UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

June 17, 2004

Jonathan L. Kempner
President and Chief Executive Officer
Mortgage Bankers Association
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-3404

Re: Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp. reached in *United States of America v. Fairbanks Capital Corp., et al.*, Civil Action No. 03-12219 (DPW) (D. Mass.)

Dear Mr. Kempner:

Thank you for your letter regarding the Commission's recent settlement with Fairbanks Capital Holding Corp. and Fairbanks Capital Corp. (collectively, "Fairbanks"). You have asked for the Commission's position regarding the scope of the Order and the application of the provisions contained therein to other mortgage servicing companies that were not a party to the agreement. I am pleased to provide you with the following staff guidance. Please understand that these are the views of the staff and do not constitute a formal Commission opinion.

The Federal Trade Commission often enters into consent orders with individuals and companies that the Commission has reason to believe have violated the FTC Act or other laws enforced by the Commission. In general, consent orders enjoin the defendants from violating the law in the future, for example, by prohibiting the alleged unfair or deceptive practices. Moreover, to protect the public from those who have demonstrated a propensity to violate the law, these orders often contain provisions that place additional constraints upon a wrongdoer that do not necessarily apply to other businesses that have not engaged in violations. *See FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965) ("The Commission is not limited to prohibiting the illegal practices in the precise form in which it is found to have existed in the past. Having been caught violating the [FTC] Act, respondents must expect some reasonable fencing in."). These "fencing-in" provisions have legal force only against the defendants who signed the order and anyone with whom those defendants act in concert. The Commission's consent order with Fairbanks reflects the Commission's views of the specific remedies necessary to resolve the particular allegations against that company.

By way of example, Part V of the Fairbanks order enjoins the defendants from assessing or collecting certain fees – that may be otherwise authorized and permitted by law – except as provided in the order. This section includes specific conditions and time frames for the imposition of such fees. The provision is not intended to impose a Federal rule or standard requiring all mortgage servicers to abide by the enumerated requirements. Rather, it serves the dual purposes of protecting consumers from further deception by the defendants, and providing specific guidance to the defendants on complying with the order. It should be noted that this provision expires after five years.

Thank you for your inquiry.

Sincerely,

Joel Winston
Associate Director
Division of Financial Practices