclosure notices and early settlement conferences, more New Yorkers will be able to preserve their credit rating, their equity and a roof over their head. Most importantly, the proposed sub-prime lending legislation will prevent this kind of crisis from ever happening again.”

Lois Aronstein, AARP New York State Director, said: “Over 80 percent of people aged 65 and older own a home, which is consistently their single largest asset. Today we are taking a step in the right direction to helping vulnerable New Yorkers who are in danger of losing their homes to predatory lenders and providing them with financial peace of mind.”

Overall, it is estimated that 20 percent of subprime loans will end in foreclosure and 54 percent of all foreclosure filings are on subprime loans. Nationally, the subprime market has grown from an estimated 10 percent of all mortgages underwritten in 1998 to about 22 percent in 2006. According to RealtyTrac, in 2007 there were 57,350 foreclosure filings in New York State affecting nearly 39,000 homes. The number of foreclosure filings represents a 55 percent increase over 2005.

This proposed legislation is the most recent step in Governor Spitzer’s efforts to address this crisis. In March 2007, the Governor created the multi-agency Halt Abusive Lending Transactions (HALT) Task Force. Since its formation, the Task Force hosted summits across the state, introduced new guidance for the mortgage industry, and participated in forums, public hearings, and grass-roots efforts to educate and inform borrowers at risk. Also in 2007, the State of New York Mortgage Agency (SONYMA) announced the \$100 million “Keep the Dream” refinancing program targeting low-, moderate- and middle-income homeowners. It offers homeowners the opportunity to refinance to avoid possible foreclosure.

In November 2007, recognizing that not all borrowers qualify for new loan or refinancing products, the Governor committed more than \$2 million to supporting these housing counseling agencies in training staff and providing services to homeowners struggling to make payments or facing foreclosure.

In addition to efforts to assist consumers, the Governor also focused on changes to the industry. Earlier this year, the Banking Department began authorizing mortgage loan originators (MLOs), the individuals originating loans for licensed mortgage bankers and brokers. An estimated 40,000 MLOs will be registered on a nationwide system before January 1, 2010.