

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

ONITY MORTGAGE CORPORATION, f/k/a
PHH Mortgage Corporation,

Plaintiff,

v.

LETITIA JAMES,
in her official capacity as Attorney
General of the State of New York, and KAITLIN
ASROW, in her official capacity as Acting
Superintendent of the New York State
Department of Financial Services,

Defendants.

Case No. 1:26-cv-2161 (MAD/PJE)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Onity Mortgage Corporation (“Onity”) brings this action under 28 U.S.C. § 2201 and 42 U.S.C. § 1983 for declaratory and injunctive relief against Letitia James, in her official capacity as Attorney General of the State of New York, and Kaitlin Asrow, in her official capacity as Acting Superintendent of the New York State Department of Financial Services (“NYDFS”).

INTRODUCTION

1. For nearly seven years, New York has told mortgage servicers that they may charge a borrower a fee if the fee is “reasonably related to the cost of rendering that service.” 3 NYCRR § 419.5(b) (the “Fees Rule”). For nearly seven years, New York has refused to say what those words mean. Onity asked—again and again, in meetings the regulators themselves convened, in correspondence, and in discussions over the threatened enforcement actions that bring Onity to this Court—for a compliance standard it could follow. Each time, NYDFS and the Office of the

Attorney General declined to answer.

2. Instead, in 2024, those same regulators accused Onity of having violated the Fees Rule from the start by charging fees to borrowers who chose to make an expedited mortgage payment by phone or online rather than by mail—fees that are optional, disclosed in advance, charged only with the borrower’s consent, and avoidable at no cost. Defendants have since threatened an enforcement action seeking refunds of every such fee collected since October 2019, even though compliance was not required until June 15, 2020, plus substantial civil penalties.

3. While New York regulators may wish to preserve maximum flexibility in enforcement investigations to decide what the law means on a case-by-case basis, the U.S. Constitution does not permit a State to keep the meaning of its law to itself and then punish a regulated party for guessing wrong. Onity brings this action to ask this Court to declare that a rule only its enforcers claim to understand is too vague to be enforced consistent with the Due Process Clause.

4. The Fees Rule, promulgated by NYDFS, provides that “[a] servicer may only collect a fee if it is for a service that is actually rendered to a borrower, [and] reasonably related to the cost of rendering that service.” Those words carry the force of law, and violating them exposes servicers to penalties of up to \$15,000 per day. Yet NYDFS has never once publicly explained what it means for a fee to be “reasonably related” to a service, or what counts as a “cost of rendering” one. It said nothing in the rulemaking record, nothing in its published list of frequently asked questions, and nothing in its industry letters.

5. The conduct Defendants now call unlawful is neither novel nor hidden. Borrowers who wanted their payments to arrive faster than the mail could carry them could pay online, through an automated telephone system, or with a live agent. Providing those options costs money,

so Onity charged for them. But no borrower had to pay: borrowers were frequently reminded that they could pay nothing at all by mailing a check, as their mortgage documents allow, or by signing up online to receive electronic statements. Onity collected these fees for years with the knowledge of, but without a word of objection from, New York regulators, including for several years after NYDFS promulgated the Fees Rule.

6. Nor have Onity's fees stood still. As the industry and technology have evolved, those fees have either been reduced or eliminated. Beginning on July 1, 2025, Onity stopped charging anything for payments made online or through its automated telephone system. It continues to collect a modest fee (\$12.50) for payments handled by a live agent.

7. In 2024—five years into the life of the Fees Rule, and three years after New York first began demanding Onity's documents related to its servicing practices—Defendants informed Onity for the first time that, in their view, Onity had been violating the Fees Rule the entire time and continues to violate it today. Onity has made clear, in months of meetings and calls, that it is prepared to adjust its fees to meet whatever standard Defendants identify. To this day, Defendants have not identified one. They have told Onity that it broke the law. They have never been willing to tell Onity what the law requires. Defendants now demand civil money penalties of up to \$15,000 per day, full restitution of every fee collected since October 2019, and an end to a modest, optional, fully disclosed service that borrowers choose for themselves.

8. Defendants' silence is not an oversight. By refusing to say what "reasonably related" means, Defendants preserve the freedom to decide, servicer by servicer and demand by demand, what each company's fee should have been and what each company should pay. The Constitution does not permit a State to hold the meaning of its rule in reserve to keep that discretion.

