

## Jan 12 2012 Interview Richard Rydstrom Hot Neutral, Chair re Fed Gov. Raskin Calls For More Fines Against Servicers By Phil Hall

Deficient procedures in loss mitigation and foreclosure practices have been documented. The debate is how to remedy the situation. Fed Gov. Raskin maintains that monetary penalties and new fines would offer incentives for servicers to "incorporate strong programs to comply with laws when they build their business models." The cold truth is big business doesn't always conform to industry, government, internal policies and practices or the law. Some would argue that it's intentional, some would deny it, and some would say they can't - because they simply can't afford to. Businesses run on operational and capital budgets, and compliance is often a *creature caught behind its steel-bars*. Sometimes the only way to effect change is massive penalties, fines or litigation judgments.

To be fair, the mortgage servicing business model historically (.25-.50bps) did not contemplate the now required high cost of operations (1.25bps, etc.) I have spent years debating, creating and working on policy and best practices with William LeRoy, CEO of the ALFN and others. I have found that many executives want to do the right thing, but operational and capital budgets restrict their options. However, on the other hand, big-houses that have the budgets (funding, bailout funds) have failed to effectively comply with government expectations, regulations or law. The industry was warned to make "*objectively obtainable safe harbor best practices*" to avoid this scenario, but it failed to do so. The movement to force compliance or move the line of practice was foreseeable.



Businesses run on operational and capital budgets, and compliance is often a creature caught behind its steel-bars. Sometimes the only way to effect change is massive penalties, fines or judgments.



There is plenty of blame to go around. One must question whether policy makers chose NOT to (a) make *standards objectively obtainable*, or (b) to include penalties, fines or *create "private rights of action"* so that violators would be vulnerable to monetary and public headline losses. Let's face it, the history of litigation has proven, that sometimes, only enormous litigation judgments will force big-business to make necessary changes for compliance, to respect the rights of others, and even for public safety. Can anyone say Ford Pinto? To correct a defective fuel system was a cost-benefit analysis weighing corporate profits against loss of human life. The mortgage servicing industry may only see it as weighing corporate profits against the loss of a so-called "deadbeat's" home. However, lost respect for the banking and court systems and property rights, should be the paramount concern. The overall effect on this country is negative not positive. The industry should take affirmative steps to *optimal best practices* and create policies and



There is plenty of blame to go around. One must question whether policy makers chose NOT to (a) make *standards objectively obtainable*, or (b) to include penalties, fines or *create "private rights of action"* so that violators would be vulnerable to monetary and public headline losses.



practices that exceed the government policies. There are numerous solutions to loss mitigation and foreclosure policy. There is simply no driver to take us there.

**Loss mitigation** has been adversarial. The single-point of contact didn't solve that. Broader mandates and options must change to change that. The people feel that most people they know got-screwed by the bank; they were told to make 3 payments; and then their home was secretly sold behind their backs. That is the public perception created by the policies to date. There are many *financially profitable solutions* that could implement principal reductions or even forgiveness policies with internal and external credit and risk enhancement solutions that would better obtain a true *ability-to-pay* and enhance conversion of non-performing portfolios into performing, without 100% loss write-offs as well. The industry has effectively lost huge economic and headline benefits. *Policies of true fairness* would have resulted in *faster rightful foreclosures, greater avoidance of wrongful foreclosures, better containment of price decline and MSR valuations, greater loss mitigation success, and a faster and qualitative housing and economic recovery*. Note, the industry has lost substantial eligible housing consumers by the enormous reduction in the eligibility-pie. The industry will shrink if new creative policies and products are not introduced to serve the now growing population of "ineligibility-pie."

**Foreclosure policy** is more than that; it's **Court Policy** as well! Instead of fighting solutions for change, like Mediation, the industry should have stepped-up and created a better mouse-trap; and yes, one that is fair to all sides, including the court. Court inefficiency is at an all-time high. Waste in the system must be in the billions. Delays are abominable! This costs the people, the banks, the servicers, the taxpayers and the economy more than is calculable. One example is in California, where non-judicial foreclosure resulting in a trustee's deed upon sale is usually first challenged in its *limited jurisdiction* court during the unlawful detainer (eviction) process. The *limited jurisdiction* court will not hear objections or challenges to *title* because the banks have succeeded at interpreting the law as such. This foreclosure policy implemented by industry attorneys is short-sighted because now, borrowers who truly feel that their rights were violated in loss mitigation or the foreclosure process are forced to file a complaint in the *unlimited jurisdiction court*. Usually, the home will be lost in the limited jurisdiction since the court will not hear evidence of the challenges, and the unlimited complaint continues (for years). If the borrower prevails in the unlimited court, the judgment in the limited court could be overturned as moot or inconsistent. Damages, costs and attorney fees are likely now very substantial. Special courts or settlement procedures could have been implemented to avoid much of this mess. But the neck-jerk reaction of many in the industry is to oppose change, and preclude grants of rights to the people. The better solution would have been to embrace change with fairness to all.

Monetary fines or penalties alone will not better the system or repair the negative perception of the mortgage banking industry, the court system, and the historical respect we all had for property rights.

///