

HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE



1001 PENNSYLVANIA AVENUE, N.W.
SUITE 500 SOUTH
WASHINGTON, D.C. 20004
Tel. 202.289.4322
Fax 202.628.2569

July 15, 2009

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

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

Dear Sir or Madam:

The Housing Policy Council (HPC) appreciates the opportunity to comment on Federal Trade Commission's (FTC) Advance Notice of Proposed Rulemaking (ANPR) on Mortgage Assistance Relief Services.

HPC is part of the Financial Services Roundtable (the Roundtable), a trade association for 100 of the nation's largest banking, securities and insurance companies. The Roundtable's member companies formed HPC in 2003 because of the importance of housing and mortgage finance to consumers, the economy and the business of our members. The members of the Roundtable and HPC are directly involved in providing mortgage credit to Americans seeking to achieve the dream of homeownership. HPC companies originate, service, and insure mortgages for Americans across the nation every day. In addition, many HPC member companies participate in the HOPE NOW Alliance, a voluntary effort which seeks to provide out-reach and non-profit counseling assistance at no-cost to homeowners at-risk of foreclosure.

HPC Supports the Issuance of a Rule

HPC supports the issuance of a rule directed at mortgage relief providers. The recent financial crisis has left many homeowners struggling to make mortgage payments, and resulted in a wave of defaults and foreclosures. As a result, a number of entities have emerged offering to help homeowners avoid foreclosure and find new financing. Many of these firms are reputable and provide a useful service. Unfortunately, that is not the case with all such firms. Some provide few services in exchange for up-front fees, and others are engaged in outright fraud. HPC and the Roundtable have urged the FBI and the Justice Department to actively pursue firms engaged in criminal fraud. A rule issued by the FTC that classifies certain practices by such firms as unfair and deceptive would complement the efforts of law enforcement agencies.

Mortgage Servicers Should Be Excluded from the Rule

In crafting this rule, we urge the FTC to focus on entities other than mortgage servicers, their agents or attorneys. While mortgage servicers do engage in foreclosure prevention and loan modification activities, such activities are ancillary to their business and are not based upon a direct relationship with the borrower.

Mortgage servicers provide a range of services for banks and other lenders who originate mortgage loans. They collect and process monthly loan payments, administer escrow accounts, respond to questions from borrowers, and, only when necessary, do they address delinquent accounts through loan modifications and foreclosures. Mortgage servicers are compensated by lenders for these activities, not by individual borrowers. While servicers may earn fees for loan modification and foreclosure activities from a lender, it is in the broader economic interest of servicers for borrowers to remain current on their loans and have a continuing relationship with a lender. In contrast, mortgage relief providers exist solely to support delinquent borrowers. They have a direct relationship with the borrower, and are compensated by the borrowers, sometimes in up-front fees.

Moreover, unlike mortgage relief providers, mortgage servicers already are regulated by federal and state authorities. Most mortgage servicers are banking institutions or are subsidiaries or affiliates of banking institutions. As such they are subject to regulation by federal and state banking agencies. Mortgage servicers that are not affiliated with a bank are subject to state regulation.

In the ANPR, the FTC has indicated that it is not the intent of the rule to reach mortgage servicers. “This ANPR...addresses the practices of entities (*other than mortgage servicers*) who offer assistance to consumers in dealing with owners or services of their loans to modify them or avoid foreclosure.” (74 Federal Register 103, p. 26131, June 1, 2009, emphasis added). The FTC also has requested comment on a separate ANPR that poses a number of questions about the activities of mortgage servicers, including how they handle loss mitigation issues. (Advance Notice of Proposed Rulemaking: Mortgage Acts and Practices, 74 Federal Register 103, p. 26118, June 1, 2009) Therefore, to ensure that this rule is focused on entities devoted exclusively to mortgage relief services, and to avoid any overlap or conflict with other actions that may be taken by the FTC in connection with the Mortgage Acts and Practices ANPR, we respectfully request that the rule explicitly exclude mortgage servicers, as well as their agents and attorneys who act on their behalf.

Customers of Non-Servicer Mortgage Relief Providers Should Be Given Contracts, Have a Right to Cancel the Contracts, and Not Be Required to Pay Up-Front Fees

As for non-servicer mortgage relief providers, we believe that the following practices should be designated as unfair or deceptive: (1) failure to require a written contract that discloses a customer's rights and obligations; (2) failure to provide borrowers with a right to rescind or cancel the agreement; and (3) mandatory up-front fees. Borrowers should be given contracts that spell out their rights and responsibilities, should be able to rescind such contracts, and

should not be required to pay a fee before the performance of a service. These standards are consistent with a number of state laws, and if adopted in an FTC rule would provide borrowers uniform protection throughout the country. There are many reputable, non-profit organizations offering foreclosure prevention assistance to troubled homeowners. Those efforts should be permitted and encouraged to continue. However, it is appropriate for the FTC to seek to improve standards and responsibilities for entities that seek to obtain up-front fees from homeowners for providing foreclosure prevention assistance. Thanks you for considering the views of the Housing Policy Council on this matter.

With best wishes,


John H. Dalton
President
Housing Policy Council
The Financial Services Roundtable