9. The Fees Rule fails both of the Due Process Clause’s vagueness tests. First, when no one but the enforcing regulator can ascertain what a regulation requires, the regulation violates due process, because it leaves the regulated party at the mercy of ad hoc judgment. Onity is living that arbitrary enforcement right now. Defendants seek to enforce the Fees Rule against Onity because Onity derived a small profit from some of its optional payment-related fees. Yet five years ago, when Onity asked specifically whether the Fees Rule was meant to prohibit profits, NYDFS told Onity the opposite: the Fees Rule was not meant to regulate profits. A regulator that answers “no” in 2021 and then years later bases a multi-million-dollar enforcement demand on “yes” provides a classic demonstration of the arbitrariness that the Due Process Clause forbids.

10. Second, the Fees Rule gives regulated entities no fair notice of what it requires. NYDFS’s complete silence—offering no definition, no benchmark, no methodology, and no example—made it impossible for any servicer to know what, exactly, the Fees Rule demanded. Due process does not permit a State to leave that silence in place for years and then fill it, for the first time, in an enforcement action.

11. For these reasons, the Fees Rule is unconstitutionally vague and Onity accordingly seeks a declaration that the Fees Rule is unconstitutional, both facially and as applied to Onity.

12. Onity also seeks a permanent injunction under 42 U.S.C. § 1983 and *Ex parte Young*, 209 U.S. 123 (1908), barring Defendants from enforcing an unconstitutionally vague Fees Rule against it. Onity currently collects, and intends to continue collecting, optional fees for agent-assisted payments—fees that Defendants now say violate the Fees Rule—and Defendants have indicated their intention to sue imminently. Onity should not have to choose between abandoning a service its customers value and accruing penalties under a standard that no one will articulate.

PARTIES

13. Onity is a New Jersey corporation, with its principal place of business in the state of New Jersey. Onity services residential mortgage loans on behalf of investors and lenders and, in that capacity, is responsible, among other things, for collecting borrowers' monthly mortgage payments.

14. Letitia James is the Attorney General of the State of New York. As Attorney General, she has authority to investigate and pursue enforcement actions relating to alleged violations of New York law—including New York's Mortgage Servicing Rules (the Fees Rule among them)—in New York courts.¹

15. Defendant Kaitlin Asrow is the Acting Superintendent of the New York State Department of Financial Services.² As Acting Superintendent, she is responsible for enforcing the regulations promulgated by NYDFS, including New York's Mortgage Servicing Rules, and is authorized, after notice and a hearing, to impose civil penalties and order consumer remediation for violations of those regulations.³

JURISDICTION AND VENUE

16. Onity's claims arise under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over those claims under 28 U.S.C. §§ 1331 and 1343(a)(3) and may award declaratory relief pursuant to 28 U.S.C. § 2201.

17. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1) and (2) because a substantial portion of the events giving rise to Onity's claims occurred here and because

¹ See N.Y. Gen. Bus. Law §§ 349-350, N.Y. Exec. Law § 63(12).

² Upon such time as a permanent Superintendent of DFS is appointed, Asrow will be automatically substituted by her successor as a party to this action. See Fed. R. Civ. P. 25(d).

³ See N.Y. Banking Law § 44(1)(a)-(c).

Defendants reside here.

18. A justiciable case or controversy exists. Defendants have informed Onity that its fees violate the Fees Rule, and Defendants have threatened Onity with imminent enforcement actions seeking restitution, civil penalties, and injunctive relief barring Onity from charging any fees for its expedited payment services.⁴ The controversy is directly traceable to Defendants' threatened enforcement of the Fees Rule and would be redressed by the declaratory and injunctive relief sought here.

19. Onity faces significant hardship absent immediate judicial intervention. In addition to facing the imminent threat of enforcement, Onity continues to face significant civil money penalties for the expedited payment fees that it continues to collect—fees that, based on Defendants' course of conduct and years of inaction, Onity believed to be lawful. Defendants have also demanded that Onity stop collecting these fees going forward, forcing Onity to choose today between abandoning a useful, borrower-elected service and continuing to accrue penalties under a standard that Defendants have to date refused to define or explain. That is precisely the impossible choice the Due Process Clause forbids, and it can be relieved only by the prospective and injunctive relief Onity seeks here.

