



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
Docket No. R911003**

Dear Sir or Madam:

JPMorgan Chase Bank, N.A. ("Chase") appreciates the opportunity to submit its comments in response to the Federal Trade Commission ("FTC") Advance Notice of Proposed Rulemaking ("ANPR") regarding mortgage assistance relief services ("MARS"). As one of the largest residential mortgage loan servicers in the country, Chase regularly deals with MARS entities that get involved in loan default workouts. Though some MARS entities may provide legitimate services, they do so at a cost to the borrowers that could be avoided by having the borrowers work directly with their servicers or through reputable, nonprofit consumer advocates. Chase strongly supports the proposed regulations because it has witnessed MARS entities engage in patterns of abusive and deceptive practices to the detriment of borrowers, as described below in this letter.

Chase would support a regulation that targets specific abuses by MARS entities provided that loan servicers are clearly exempted. Chase's experience has been that MARS entities disrupt the loan modification process and provide little value in exchange for the high fees they charge.

Accordingly, Chase offers the following answers to selected questions raised by the ANPR:

1. The Loan Modification and Foreclosure Rescue Industry

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?

Mortgage servicers such as Chase provide a vital role in modifying the loans that they service for investors or on their own behalf. Some of the servicing activities engaged in by servicers are similar to the activities undertaken by the MARS entities. For example, servicers solicit borrowers who are experiencing difficulty making their payments to offer modification and other options to avoid foreclosure. However, servicers typically only offer these services to their own borrowers. They don't market their services to the general public as the MARS providers do.

Chase has found that most of the services offered by the MARS industry are unnecessary and serve only to interfere in Chase's efforts to assist its customers directly for free. Chase has a very active program for working directly with borrowers who are having trouble making payments. Chase has opened 27 Chase Homeownership Centers where struggling borrowers around the country can meet face to face with trained counselors. More than 20,000 borrowers have met with counselors at the centers in an attempt to keep the borrowers in their homes.

Chase recently announced that it has approved 138,000 trial mortgage modifications for struggling homeowners since April 6, when it began processing trial modifications through President Obama's Making Home Affordable program. Since 2007, Chase has continued to expand its comprehensive plan to keep families in their homes, helping prevent 565,000 foreclosures—including the 138,000 trial modifications—for Chase, Washington Mutual and EMC customers. Another 155,000 applications are in the review process.

Chase has gone to great lengths to proactively reach out to its customers who are having difficulty making their payments to encourage them to contact Chase directly to review the options available to assist them in avoiding foreclosure. This has included a direct mail campaign to customers who are delinquent in making their payments or are already in the process of foreclosure. Chase conducts community outreach events and counseling sessions in cities across the U.S. to explore workout options for distressed homeowners. Chase also provides comprehensive information and links on its web site for customers to learn about their options and get in touch with a Chase representative who can assist them with a loan modification or other foreclosure avoidance plan.

Chase generally stops foreclosure while reviewing a mortgage for modification. If a loan does not qualify for a Making Home Affordable or a Chase modification, it is referred to the loss mitigation department, which will consider more traditional plans as well as short sales and deeds in lieu of foreclosure.

Chase also works closely with HUD and state-approved nonprofit housing counseling services. These nonprofits provide the same services as the MARS entities in assisting distressed borrowers obtain loan modifications or other foreclosure prevention measures, but they do it at no charge to the borrower. Chase has established a toll free number and central point of contact for nonprofits and HUD-approved counseling agencies. It also offers a comprehensive Foreclosure Prevention/Loss Mitigation training program for

nonprofit agencies, counselors and housing advocates to provide them with tools to help their clients avoid mortgage foreclosure.

Chase is also participating in the NeighborWorks America and Homeownership Preservation Foundation's national foreclosure intervention campaign along with other industry leaders including members of the Financial Services Roundtable's Housing Policy Council.

When one of the MARS entities intervenes in Chase's established modification programs, it disrupts the direct communication with the borrower and only serves to add an extra layer of bureaucracy that can lead to confusion and miscommunication.

Some of the MARS entities engage in abusive practices. They collect their fees upfront and promise the borrower they can get a loan modification or other foreclosure relief, when, in fact, this is only a determination that the servicer can make after reviewing the borrower's financial information and investor agreements. These MARS entities also may lead the borrower to believe that they are associated with the servicer or that they have special agreements with the servicer for processing loan modifications, when, in fact, they do not. Once the MARS entity collects its fee, it may actually do little, if anything for the borrower that the borrower could not do directly with the servicer. There is no reason for a servicer to mislead borrowers into believing that they will qualify for a loan modification or to mislead borrowers about the level of services they can provide. Servicers are compensated by investors through the cash flows from the loan payments, so they don't charge upfront fees to the borrowers and they have every incentive to work with the borrowers to modify the loan payments into terms that the borrowers are better able to afford.

