July 14, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Mortgage Assistance Relief Services Rulemaking, Rule No. R911003

Dear Sir or Madam:

The Conference of State Bank Supervisors (CSBS) appreciates the opportunity to comment on the ANPR: Mortgage Assistance Relief Services. Many state banking regulators, along with other state and local agencies, have been on the frontlines of efforts to assist homeowners struggling to avoid foreclosure. State banking regulators have implemented hotlines for consumers, partnered with non-profit housing counselors, conducted public awareness campaigns, and/or assisted homeowners in working with mortgage servicers. Unfortunately, these efforts are often undermined by unfair and deceptive practices by companies purporting to help homeowners avoid foreclosure. Therefore, CSBS strongly supports the FTC's initiation of rule-making in this area, and encourages the FTC to move expeditiously to address abuses in this area.

In recent months, state regulators have witnessed a sharp increase in consumer complaints related to mortgage loan modifications or foreclosure prevention schemes. State banking and mortgage regulators have worked with State Attorneys General to enforce state laws related to foreclosure prevention scams and illegal mortgage modification activity; however, these practices have evolved rapidly as the foreclosure crisis has unfolded. Therefore, state authorities believe this is an area of concern where FTC rulemaking to restrict unfair or deceptive acts and practices would be particularly important to supplement state efforts. It is crucial that any rule adopted by the FTC sets a floor and does not deprive states of their authority to adopt measures that may be more protective of consumers.

CSBS encourages the FTC to refer to state initiatives undertaken in an effort to protect consumers. For example, some states have prohibited entities that offer these services from charging up-front fees or limit the fees charged. Some states also require the use of specific contracts and/or notices that spell out the terms of the services to be provided, require a right of cancellation and advise consumers of the availability of free, not-for-profit financial counselors as an alternative to utilizing for-profit entities requiring a payment for services.

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One particular area of concern that warrants further FTC consideration is the role some attorneys have played in loan modifications or foreclosure preventions schemes. State authorities are witnessing an increased involvement of attorneys who are forming alliances with unscrupulous entities to circumvent applicable state laws designed to protect consumers. This includes out-of-state attorneys, many of whom are not licensed to practice law in the state where the homeowner lives, as well as attorneys who lend their name to a loan modification company, but play, little, if any direct role, in helping consumers obtain actual loan modifications. The latter raise significant regulatory issues and work to circumvent state safeguards by exploiting licensing exemptions that many states have provided for attorneys. CSBS notes that these arrangements also raise serious ethical issues including referral fees, fee-splitting and potentially aiding in the unauthorized practice of law. While such issues are beyond the scope of FTC action, several state bar organizations have issued advisories and similar focus at the Federal level would be advisable.

CSBS looks forward to reviewing more specific provisions as the FTC develops a proposed rule.

Best regards,

Neil Milner
President and CEO