FACTUAL BACKGROUND

I. Onity's Optional Expedited Payment Services and Related Fees

20. As a mortgage servicer, Onity collects monthly mortgage payments from borrowers on behalf of lenders and investors. Onity performs those services in exchange for a contractual servicing fee.

⁴ Specifically, NYDFS has threatened an enforcement action pursuant to its authority under N.Y. Banking Law § 44, and the Office of the Attorney General has threatened an enforcement action for alleged violation of the Fees Rule pursuant to its authority under Executive Law § 63(12).

21. Onity services loans pursuant to the mortgage Notes executed between borrowers and their lenders. Those Notes authorize Onity, as servicer, to collect payments on the lender's behalf.

22. Under the terms of these mortgage Notes, borrowers may make their monthly payments by U.S. Mail at no charge. That is the method the Notes require Onity to accept, and there is no New York statute or regulation obligating a mortgage servicer to offer any other.

23. Onity nonetheless offers borrowers additional ways to make their payments, including expedited options that help borrowers avoid mailing delays and instantly confirm that their payments have been received. Borrowers may make such expedited payments through an automated telephone system, online, or with the help of a live agent over the phone. Until July 1, 2025, Onity charged \$7.50 for a payment made through the automated telephone system, \$7.50 for a payment made online (which was reduced to \$0 if the customer had enrolled in paperless billing), and \$17.50 for a payment handled by a live agent.

24. Onity has since eliminated or reduced those fees. Onity eliminated all fees for payments made through automated channels (*i.e.*, via the automated telephone system or online) on and after July 1, 2025. Because making live agents available costs considerably more, Onity continues to collect a fee for live-agent-assisted transactions—but it reduced that fee to \$12.50 per payment effective July 1, 2025. Notably, in New York, Onity is required to use onshore agents for such calls, increasing Onity's costs for calls from New York customers making agent-assisted payments.

25. Moreover, most customers, as required by their Note, would contractually have to pay higher fees if their mortgage payment was late. Onity's expedited payment options help

customers avoid those fees.

26. Onity incurs real and continuing costs to make these expedited payment services available, including expenses for additional call-center personnel, technology, compliance, and third-party vendors.

27. Onity's fees for expedited payments are reasonable in light of the costs of providing these services.

28. Onity does not hide or spring these fees on anyone. Before charging any expedited payment fee, Onity discloses the fee to the borrower and informs the borrower of the lower-cost and no-cost payment options available to them.

29. Whenever a borrower chooses a fee-based payment method, Onity discloses the amount of the fee, reminds the borrower again that no-cost payment options remain available, and obtains the borrower's affirmative consent before processing the payment.

30. Accordingly, no borrower is ever required to pay a fee to make their monthly mortgage payment. Borrowers who choose an expedited payment method voluntarily do so because it offers them something they value, including avoided late payments, reduced risk of adverse credit reporting, convenience, and prompt confirmation that a payment has been processed.

II. NYDFS's Mortgage Servicing Rules and the Fees Rule

31. In 2019, NYDFS amended Part 419, which are the Mortgage Servicing Rules that include the Fees Rule. The amendment was adopted on October 23, 2019 and became effective on December 18, 2019. Compliance with the Fees Rule in particular was extended to June 15, 2020.

32. Before the amendment, the Fees Rule permitted a mortgage servicer to charge "a reasonable fee for a specific service requested by the borrower," provided the servicer disclosed

the fee and obtained the borrower’s affirmative consent to the fee before the service was provided.⁵ Onity charged its optional, expedited-payment fees under that standard for years, without objection from New York.

33. The 2019 amendment replaced that standard with a new one: a fee must now be “for a service that is actually rendered to the borrower” and “reasonably related to the cost of rendering that service.”⁶ The Fees Rule imposes what amounts to strict liability. It does not require any showing that a servicer knowingly, intentionally, or recklessly crossed the line—wherever that line may be.

34. Notably, the Fees Rule never says what “reasonably related” means. Neither does any other section of the Mortgage Servicing Rules. Nowhere do the Rules supply a benchmark, a ratio, a formula, or any other measure for determining when the relationship between a fee and the cost of a service ceases to be reasonable.

35. Nor do the Rules clarify what a “cost” is. The Rules do not state whether cost includes only amounts paid to third-party vendors or also the costs of internal labor, technology, compliance, and allocated overhead. The Rules also do not say whether costs should be measured by transaction, by payment channel, or across the payment program as a whole. They do not say whether a servicer may recover any amount above cost. They also do not say when the relevant costs must be measured. Each of those questions is left for the enforcing agency to answer after the fact.

