



March 29, 2010

Office of the Secretary  
Federal Trade Commission  
Room H-135 (Annex W)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
RIN 3084-AB18

Dear Sir or Madam:

The Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), the American Association of Residential Mortgage Regulators (AARMR), 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 or Commission) Notice of Proposed Rulemaking (NPR) regarding Mortgage Assistance Relief Services (MARS). Substantial harm to consumers can result from unscrupulous or incompetent people engaging in mortgage relief services. These services prey on consumers when they are most vulnerable. Consumers who contract for mortgage relief services are already in a state of distress from the prospect of losing their home, which is likely not only their largest asset but also has sentimental and emotional ties, and can fall victim to promises of help.

The state regulators strongly support the FTC’s NPR regarding MARS. At least 20 states have enacted laws that prohibit the collection of advance fees and restrict the practices of MARS providers. In addition, the Department of Housing and Urban Development (HUD) is currently in the process of formulating rules under the Secure and Fair Enforcement Licensing Act (the “SAFE Act”) which may require the licensing of mortgage assistance relief providers as mortgage loan originators. In fact, a number of states currently require MARS providers to be licensed. Nevertheless, SAFE Act-compliant state licensing laws are primarily focused toward the origination of new mortgage loans and may not directly address the particular dangers associated with mortgage assistance relief services. The proposed FTC rule will establish a floor to protect consumers from abusive MARS practices nationwide. By banning up-front fees, implementing disclosure requirements, prohibiting certain misrepresentations, and instituting various record-keeping requirements for MARS providers, the FTC’s proposal, if adopted, will go a long way in rooting out fraudulent practices among these individuals wherever they operate.

In an effort to address the various aspects of the proposal in an organized manner, the state regulators have split up the various sections for which we provide comments.

**Definitions:**

*“Mortgage Assistance Relief Service”*

The state regulators believe that the proposed definition of “mortgage assistance relief service” is generally adequate in covering the scope of the NPR. The Commission specifically seeks comment on how the proposal should treat offers from mortgage brokers to work with lenders to negotiate new loans or refinance existing loans. To the extent that mortgage brokers originate new loans, their activities are already addressed by state laws which are focused on new loan origination activities. Thus, the proposed FTC rules do not need to address loan origination activities, even if the loan is being originated to avoid a foreclosure. The proposed FTC rules should apply to mortgage brokers to the extent that mortgage brokers engage in non-loan origination MARS activities, e.g. negotiating loan modifications, short sales, etc. In fact, a number of state laws expressly ban mortgage brokers from collecting up-front fees for MARS services.

The NPR also solicits comments on how the proposed rule should apply to sale-leaseback and title-transfer transactions. Although promoted as a means for helping borrowers avoid foreclosure, such transactions often use deceptive and unfair practices to induce desperate borrowers to relinquish ownership of their property at a fraction of its value. Furthermore, the transaction, and the borrower’s ability to remain in the property is contingent on the borrower being able to make lease payments even though the borrower presumably cannot make his or her mortgage loan payments. The state regulators believe that it is important for the FTC to address abuses with respect to sale-leaseback transactions. However, given the current prevalence of loan modification scams, regulations addressing those practices must receive priority. If the development of sale-leaseback regulations will delay the promulgation of final regulations to address loan modification scams, we believe that the sale-lease back regulations should be addressed in a separate effort. In addition, any rule regarding sale-leaseback transactions should require that, when a sale-leaseback transaction is conducted for the purpose of helping a consumer avoid losing his or her home, the sale price should be no less than a certain percentage of the property value. The proposed rule should also require a buyer/lessor to conduct an analysis of the borrower/seller/lessee’s ability to make the lease payments. The state regulators would like to note that some states already enforce laws regarding sale-leaseback transactions and already have in place specific property value percentage requirements for sale transactions. If the FTC determines that this effort requires additional time or study, it would be logical for the Commission to investigate state laws that currently exist in order to gauge various options for addressing these practices.

The state regulators do not believe that there is any reason to broaden the definition of MARS to include the word “product” as inquired by the Commission.

*“Clear and Prominent”*

The state regulators acknowledge that the FTC is drawing from comparable FTC rules in formulating the clear and prominent requirements of this NPR. We endorse this initiative, as FTC requirements regarding clear and prominent disclosures are generally well-rounded and adequate. We strongly support requirements for including company names, phone numbers, and websites on all disclosures, and we do want to ensure that company street addresses are required on disclosures as well.

*“Mortgage Assistance Relief Service Provider”*

The Commission's definition of "mortgage assistance relief service provider" is satisfactory. We support the Commission's inclination to generally exempt loan holders and servicers, as well as their agents, and nonprofit entities excluded from the FTC's jurisdiction from the definition of mortgage assistance relief service provider.

**Prohibited Misrepresentations:**

The state regulators strongly support the Commission's effort to address deceptive or unfair representations that MARS providers commonly make in marketing their services. As a consumer's best hope of receiving mortgage resolution assistance from a lender or servicer is through communication with that lender or servicer or through a non-profit housing counselor, the state regulators believe it is appropriate to prohibit providers from advising consumers not to contact or communicate with their lenders or servicers. We endorse the Commission's effort to prohibit misrepresentations of any material aspect of any MARS. To address the Commission's comment solicitation regarding the disclosure of MARS providers' historical performance, the state regulators urge the Commission to prohibit MARS providers from including such figures in disclosures. Historical performance records and success rates are subject to manipulation and have the capacity to seriously mislead consumers.

