Department of Consumer Affairs
Office of Financial Empowerment

The New York City Department of Consumer Affairs'
Comments to Mortgage Assistance Relief Service Rulemaking,
Rule No. R911003,
Submitted to the Federal Trade Commission

July 15, 2009

Introduction

The New York City Department of Consumer Affairs (DCA) and its Office of Financial Empowerment (OFE) appreciate this opportunity to comment on the proposed rulemaking regarding mortgage relief assistance services on behalf of the City of New York and Mayor Michael R. Bloomberg. For-profit foreclosure rescue businesses not only prey upon vulnerable people already in crisis, they undermine critical federal efforts to prevent foreclosures and avoid further destabilization of our neighborhoods and economy. This malignant industry warrants a systematic response at federal, state and local levels. Strong regulations by the FTC, as well as state and local governments, are an important step in protecting people in foreclosure from these predatory businesses.

For-profit foreclosure relief services actually erode struggling households' abilities to repay their mortgages by charging for a service that is available at no cost. These businesses should be banned outright, which would require legislation at the federal level. Given its rulemaking authority, the Federal Trade Commission (FTC) should prohibit foreclosure rescue services from charging fees before the full completion of such services. In addition, the FTC should encourage the use of local resources and referral numbers such as 311 and 211 systems to channel complaints and help direct consumers to local resources, as well as streamline referrals, information sharing, and enforcement among federal, state and local agencies. The FTC should ensure that its rulemaking does not undermine the ability of states and municipalities to enact the strongest consumer protections possible in this area.

Background on DCA and OFE

The New York City Department of Consumer Affairs (DCA) enforces the City's aggressive Consumer Protection Law and other business regulations.[1] To ensure a fair and vibrant marketplace for the City's businesses, it's 8.3 million inhabitants, and its 47 million annual visitors, DCA licenses over 70,000

[1] Chapter 64, Section 2203(a)

businesses in 55 different industries; enforces municipal laws, including the strongest local unfair and deceptive practices act in the nation, through both inspections and targeted litigation; mediates thousands of individual consumer complaints annually; and educates consumers and businesses through public hearings and public marketing and outreach campaigns. DCA also works with other city, state and federal law enforcement agencies to protect consumers from deceptive practices and ensure a fair marketplace.

DCA regularly prosecutes businesses engaged in illegal and misleading conduct, from cell phone companies engaged in deceptive advertising, to tax preparers, process servers, employment agencies, and dozens of other industries. DCA stops illegal practices, garners millions of dollars in fines and recovers millions of dollars more in restitution to consumers.

In addition to protecting against unfair and predatory practices, DCA's OFE spearheads an array of financial empowerment efforts, each designed with a focus on scale.[2] OFE's many large-scale initiatives include leadership of Mayor Bloomberg's extensive and comprehensive Earned Income Tax Credit outreach campaign, more than doubling the number of people receiving free tax preparation over the seven years that the program has been led by DCA and making a significant dent in the number of eligible New Yorkers who had yet to claim their EITC and other credits. Last year, nearly 40,000 people called the City's 311 information and referral line to seek tax preparation help alone.

In addition to large-scale public education campaigns, DCA's OFE implements innovative asset-building strategies and coordinates a dynamic network of the City's many financial education service providers. DCA's OFE recently launched a citywide network of Financial Empowerment Centers that offer the "gold standard" of financial education: free one-on-one financial counseling and coaching. Leading the way in the municipal financial empowerment movement, Mayor Bloomberg also created the Cities for Financial Empowerment (CFE) Coalition that identifies innovative cities across the country that partner and coordinate at the national level efforts similar to the work OFE does locally.[3]

This combination of enforcement and education is exactly what is needed to intervene and disrupt the tide of foreclosure prevention and loan modification scams sweeping across our cities and stripping those who can least afford it of their last chance to save their homes and keep their family finances stable.

[2] DCA's OFE was the first initiative to be implemented under Mayor Michael R. Bloomberg's Center for Economic Opportunity (CEO), a comprehensive, research-driven effort to design and implement innovative poverty-reduction strategies.