36. NYDFS has had every opportunity to answer those questions, yet it has not done so. When NYDFS proposed and adopted the amendment, it did not explain why it was adding the

⁵ 3 NYCRR § 419.10(b) (Oct. 7, 2019).

⁶ 3 NYCRR § 419.5(b) (Oct. 23, 2019).

“reasonably related” requirement, how that requirement should be interpreted or applied, or what information a mortgage servicer must consider when setting a fee.⁷

37. NYDFS’s December 3, 2019 Notice of Adoption said only that NYDFS had received comments concerning the Fees Rule and had made “a few minor adjustments” where it considered changes necessary. NYDFS also explained that it declined most recommended revisions because it considered them “either unnecessary or inconsistent with the goals of the regulation.”⁸ The Notice did not identify the substance of those comments, articulate NYDFS’s reasoning, or say a word about what the new standard meant.

38. NYDFS published “Mortgage Loan Servicer Business Conduct Rules FAQs,” which purported to address the most common questions NYDFS has received concerning the Mortgage Servicing Rules. These FAQs likewise say nothing about what “reasonably related” means, or how a servicer should determine the cost of rendering a particular service.⁹

39. NYDFS also issued two industry letters concerning the Rules in 2020. Neither letter addressed how the Fees Rule applies to payment-processing fees or explained the meaning of “reasonably related to the cost of rendering that service.”¹⁰

⁷ See, e.g., NYDFS, Proposed Rulemaking (May 1, 2019), at 2, 7.

⁸ NYDFS, Notice of Adoption (Dec. 3, 2019), at 5.

⁹ NYDFS, *3 NYCRR Part 419 – Mortgage Loan Servicer Business Conduct Rules FAQs* (last accessed on Oct. 18, 2026), available at https://www.dfs.ny.gov/apps_and_licensing/mortgage_companies/mls_business_conduct_rules_faqs.

¹⁰ NYDFS, *Industry Letter – September 1, 2020: Guidance to New York State Regulated Mortgage Lenders and Servicers Relating to Fees Paid to Register Mortgages in Default* (Sept. 1, 2020), available at https://www.dfs.ny.gov/industry_guidance/fees_paid_mortgages_in_default; NYDFS, *Industry Letter – Compliance with 3 NYCRR Part 419, Servicing Mortgage Loans: Business Conduct Rules* (June 12, 2020), available at https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200612_compliance_part419_mls.

40. To this day, neither the Fees Rule nor the Mortgage Servicing Rules more generally identify which costs are acceptable predicates under the Fees Rule, or how to determine whether a fee is “reasonably related” to such costs.

41. And NYDFS, the very agency charged with implementing the Mortgage Servicing Rules, including the Fees Rule, has published no guidance on the subject in the nearly seven years since the Fees Rule was amended. The only time it articulated expectations under the Fees Rule has been in the threat of enforcement directed at Onity, years after the fact.

III. Onity’s Requests for Guidance and Defendants’ Response

42. Left without any public source of meaning to rely on, Onity did the responsible thing: it asked the State. Over the last five years, Onity repeatedly asked NYDFS and the Office of the Attorney General, including in meetings the regulators themselves convened and during the enforcement investigation they initiated, what the Fees Rule required. Up until threatening enforcement, each time, Defendants rebuffed the request.

43. In June 2021, NYDFS requested a meeting about expedited payment fees and Onity’s compliance with the Fees Rule (the “June 2021 Meeting”). During this meeting, Onity explicitly asked NYDFS whether the Fees Rule was intended to regulate Onity’s profits. NYDFS responded “no.”

44. In July 2021, Onity followed up with NYDFS regarding the June 2021 Meeting and Onity’s expedited payment fees. As part of that follow-up, Onity offered additional information about its payment processing services. NYDFS never responded: not to Onity’s request about expedited payment fees, and not to Onity’s offer to provide additional information.

45. Instead, in July 2021, Onity received a subpoena *duces tecum* from the Office of the Attorney General demanding documents, data, and information related to Onity’s expedited payment fees.

46. The Office of the Attorney General served three more subpoenas on Onity in March 2023, July 2023, and December 2023, each demanding yet more information and data about Onity's expedited payment fees.