3. Scope of Covered Practices

B. 3. (ii) Should the Commission ban the payment of advance fees for loan modification and foreclosure rescue services in a proposed FTC rule? If so, why or why not? What effect, if any, would an advance fee ban have on the willingness or ability of loan modification and foreclosure rescue services providers to do business?

(iii) Should the Commission impose fee restrictions in a proposed FTC rule other than a ban on the advance fees that providers of loan modification and foreclosure rescue services receive? If so, what restrictions should be imposed and why?

Yes, the payment of advance fees should be banned because there is no guarantee the MARS provider will be successful in obtaining a loan modification or foreclosure rescue. In addition, care should be taken in defining the point in the process at which a fee can legitimately be charged. Some MARS providers charge a fee at the point where the servicer has established a trial modification payment to determine whether the borrower can afford the modified payments. If the borrower fails to make the payments during this trial modification period, the borrower does not qualify for the permanent loan modification. If the borrower has to pay the MARS provider's fee, which can range as high as several thousand dollars, the borrower is less likely to be able to afford the trial

modification payments and thus is less likely to qualify for a permanent loan modification. The funds paid to the MARS providers would be better served going to make the trial loan modification payments.

C. Are there any unfair or deceptive acts and practices by providers or advertisers of loan modification and foreclosure rescue services that neither the FTC nor the states have addressed that a proposed FTC rule should address? If so, how should these acts and practices be addressed and why?

Correspondence to servicers from MARS entities frequently list a series of unfounded claims in an attempt to slow down the default and foreclosure process. Usually, these are form letters with generic claims that the lender or servicer has engaged in fraud or violated various consumer protection laws, such as the Truth in Lending Act, Real Estate Settlement Procedures Act, or Fair Debt Collection Practices Act. No specific details are provided by the MARS entity to support their allegations. They are only making these claims in an attempt to gain leverage by forcing the servicer into time-consuming investigations and research to respond to the allegations. The use of these delay tactics based on unfounded claims should be prohibited under the regulation.

Other widespread abusive and deceptive tactics that should be prohibited under the regulation include: (1) the requirement by the MARS entity that all borrower loan payments be funneled through them to be held “in escrow” or acting as a pass-through for payments, which has often led to borrowers losing payments made in addition to their upfront fees if the MARS entity ceases to operate; (2) the use by the MARS provider of the servicer’s name, logos, and even forms to give the appearance to borrowers that they have a special connection with the servicer; (3) the use of names similar to government entities or housing programs that give the impression that the MARS provider is a government-sponsored agency; and (4) intimidation and bullying of the servicer’s employees who are processing the modification request, by using unfounded litigation threats and frequent repetitive contacts by phone and email, which distracts the employees from their primary jobs of assisting borrowers and slows down the process.

4. Scope of Covered Entities

A. As described in the text, an FTC proposed rule would not cover banks, thrifts, federal credit unions, and nonprofits. 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?

Banking institutions typically do not advertise these services for loans that they do not service themselves. Therefore, they are not in competition with the MARS entities. There are many nonprofit housing counseling agencies approved by HUD or state agencies that provide similar services MARS entities, but they typically do it free of charge.

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 nonattorneys in providing or advertising loan 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?

Attorneys should not be entirely exempt from the regulation. Many MARS providers claim to be affiliated with attorneys, but typically the people performing the services are not attorneys, and the connection with the attorney is very tenuous. Calls to the MARS provider do not go to the attorney's office and addresses used by the providers are not the same as the attorney's. If attorneys are to be exempted, it should only be to the extent that the attorney is representing the borrower in a *bona fide* attorney-client relationship, and the loan modification or foreclosure rescue services are legal services provided directly by the attorney in the context of that relationship. The Uniform Debt-Management Services Act could be followed as an example in drafting a rule in this regard. This Act has served as the basis for regulating debt-management services in many states. It provides an exemption for "legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state." Uniform Debt-Management Services Act, Section 2(9)(A).

Chase appreciates the opportunity to comment on the proposed rulemaking concerning the abuses by MARS providers. As stated above, Chase would support a regulation that targets specific abuses by MARS entities as long as loan servicers are clearly exempted. If you have any questions or need any additional information, please contact the undersigned.

Sincerely,

David C. Schneider
Executive Vice President
Home Lending