[3] Commissioner Jonathan Mintz co-chairs this Coalition with San Francisco Treasurer José Cisneros, promoting CFE member cities as cutting-edge laboratories for large-scale asset building, financial education, and banking initiatives.

Context: The Marketplace for Mortgage Assistance Relief

The national foreclosure crisis has created a formidable demand for rescue and refinancing. The numbers are alarming, with over 20,000 foreclosures in New York City in 2008[4] and over 4,000 additional foreclosures in the first quarter of 2009.[5] Unfortunately, the foreclosure rescue industry, which is moving very aggressively, is aimed at profiteering from both the enormity of the crisis and available, significant federal resources.

The public hears daily about the Federal government's determination and efforts to help distressed mortgage holders. The media is abuzz with terms like "Economic Stimulus Plan"; "foreclosure prevention"; "HUD"; "FHA"; and the like. But homeowners in foreclosure don't know what that means for them individually or where they can turn for assistance. Information is channeled through multiple conduits – from every level of government and from non-profit sector partners. Simply put, diffuse messaging and multiple doorways facilitate swindles.

For-profit foreclosure rescue services vary widely. At best, these companies convince struggling homeowners to pay for a service that ultimately has no value. With millions of dollars streaming into HUD-certified housing counseling organizations and free legal services providers throughout the country, there is simply no reason for a homeowner behind on mortgage payments also to pay someone scarce dollars to contact the lender on his or her behalf.

At their most outrageous, these purported rescue services are outright criminals who engage in deed theft or con artists who offer homeowners assistance in negotiating with lenders or help in refinancing, collect an upfront fee and then simply disappear. While the financial impact of these swindles is, of course, devastating for homeowners, the more pernicious component of these scams is that these businesses dissuade homeowners from contacting their own lenders or servicers, thereby wasting opportunities for homeowners to negotiate directly with their lenders. By the time the homeowner realizes the scam, generally too much time has elapsed for the lender or servicer to modify the loan.

Recommendations

Enact a federal ban on fee-for-service foreclosure assistance services.

There is no reason for distressed homeowners to pay for-profit entities to negotiate with servicers or lenders on their behalf. No for-profit enterprise is better positioned to work with mortgage servicers than a qualified, not-for-profit

[4] 2008 Foreclosure Filings by County, New York State Banking Department, Accessed online on July 1, 2009 at www.banking.state.ny.us/pr090123e.pdf.
[5] 1Q 2009 Foreclosure Filings by County, New York State Banking Department, Accessed online on July 1, 2009 at http://www.banking.state.ny.us/pr090421b.pdf.

HUD counselor, an attorney acting in a legal capacity or an individual homeowner. Akin to the banning of fee-based debt counseling services in the state of New York, the FTC should work with Congress to curb these abusive services immediately with the enactment of a simple ban on fee-for-service foreclosure prevention businesses. Moreover, state and local governments must be empowered to enforce such regulations.

Ban upfront fees and ensure there are no loopholes that would allow businesses to evade this restriction.

The FTC rulemaking should ban foreclosure rescue services from collecting upfront fees from consumers. Collecting fees in advance gives these businesses an easy opportunity to swindle consumers by failing to provide adequate service, or not providing any service at all. A number of states, including New York[6], have banned upfront fees in this context, and the FTC should apply these same protections to consumers nationwide. Further, this restriction should apply to everyone operating foreclosure rescue businesses – including mortgage brokers and attorneys not directly involved with legal services in connection with either the preparation and filing of a bankruptcy petition or court proceedings to avoid a foreclosure.

In addition, FTC rulemaking should mandate that all contracts for foreclosure rescue transactions include a safe harbor of five business days. Similarly, all advertisements should display a disclaimer that similar services can be obtained at no cost and direct consumers to free HUD-certified counselors. Most importantly, the FTC should ensure that its rulemaking does not undermine the ability of state and local governments to enact stronger consumer protections in this arena.

