



July 15, 2009

Donald S. Clark
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 Secretary Clark:

The National Community Reinvestment Coalition (NCRC) believes that the Federal Trade Commission has taken an important step in addressing the regulatory vacuum surrounding for-profit foreclosure relief service providers. The nation faces a foreclosure crisis, which can only be exacerbated by unfair and deceptive practices by supposed “rescuers.” These companies have been a source of increased community concern, and their abusive practices have become a major policy priority for NCRC and its member organizations.

NCRC is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America’s working families. Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations, local and social service providers from across the nation.

From our testing experience, NCRC can attest that problematic practices are rampant in the industry, and would frequently meet the standard of “unfair and deceptive” under Section 5 of the FTC Act. We urge the Federal Trade Commission to address these concerns by including such service providers under their purview, and to issue specific rules that address the conduct of those who provide or advertise loan modification and foreclosure rescue services.

NCRC’s comments on the specific questions raised by the Federal Trade Commission include the following:

1. The Loan Modification and Foreclosure Rescue Industry

A. What empirical data are available concerning the nature, extent, and impact of the loan modification and foreclosure rescue industry? Please identify any such data sources.

In early 2009, NCRC began a testing initiative to address and investigate the complaints we received about foreclosure prevention companies. In total, nearly two hundred tests were conducted of nearly one hundred providers. NCRC collected data on companies' fees for services, the types of services offered, the documents needed to receive such services, and the types of agreements/arrangements troubled homeowners must enter to receive services and/or keep their homes, and other recommendations that were made. In this study, NCRC collected a significant body of data that reveal the nature and extent of the loan modification and foreclosure rescue industry.

NCRC's National Homeownership Sustainability Fund (NHSF), which assists victims of predatory lending, has received a number of troubling complaints that show evidence of the problematic practices that the FTC wishes to address. These cases reveal the impact that unfair and deceptive loan modification and foreclosure rescue companies have on consumers and their neighborhoods.

B. What business models are used to provide loan modification and foreclosure rescue services? Please identify and describe any such business models and their impact on consumers and competition.

In our testing project, NCRC found that for-profit loan modification and foreclosure rescue companies offer a range of services. Based on our testing evidence, these services can be categorized into roughly four categories:

1. Companies that market do-it-yourself kits, books, or CDs that promise to instruct consumers on how to prevent foreclosure or modify their loans. While cheaper than some other services, the information that these companies sell can be easily found for free.
2. Companies that claim that they will provide assistance, but only collect information and (presumably) sell it.
3. Companies claiming to offer assistance with loan modifications, to consumers who may or may not be in default. Such companies may actually take title to consumers' homes.
4. Law firms that claim to assist consumers with loan modifications. These firms often push other financially damaging alternatives, like bankruptcy, and their organizational structure allows them to collect upfront fees in states where it would be prohibited for a regular for-profit company.

Some of the companies that NCRC tested were organized as nonprofits. One such foreclosure rescue nonprofit requested a fee of one mortgage payment, plus a mandatory \$200 "donation," for a total of nearly \$5,000. This presents a concern that needs to be addressed by the FTC's proposed rulemaking.

C. What are the distinctions between different models of providing loan modification and foreclosure rescue services (e.g., free versus fee-for-service, loan negotiation versus title transfer, etc.)?

In our testing project, NCRC captured a wealth of information about fee-for-service companies that would negotiate with a consumer's lender to obtain a loan modification. None of the companies that NCRC tested offered free services, and our objective in this study was to understand the business practices of loan modification companies.

Typically, loan modification companies request a significant fee upfront. Though cautious about guaranteeing returns, representatives generally will promise an overwhelmingly high modification success rate, like 98% - in the absence of any actual services being performed, this practice may be deceptive under the FTC Act. Companies typically request income documentation, and sometimes a form granting permission to negotiate on the consumer's behalf. In a few cases, (eleven tests) consumers were advised to not pay their mortgage. In some of these cases, consumers were further advised that ceasing payment would not harm their credit, or that they should not communicate with their loan servicer.

Each of the various scams present different consumer protection concerns. In this economic environment, however, it appears that loan negotiation services are most prevalent. This is likely due to the massive loss of equity that most households experienced as a result of the housing bubble. Title transfer scams were particularly problematic in recent years, when many long-term homeowners were temporarily house-rich. This seems to have subsided in favor of scam artists that ask for thousands of dollars in fees up-front, promising loan modifications in return, and delivering poorly on their obligations. Few industry insiders are willing to obtain a home that they might not be able to easily sell in the current market. However, some title-transfer scams still exist.