47. Onity complied with each of these requests and repeatedly asked for guidance regarding the basis for the State's concerns regarding the "reasonable[ness]" of Onity's fees and how it should comply with the Fees Rule. The Office of the Attorney General never responded.

48. In or around May 2024, the Office of the Attorney General informed Onity that it had determined that Onity's assessment of expedited payment fees on New York borrowers violated the Fees Rule because those fees exceeded what the Office of the Attorney General viewed to be reasonably related costs.

49. On follow-up calls in or around November 2024 and December 2024, Onity asked Defendants which aspects of its fees were under scrutiny. Defendants indicated that "indirect costs" included in the fees were not "reasonably related to the cost of rendering" the expedited payment service. Defendants did not elaborate on which precise costs were problematic, or what they believed a reasonably related fee would be. The Fees Rule is silent on "indirect costs" and NYDFS had nowhere previously or publicly indicated that the Fees Rule prohibited charging for "indirect costs" associated with a service.

50. During the course of the investigation to the present, Onity has asked Defendants repeatedly to clarify the governing standard, including which costs could be considered, how those costs should be measured, and what fee amount Defendants believed would comply with the Fees Rule. Defendants have never provided clarification.

51. In or around the spring of 2026, Onity again raised that there was no guidance on what "reasonably related" means. NYDFS responded that it believed Onity's expedited payment

fees violated the Fees Rule because the fees allegedly generated a profit. At no point has NYDFS indicated, either by rulemaking or otherwise through public guidance, that the Fees Rule prohibits *profiting* from the services provided to customers. Worse, this new position squarely contradicted what NYDFS told Onity in the June 2021 Meeting. NYDFS also stated that the fees were problematic because, in some cases, Onity would incur similar costs to facilitate payments that would not result in an expedited payment fee.

52. Onity made clear that it was prepared to modify its practices to meet *any* discernible regulatory standard. But Defendants would not identify a permissible fee, an accepted cost methodology, or any other objective measure by which Onity could evaluate and adjust its conduct. Onity asked Defendants to identify the portion of the challenged fees they considered inconsistent with the Fees Rule. Defendants refused to identify how much of the fee was permissible.

53. Onity understands that Defendants intend to seek full borrower restitution for the total amount of all expedited payment fees Onity has collected since the amended Mortgage Servicing Rules were adopted in October 2019 (notably well before compliance was required in June 2020) and injunctive relief requiring Onity to stop charging *any fees* for expedited payments. Defendants also asserted that the fees clearly violated the law. If Onity does not agree to a consent order to this effect, it faces an enforcement action from Defendants.

54. Onity has asked Defendants whether it was their view that any expedited payment fee violates the Fees Rule, generally and not specific to Onity. Defendants have declined to confirm. To date, Defendants have refused to say what “reasonably related to the cost of rendering that service” means, which costs may be included, how those costs should be allocated, what fee level would be permissible, or how precisely Defendants determined that Onity’s fees violated the Fees Rule. Defendants know what they think the Fees Rule forbids. They have simply withheld

this information and opted instead to threaten an enforcement action after the fact.

COUNT ONE

**42 U.S.C. § 1983—Violation of the Fourteenth Amendment As Applied to Onity
(The Fees Rule Authorizes Arbitrary and Discriminatory Enforcement)**

55. Onity re-alleges and incorporates by reference the allegations in paragraphs 1-54 of this Complaint as if fully set forth herein.

56. The Fees Rule permits mortgage servicers to charge fees for services actually rendered as long as those fees are “reasonably related to the cost of rendering” the service. 3 N.Y.C.R.R. § 419.5(b). But neither the Fees Rule, the Mortgage Servicing Rules as a whole, nor any published guidance explains what “reasonably related” means, what costs may be considered, how those costs should be measured, or what methodology a servicer should use to assess compliance. As a result, no mortgage servicer, including Onity, can reasonably ascertain whether and how a particular fee complies with the Fees Rule.

57. The Fees Rule also lacks any defined standard that can be objectively applied to determine if the fees a mortgage servicer charges are “reasonably related to the cost” of the services rendered. Defendants have asserted that Onity’s expedited payment fees violate the Fees Rule, yet they have declined to explain *why*—*i.e.*, the standard they applied, the costs they considered, or the basis for concluding that Onity’s fees were not reasonably related to the cost of providing the services at issue. And the assertion has come years after the fact and with the threat of enforcement. Only Defendants know what the Rule means, and they refuse to articulate the standard. Instead of providing a standard, Defendants abruptly and arbitrarily identify conduct that they believe violates the Rule—at the very same moment that they seek to punish Onity on that belief.