Use municipal 311 and 211 systems as the single, tamper-proof number through which consumers are directed to legitimate rescue resources and market such services through a national outreach campaign.

While so-called “loan modifiers” are located throughout the country, their targeting and marketing is usually local in nature. In New York City, the neighborhoods most dramatically impacted by the foreclosure crisis are papered with flyers offering rescue from foreclosure – on lampposts, on trees, at grocery stores, and at local businesses. To combat this flood of marketing, the national response needs to be clear and simple in messaging, yet local in delivery. Simplifying the conduit to well-trusted and tamper-proof “311’s” or “211’s” is an ideal “fix”. More than 60 cities across the U.S. – covering 78% of the American population – have ‘311’ or ‘211’ information and referral systems, generally available 24 hours a day, seven days a week, and in dozens, if not hundreds, of languages.

[6] New York State Real Property Law Section 265-b

In New York City, residents who call 311 regarding foreclosure are directed to the specially-trained call-takers who triage and assess their needs at the Center for New York City Neighborhoods (CNYCN), a non-profit created by Mayor Bloomberg, in partnership with the New York City Council and private funders. The Center coordinates and expands services to New York City residents at risk of losing their homes to foreclosure and funds a network of more than 19 non-profit legal services and housing counseling organizations to which it refers thousands of New Yorkers. More than 90% of people contacting the Center come through the City's 311 system.

The FTC has the unique power to mobilize tens, if not hundreds, of thousands of civic leaders and community partners to create a national public awareness campaign to widely market the uniform message: call 311. Loan servicers, lenders, mortgage brokers and real estate agents should all be required to include references to 311 or 211 in their communications to homeowners. All federally-funded social and housing programs, federal benefits offices, the Postal Service and others should all carry the same simple message in localities with 311 or 211 systems: "don't talk to anyone about helping you avoid foreclosure unless you got to them through 311 or 211." Local governments have invested millions of dollars to popularize these free and multi-purpose hotlines as safe, reliable information sources and stand ready to utilize this incredible resource for the present emergency.

The FTC should also establish a national task force that includes local, state and federal enforcement and investigation agencies. Coordination among enforcement agencies is critical to identifying egregious scams and tracking down perpetrators who take the money and run – usually without respect for geographical boundaries. Local enforcement is often thwarted by the inability to pursue bad actors across state borders. A comprehensive database and tips line would allow local enforcement agencies immediately to relay critical data to help federal agents track down elusive businesses that too easily shut down and reincorporate.

Ensure Federal Regulations Provide a Floor to Protect All Homeowners, But Not a Ceiling.

A number of states have already implemented strong, effective laws and regulations regarding this industry and other states may do so in the future. In New York, for example, recently implemented laws give homeowners additional time to pay lenders and even require settlement conferences before a foreclosure can take place. The FTC should issue new rules to protect homeowners in states that have not enacted any protections. But, the FTC should make clear that federal regulations do not preempt stronger state laws or rules.

The extent of the foreclosure crisis, and the utter failure of the mortgage servicing industry to do its part in addressing it, has driven many homeowners to respond to slick ads promising relief from foreclosure. Simple disclosure rules will not suffice to protect homeowners from mortgage assistance scams because homeowners are already desperate by the time they contact the scammers. The FTC must enact strong rules that will act as a floor in states that do not regulate this industry and that will send a strong national message that preying on desperation will not be tolerated.

Conclusion

The New York City Department of Consumer Affairs applauds the Federal Trade Commission's recognition of the critical importance of this problem. The FTC should work with legislators to enact aggressive legislation to outlaw this for-profit industry, promulgate regulations to ban the most egregious, predatory practices, marshal a clear message with an unmistakable phone number and coordinate enforcement with local agencies. An integrated, comprehensive response at the federal, state and local levels, coordinated and promoted by the FTC, will ensure that consumers in danger of foreclosure receive the assistance available without eroding their limited funds or falling victims to abusive scams.

Respectfully submitted,

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