D. What are the costs and benefits of various loan modification and foreclosure rescue services?

NCRC documented a median fee of \$2,900 for foreclosure prevention service providers in our testing study. Fees ranged as high as \$5,600, and no services were offered that could not be provided by HUD-certified counseling agencies for free. The high costs of loan modification and foreclosure rescue services may also prevent financially stressed consumers from being able to pay their regular mortgage payment, if they buy into companies' promises. If the company does not deliver, they may be unable to correct the delinquency for lack of these funds. Loan modification and foreclosure rescue services are also a costly alternative to the other non-profit, private, and governmental resources that are available.

However, many consumers have complained of a lack of access at HUD-certified counseling agencies. In many areas, agencies have received a deluge of new cases, and are overwhelmed. High fees incentivize for-profit loan modification and foreclosure rescue firms to welcome new clients indiscriminately. This insidious marketing tactic falsely gains the trust of consumers.

E. What roles do mortgage servicers play in the loan modification and foreclosure rescue industry? What are the costs and benefits of their conduct in the context of loan modification and foreclosure rescue services? Do the practices of mortgage servicers present consumer protection concerns? If so, how are these concerns the same as or different from those raised by third-party loan modification and foreclosure rescue entities?

One of the most prevalent consumer protection concerns about mortgage servicers is the damage caused by lack of access to viable loss mitigation options, whether due to servicers' reluctance, prohibitive investors' rules, incentives to collect default fees, or simply the chilling effect of long hold times before reaching a loss mitigation professional, if at all.

The industry and its regulators often take an overly optimistic view on loan modifications, citing them as a method of reducing consumers' payments and debt burden. However, many loan

modifications actually result in an increased monthly burden on consumers. In a study of subprime and alt-A modifications from May 2009, it was found that 27% of modifications actually resulted in higher payments, while payments were reduced in only 59% of cases.¹ Further, 40% of those who obtained modifications still were making late payments after the arrangement was made.

Representing themselves, consumers may not know how to approach the situation so that it would be resolved to their maximum benefit. Third parties are helpful because they can objectively assess and advise a consumer about his or her situation. Both for-profit and non-profit, HUD-certified counseling agencies can assist consumers in their dealings with loan servicers, by advocating for them and documenting their capacity to repay.

Even more problematically, some servicers may determine how a consumer's account is handled by profiling them on the basis of a protected class. For example, concerns have arisen recently about a mortgage servicer that routed Spanish-speaking mortgagors to their collections department, while English-speaking ones easily reached loss mitigation representatives. In the best-case scenario, a consumer attempting to get a loan modification to prevent foreclosure faces numerous bureaucratic hurdles and unwilling investors. Servicers intentionally stonewall the process, which drives consumers to seek outside help from loan modification and foreclosure rescue companies.

2. Need for FTC Rule

A. Given that many states have enacted and enforced laws concerning loan modification and foreclosure services and that the FTC has brought law enforcement actions against providers of these types of services under Section 5 of the FTC Act, should the FTC promulgate a rule to address these services? Why or why not?

The FTC should act aggressively to promulgate a rule with all possible haste. Though some states have issued new laws or regulations to better implement consumer protection safeguards, the majority of states have taken no such actions. The FTC's rule is needed to provide consumers with a baseline level of consumer protection against unfair and deceptive loan modification and foreclosure rescue companies. Any FTC rule should not preempt existing states' laws, but rather become one of many tools in the nationwide consumer protection arsenal.

4. Scope of Covered Entities

A. As described in the text, an FTC proposed rule would not cover banks, thrifts, federal credit unions, and non-profits. To what extent do these types of entities provide or advertise loan modification and foreclosure rescue services? To what extent do these entities compete with entities that an FTC proposed rule would cover and what effect would an FTC proposed rule have on such competition?

B. As described in the text, many states have exempted attorneys from laws (e.g., foreclosure consultant laws) which regulate the conduct of providers and advertisers of loan modification and foreclosure rescue services. What are the costs and benefits of exempting attorneys from these laws? What has been the effect of such exemptions on competition between attorneys and non-attorneys in providing or advertising loan

¹ Lauren Saunders, National Consumer Law Center, *Foreclosure Rescue and Loan Workout Scams*. (presentation)

modification and foreclosure rescue services? Should an FTC proposed rule include an exemption for attorneys or any other class of persons or entities? Why or why not?

As described above, non-profits and attorneys have engaged in loan modification and foreclosure rescue services. This has not yet been observed in the case of banks, thrifts, or federal credit unions.

Further exemption, especially on a federal level, is likely to create an environment where more companies organize themselves as exempted classes. An effective rule will not create loopholes that will only be readily exploited, nor will it create unfair competition by creating less-accountable classes of loan modification or foreclosure rescue companies.

NCRC appreciates the opportunity to comment on this important matter, and hopes that any rulemaking will take into consideration our experience with this problematic, emergent industry. If you have any questions, please contact me or David Berenbaum, Executive Vice President, at (202) 628-8866.

Sincerely,

John Taylor
President & CEO