**Required Disclosures:**

The state regulators believe that the disclosures required under §322.4 are generally appropriate for addressing current and prospective harms to consumers in connection with the sale of MARS. However, we believe that the MARS providers should also be required to disclose that government approved non-profit and government organizations exist that provide this type of assistance at little to no cost. Additionally, we believe the disclosures should include the fact that consumers are not exempt from making their home payments simply because they have decided to pursue MARS.

The state regulators believe that disclosures that are relayed through advertisement should be re-stated once consumers contact the provider about the advertised service. Furthermore, as discussed in more detail in the section regarding up-front fees, the state regulators believe that MARS providers should be subject to a written contract requirement that is not currently included in the proposed rule.

**Prohibition on Collection of Advance Fees:**

The state regulators strongly support an effort to curb abusive action in the MARS industry. We believe that the proposal to prohibit MARS providers from requesting or collecting advance fees for any represented service until *all* of the results promised, expressly or implicitly, are delivered, and adopting the same standard that is articulated in the NPR to amend the Telemarketing Sales Rule, is a positive step in achieving this goal. The state regulators therefore endorse the FTC's proposal to ban advance fees among MARS providers across the country. Of course, these rules should serve as a floor which states should be free to supplement.

The proposed rule states that a provider cannot collect a fee unless the provider has "achieved all of the results (i) the provider represented, expressly or by implication and (ii) that are consistent with consumers' reasonable expectations about the service." While we support the intent of this provision, we believe this language is too vague and that it permits too much ambiguity regarding the results to be achieved. The state regulators believe the final rule should require a written contract between the MARS provider and the consumer that specifies the services to be

provided, the results to be achieved and the cost to the consumer if those results are achieved. The written contract should further disclose that the final outcome of MARS cannot be predicted or guaranteed.

Under the proposed rule, a loan modification is effective, and the MARS provider can be compensated, if the consumer receives a “permanent” contractual arrangement that “substantially reduces” the borrower’s scheduled periodic payments. The state regulators believe that in addition to substantially reducing a borrower’s payments, a modification must result in payments that are “affordable” and “sustainable” in order for a MARS provider to be compensated. The proposal also requires that a change in terms for a “mortgage loan modification” be in effect for 5 years or more. While we acknowledge that 5 years is a sensible timeframe in many situations, shorter modifications may be in a borrower’s best interest in certain circumstances. Thus, there should be some latitude in the permanent standard to allow shorter term modifications when such modifications are appropriate and advantageous for the borrower.

The state regulators do not support permitting MARS providers to charge a small up-front fee or to collect fees as they perform services preliminarily to obtaining the results that are commensurate with those services. Nor do the state regulators support allowing MARS providers to charge partial or piecemeal fees for intermediate results. With regard to the Commission’s question concerning whether or not MARS providers should be able to collect fees for individual services so long as they do not promise that consumers will obtain a specific end result, we do not believe that such practices should be permitted. We also do not believe that MARS providers should be allowed to place fees into an escrow account prior to completing the promised task.

The state regulators strongly believe that consumers should be afforded a 3-day cancellation period after executing a written agreement with a MARS provider. MARS services come at a high price to consumers who are financially strapped yet desperate to find help. Consumers should be allowed a cooling off period to reflect on whether or not pursuing another option, such as requesting similar services from a non-profit or government entity, would better serve their interests. A three day period offers consumers a reasonable period to weigh alternatives while also avoiding undue burdens for providers.

**Assisting and Facilitating:**

The state regulators support the Commission’s proposal to prohibit any person from providing substantial assistance or support to a MARS provider if that person knows or consciously avoids knowing that the provider is violating any provision of the proposed Rule.

**Exemptions:**

The state regulators support the Commission’s inclination to exempt attorneys from the proposed rule’s prohibition on instructing consumers not to communicate with their lenders or servicers, so long as attorneys are licensed to practice in the state where the consumer resides. And while we do acknowledge that an increasing number of attorneys have engaged in deception and unfairness in connection with mortgage assistance relief services, we believe that limiting the exemption to preparing and filing for bankruptcy petitions or other documents in a bankruptcy or other court or administrative proceeding, is unduly narrow and might interfere with the ability of attorneys to offer legitimate counsel and advice to their clients. We certainly believe that attorneys who advertise and solicit MARS should be covered by the proposal. However, we

suggest that the language be further tailored so that it does not deter legitimate and non-MARS related, legal services. Some states laws already outline sound methods for addressing attorney exemptions. For instance, the Michigan Credit Services Protection Act handles the attorney exemption issue by exempting attorneys “if the person renders services within the course of that person’s practice as an attorney and does not engage in the business of a credit services organization on a regular and continuing basis” [MCL 445.1822(b)(iv)]. It would be logical for the FTC to review applicable state laws in re-examining its proposed attorney exemption.

**Recordkeeping and Compliance Requirements:**

The state regulators support the Commission’s proposed recordkeeping and documentation requirements, and we support the proposed 24-month document retention period.

Improving consumer protection in mortgage assistance relief services is a valuable mission. Therefore, the state regulators commend the Commission’s efforts in proposing measures to protect consumers from abusive and careless MARS providers. We look forward to working with the Commission to address MARS practices that may be detrimental to consumers.

Thank you for the opportunity to submit a formal response on behalf of the state regulators.

Best Regards,



Neil Milner, CSBS  
President and CEO

Joe Crider  
President, NACCA

Doug Foster  
President, ACSSS

Mark Pearce  
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