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RE: Mortgage Assistance Relief Services Proposed Rule

Dear Federal Trade Commission:

The Ohio Poverty Law Center, Southeastern Ohio Legal Services, Advocates for Basic Legal Equality and the Legal Aid Society of Southwest Ohio appreciate the opportunity to comment on the proposed rule concerning Mortgage Assistance Relief Services. In our experience, homeowners in foreclosure are flooded with solicitations by these services as soon as the foreclosures filings become public records. In fact, the homeowners often receive the solicitations before they are served with the summons and complaint in foreclosure, and are derailed from properly responding to and participating in the legal process by the promises of assistance and relief contained in the written, verbal and electronic solicitations. To add insult to injury, there is no shortage of web advertising, television commercials or radio spots from companies touting their ability to help people save their homes from foreclosure without any discussion of how they accomplish such feats. A recently released study by the national Community Reinvestment Coalition documents the variety of rescue scams victimizing distressed homeowners. This study can be found at: <http://www.ncrc.org/images/stories/pdf/research/foreclosure%20rescue%20scams%20-%20%20nightmare%20complicating%20the%20american%20dream.pdf>

First, we offer the following general comments:

We support the prohibition on collection of advance payments. The money that desperate homeowners pay to mortgage rescue scammers is money that could instead be used to help negotiate loan modifications. At least in Ohio, housing counseling and legal assistance is available at no cost to low and moderate income homeowners. The Notice asks a number of questions with regard to the ban on up front fees, proposing alternate scenarios. In our opinion, any fee structure that includes client escrow accounts or graduated payments has too much potential for abuse by providers. In the mortgage context, one of the most troublesome areas to resolve in payment disputes revolves around the misallocation of payments in escrow accounts.

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We also support the enforcement authority given to states' attorneys general in Section 322.10. Because these regulations do not give consumer homeowners a private right of action, it is important for consumer to have a state mechanism for addressing violations of the regulations.

We offer the following specific comments, observations and suggestions with regard to the proposed rule:

1. Section 322.2 Definitions

(d) "dwelling" should be revised to include the term "manufactured housing" as a possible residence. Manufactured housing is a term of art used in many state statutes and is the most current reference for non-stick built housing.

(h)(1) Should include the possible modification of extending the loan term to be a more complete list of possible loan modification options.

One of the specific questions addressed to Section 322.2(i)(1) and (2) asks whether loan holders and servicers, as well as their agents, should be exempted. Based on our experience with actual client cases, we do not believe that loan holders and servicers, or their agents, should be exempted. Part of the reason why so many consumers have lost homes to foreclosure is the fact that they communicate with the loan holders/loan servicers and/or their agents in hopes of finding a workout option and are not advised about the fact that failure to do anything with a pending lawsuit will lead to foreclosure. Even if the consumers are told such information, multiple problems still remain, including submitted paperwork or payments in furtherance of a modification not being processed; said submitted paperwork getting lost multiple times; misinformation being communicated to the consumer regarding the status of their case; signing onto the Making Home Affordable Program (HAMP) as a participating servicer and then refusing to review under HAMP or failing to offer HAMP as a workout option; and most disconcertingly, representing that the consumer is eligible for loan modification workouts such as the HAMP program and then either not following through with giving them a permanent modification or somehow moving forward with the foreclosure action despite their representations to the consumer.

Unfair and deceptive acts and practices such as these by the holder/servicer/agent cannot be adequately addressed under the Fair Debt Collections and Practices Act in most cases since the debt was not usually acquired by the servicer and/or holder after default has occurred. This lack of adequate recourse for consumers means that holders, servicers, and/or their agents will continue to act in a manner inconsistent with the objective of foreclosure prevention despite public claims to the contrary.

2. Section 322.3 Prohibited Representations

Often mortgage assistance relief services (MARS) providers will imply that they will represent the homeowners in legal proceedings, or otherwise suggest or state that they have attorneys on staff that will resolve the homeowners' legal proceedings. The list of prohibited representations should include a prohibition on such implications or statements, unless the service actually has attorneys on staff that are licensed to practice law in the state of the homeowner and the contract for services includes the name of the licensed attorney and the number or other identifier assigned to the attorney from the state licensing court, board or agency.

Consequently, the prohibitions should also include a prohibition on representing to a consumer homeowner that he or she need not respond to court papers or otherwise attend court proceedings.

3. Section 322.4 Required Disclosures

Even if the MARS provider does not represent that it will represent the homeowner in the legal proceedings or does not tell the consumer to ignore the court pleadings or proceedings, it is our experience that the homeowners assume the court case will somehow terminate or stop once they have secured the provider's services. In fact, most consumers stop opening mail when they become seriously delinquent. The language, as proposed, does not go far enough to warn the consumer that this is wrongful thinking.

Therefore, it is imperative that the "IMPORTANT NOTICE" from MARS providers (referenced in (a)(2)) not licensed to practice law in the consumer's state of residence be required to include language that affirmatively informs the consumer that their services do not automatically terminate or halt any foreclosure or other court proceedings that may be pending against them and that failure to take any action with regards to the pending lawsuit will likely result in a foreclosure judgment being rendered.

4. Section 322.7 Exemptions

While consumers generally have recourse against licensed attorneys who mislead or defraud them, such recourse is not necessarily helpful if such deceptive representation causes the consumer to lose his or her home as a result of a foreclosure action where the attorney did little to nothing to defend against the lawsuit. Although MARS providers appear to be mainly non-attorneys, various Ohio licensed attorneys have been disbarred for their involvement with MARS providers who promised to save homes but did nothing to actually defend against the pending lawsuits. As such, we recommend that licensed attorneys not be categorically exempt from 322.3(a) as stated in the proposed rule; instead the exemption should only be applicable to those licensed attorneys who have set forth in writing (such as by way of retainer) to provide actual representation in the pending foreclosure lawsuit to help save the consumer's home. In other words, a licensed attorney or firm that will not actually provide meaningful representation for a consumer in a foreclosure action is no better or different than a general non-attorney, non-licensed MARS provider.

5. Section 322.9 Recordkeeping and compliance requirements

Although the proposed rule contains record keeping and compliance requirements for the providers, the proposed rule does not contain any provisions requiring the mortgage assistance relief service providers to give the consumer copies of any contracts or other documents signed by the consumer or assented to electronically which dictate the terms and conditions of the agreement(s) of the parties. Also, the rule does not contain any provisions requiring the providers to respond to consumer requests for documents. In disputes with providers, it is critical that consumer homeowners have documentation of the transaction.

Therefore, this rule should be amended to require providers to give consumers copies of all documents generated or executed in connection with the transaction. In addition, it should be amended to require providers to timely send consumers copies of all documents in response to a written request from the consumer.

Thank you for the opportunity to comment.

Sincerely,

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