58. Under the Due Process Clause of the Fourteenth Amendment, a law is unconstitutionally vague and violates due process if it “authorizes or even encourages arbitrary

and discriminatory enforcement.” *Cunney v. Bd. of Trs. of Vill. of Grand View*, 660 F.3d 612, 621 (2d Cir. 2011).

59. The Mortgage Servicing Rules’ failure to provide explicit standards for officials tasked with the responsibility of enforcing the Fees Rule improperly allows for enforcement “on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Cunney*, 660 F.3d at 621 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972)).

60. A regulator that declines to define the standard it enforces so that it may apply it differently to different regulated parties has not merely left the standard undefined; it has embraced the “ad hoc and subjective” enforcement the Due Process Clause forbids.

61. Onity has experienced this arbitrary enforcement firsthand. In 2021, NYDFS informed Onity that the Fees Rule did not seek to regulate profits derived from fees collected from mortgage-servicing customers. Years later, NYDFS did an about-face, announcing for the first time, in conjunction with threatened enforcement, that Onity’s expedited-payment fees purportedly violated the Fees Rule because Onity sometimes collected more than what the service cost to provide—*i.e.*, Onity made a modest profit off the fees. On top of that, Defendants have asserted that charging for indirect costs related to the service may also be unlawful. These “various interpretations ... serve only to reinforce [the view]” that the Fees Rule “authorizes arbitrary enforcement.” *See Cunney*, 660 F.3d at 621.

62. By seeking to enforce the Fees Rule against Onity, Defendants have violated and continue to threaten violations of Onity’s rights under the Due Process Clause of the Fourteenth Amendment while acting under color of law.

63. The threat of enforcement is real, immediate, and ongoing. Defendants have indicated their intent to pursue enforcement actions. Defendants have also indicated that enforcement is imminent and that they will seek substantial civil penalties, refunds and an end to the collection of the expedited-payment fees, which Onity believed to be lawful and not prohibited by the Fees Rule.

64. Onity faces ongoing harm from the threatened enforcement of a regulatory standard that Defendants have never meaningfully defined. That harm is directly traceable to Defendants' conduct and is redressable through the relief sought in this action.

65. Onity is therefore entitled to declaratory and injunctive relief under 42 U.S.C. § 1983, including an order prohibiting Defendants from enforcing the Fees Rule against Onity, as well as reasonable attorney's fees as this Court may allow under 42 U.S.C. § 1988.

COUNT TWO

42 U.S.C. § 1983—Violation of the Fourteenth Amendment as Applied to Onity (The Fees Rule Does Not Provide Fair Notice)

66. Onity re-alleges and incorporates by reference the allegations of paragraphs 1-65 of this Complaint as if fully set forth herein.

67. The Due Process Clause of the Fourteenth Amendment requires that regulated parties have fair notice of what the law forbids or requires. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

68. To comport with due process, a regulation must contain enough specificity to provide “a person of ordinary intelligence fair notice of what is prohibited.” *Brokamp v. James*, 66 F.4th 374, 403 (2d Cir. 2023).

69. Neither the Fees Rule nor the scant public guidance surrounding it provides a person of ordinary intelligence fair notice of what the Rule prohibits.

70. Onity has spent the last five years trying to discern the Rule’s prohibitions, with no success. It has made repeated efforts to understand and comply with the Fees Rule yet has never been able to divine ahead of time what, exactly, the Rule prohibits. It sought guidance from Defendants concerning the meaning of the Fees Rule and the standards governing permissible fees. Defendants did not provide the requested guidance. Instead, Defendants informed Onity that they intended to pursue enforcement based on a standard they never articulated.

71. Onity explicitly discloses its expedited payment fees. It offers borrowers no-cost alternatives. It reduced and then eliminated some fees. It sought guidance regarding the Fees Rule’s requirements. And it said plainly that it was willing to modify its practices if Defendants would simply identify what conduct is prohibited by the Fees Rule and what conduct is permitted. Defendants nevertheless press for enforcement without ever explaining what compliance with the Fees Rule would look like or how Onity could conform its conduct to Defendants’ interpretation.

