November 15, 2010

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

Dear Sir or Madam,

The Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of Consumer Credit Administrators (NACCA), collectively "the state regulators," appreciate the opportunity to comment on the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking (NPR) relating to unfair or deceptive acts and practices that may occur with regard to mortgage advertising. We strongly support the FTC's proposal to prohibit any misrepresentation in any commercial communication regarding any term of any mortgage credit product. Given the complexity of mortgage products, consumers may be easily misled by disingenuous mortgage advertisements. Preventing and deterring deception in mortgage advertising is a critical issue. We therefore applaud the FTC's efforts in bringing more clarity to the meaning of deceptive mortgage advertising. The state regulators concur with all of the FTC's proposed prohibited representations and agree with all proposed term definitions in the NPR. Additionally, the state regulators appreciate the FTC's recognition of the important role states play in combating deceptive practices, particularly in the area of mortgage lending, by giving states express authority in proposed §321.6 to enforce these rules in federal or state court.

On a more specific level, the state regulators do not believe the rule should grant any exemptions to non-depository institutions beyond those in the FTC Act, including any exemptions for subsidiaries or affiliates of banks and thrifts as is inquired in the NPR. Additionally, to address another specific question posed in the NPR, the state regulators believe the FTC should include a specific prohibition on the provision of substantial assistance or support to others who violate the rule. This will prevent mortgage originators and lenders from evading the requirements of the rule by contracting their advertising to third parties.

As discussed in the NPR, we agree that the FTC should avoid requiring additional sets of disclosures regarding mortgage advertisements. Other recently adopted federal rules require specific advertising disclosures, and imposing additional disclosure requirements in this area is likely to create inconsistencies and confusion. However, any rule should prohibit advertising that obscures significant risks to the consumer. Thus, advertisements which promote a particular mortgage product or feature should give clear and comparably prominent information alerting the consumer to any potentially negative aspects of the loan, such as, but not limited to, increases in the interest rate, negative amortization and balloon payments. Without requiring any specific affirmative disclosures, the rule should, consistent with general FTC law, require that mortgage advertisements disclose any qualifying information, the omission of which would likely mislead reasonable consumers in a material way.

The state regulators recommend that the FTC require brokers to disclose in advertisements that they are not lenders and do not fund loans. While most states require brokers to disclose this distinction after application, there exist few rules across the country which require brokers to make this distinction in advertisements. This has proven to be a source of confusion among consumers.

With regard to the FTC's comment solicitation on language and translation requirements, the state regulators believe that a company which advertises in a language other than English should provide disclosure and other mortgage documents, including the loan contract, in that language as well as in English.

The NPR requests comment on the proposed recordkeeping requirements. The state regulators believe the proposed 24-months for which covered persons must maintain applicable information is too short. Many states require 3-4 years recordkeeping for other similar information. We believe the 3-4 year time periods are more appropriate for such important records. Relating to a more specific record retention issue, the state regulators recommend that the FTC require brokers and lenders who advertise certain rates and terms to provide documentation. Specifically, brokers who advertise rates and terms of loans offered by lenders should retain evidence demonstrating that the rates and terms actually were being offered by specific lenders at the time of the advertisement.

Preventing deceptive origination advertising is certainly an important issue, and we commend the FTC for providing additional clarity on deceptive mortgage advertising practices. Even more pressing in the current environment, however, is deceptive advertising related to loan modifications and other loan scams. CSBS, ACSSS, NACCA, and the American Association of Residential Mortgage Regulators (AARMR) submitted a comment letter in March of this year to the FTC on its NPR regarding mortgage assistance relief services (MARS). We encourage the FTC to continue to work on and move forward with rules related to modifications given the current number of modifications consumers are seeking in the marketplace.

Thank you for the opportunity to comment,

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President and CEO

Doug Foster
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