72. Defendants cannot satisfy the Due Process Clause by identifying conduct that violates the Fees Rule while simultaneously pursuing enforcement based on that conduct. And Defendants’ actions are all the more arbitrary given that their asserted positions—that the Fees Rule prohibited Onity from profiting from its optional fees or including indirect costs—cannot be squared with the plain text of the Rule, which says nothing about profit or indirect costs. An “abrupt” change in interpretation announced at the point of enforcement does not satisfy due process. *FCC*, 567 U.S. at 254.

73. Because Defendants will imminently violate Onity’s constitutional rights under the Due Process Clause by seeking to enforce a regulation that fails to provide fair notice about the lawfulness of Onity’s expedited-payment fees, Onity is entitled to declaratory and injunctive relief under 42 U.S.C. § 1983, including an order prohibiting Defendants from enforcing the Fees Rule

against Onity, as well as reasonable attorney’s fees as this Court may allow under 42 U.S.C. § 1988.

COUNT THREE

42 U.S.C. § 1983—Violation of the Fourteenth Amendment (The Fees Rule Is Unconstitutionally Vague on Its Face)

74. Onity re-alleges and incorporates by reference the allegations of paragraphs 1-73 of this Complaint as if fully set forth herein.

75. A law violates due process on its face if it is “permeated with vagueness,” infringes on a constitutional right, and has no *mens rea* requirement. *See Dickerson v. Napolitano*, 604 F.3d 732, 744 (2d Cir. 2010).

76. The Fees Rule is unconstitutional on its face because it fails to provide any ascertainable standard for discerning when a fee is “reasonably related” to the “cost of rendering” a service. It provides no fair notice on how to comply, and there is also no *mens rea* requirement—regulated entities are strictly liable for a violation.

77. Far from providing minimal guidelines for regulated entities to follow, the Fees Rule instead vests virtually complete discretion in Defendants (the Rule’s enforcers) to decide what the Rule permits or prohibits. No servicer, including Onity, can reasonably discern the metes and bounds of the Fees Rule with any degree of certainty. Nearly seven years of regulatory silence, followed by the threat of enforcement seeking full restitution, substantial penalties, and a ban on the fees outright, is the predictable result.

78. Because the Fees Rule is facially unconstitutional, Onity is entitled to declaratory and injunctive relief under 42 U.S.C. § 1983, including an order prohibiting Defendants from enforcing the Fees Rule, as well as reasonable attorney’s fees as this Court may allow under 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Onity respectfully requests that the Court enter judgment in its favor and grant the following relief:

A. Declare, pursuant to 28 U.S.C. § 2201, that the Fees Rule violates the Due Process Clause of the Fourteenth Amendment both on its face and as applied to Onity, and is therefore unenforceable against Onity;

B. Permanently enjoin Defendants, and their officers, agents, servants, employees, attorneys, and all persons acting in concert or participation with them who receive actual notice of the injunction, from enforcing the Fees Rule against Onity based on the expedited payment fees at issue in this action;

C. Award Onity its reasonable attorneys' fees, costs, and expenses as permitted by law, including 42 U.S.C. § 1988(b); and

D. Award such other and further relief as the Court deems just, proper, and equitable.

Dated: October 20, 2026

Respectfully submitted,

/s/ Allison J. Schoenthal
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Onity Mortgage Corporation f/k/a PHH Mortgage Corporation

(b) County of Residence of First Listed Plaintiff Burlington Cnty. NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Allison Schoenthal
Goodwin Procter LLP, 620 Eighth Avenue, New York, NY 10018
212-459-7183**DEFENDANTS**

Letitia James, in her official capacity as NYAG; Kaitlin Asrow, in her official capacity as NYDFS Acting Superintendent

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☒ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983 and 28 U.S.C. § 2201

Brief description of cause: Plaintiff is seeking a declaration that 3 NYCRR Part 419.5 is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. Plaintiff also seeks an injunction preventing Defendants from enforcing 3 NYCRR Part 419.5 against Plaintiff.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Decl. Judgment, Injunction and attorney's fees & costs CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

October 20, 2026

/s/ Allison J. Schoenthal

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT \$405.00 APPLYING IFP _____ JUDGE MAD MAG. JUDGE PJE

ANYNDC-7815399

1:26-cv-2161