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

Re: Mortgage Assistance Relief Services Rulemaking, 16 C.F.R. Part 322

Dear Commissioners:

The Office of the Minnesota Attorney General submits the following written comments to the Federal Trade Commission ("Commission") in response to the Commission's Notice of Proposed Rulemaking: Mortgage Assistance Relief Services, issued on February 4, 2010. This Office also submitted comments regarding this topic on July 15, 2009, and urged the FTC at that time to propose a rule regulating Mortgage Assistance Relief Servicers. This Office hopes that the FTC will act swiftly to enact the proposed rule.

I. Types of Mortgage Assistance Relief Servicers

As noted in this Office's July 15, 2009 comments, the current foreclosure crisis and economic recession has led to an explosion of for-profit mortgage assistance relief companies. These types of companies all promise, in one way or another, to resolve homeowners' problems relating to their mortgage payments and the affordability of those payments, for a profit. Although there are technical differences in how these various companies operate, these technical differences appear to be ones of form rather than substance and may be in part driven by attempted efforts to circumvent existing state regulations.

Over the past several years, this Office has recognized three distinct variations of mortgage assistance relief companies: foreclosure consultants, mortgage modification companies, and forensic loan auditors. As noted in this Office's July 15, 2009 comments, foreclosure consultants and mortgage modification companies offer to modify homeowners' mortgages and/or "save" their homes from foreclosure, in return for up-front fees of between several hundred and several thousand dollars. However, these companies typically provide little to no service in return for the up-front fees they collect, and often leave homeowners in a worse position than they would be otherwise. For example many of these types of companies tell homeowners not to make their mortgage

payments or negotiate with their lenders. Over the past two years, this Office has sued seventeen such companies, including five that were sued since this Office's July 15, 2009 comments.[1]

Recently, so-called forensic loan auditors have emerged as a new type of mortgage assistance relief "service." Forensic loan auditors purport to provide an "audit" of a homeowner's mortgage loan that will discover violations of state and federal mortgage-lending laws. Forensic loan auditors further claim that these legal violations will provide "ammunition" for homeowners to negotiate with their mortgage lenders. Homeowners often hire these forensic loan auditors under the mistaken belief that they will provide a solution to the homeowners' existing mortgage problems. However, like foreclosure consultants and mortgage modification companies, forensic loan auditors typically fail to provide any meaningful service in return for the large up-front fees that they charge. Moreover, by carefully omitting to explicitly promise a particular result (e.g. a reduction in mortgage payments or cessation of foreclosure proceedings), forensic loan auditors attempt to circumvent existing state laws regulating foreclosure consultants and mortgage modification companies.

Any rule adopted by the Commission should clearly regulate all forms of mortgage assistance relief servicers. This Office is encouraged that the current proposed rule defines "Mortgage Assistance Relief Service" broadly to include services that "expressly *or by implication*" assist homeowners in resolving their mortgage problem. Mortgage Assistance Relief Services, 75 Fed. Reg. 10707 (proposed Feb. 4, 2010) (to be codified at 16 C.F.R. pt. 322), at § 322.2 (h). In adopting, implementing, and enforcing this rule, the Commission should carefully consider the practices of forensic loan auditors and similar entities to ensure that such entities are properly regulated.

II. Costs and Benefits of Mortgage Assistance Relief Servicers

As discussed in this Office's July 15, 2009 comments, mortgage assistance relief servicers impose substantial costs on their clients. These costs include both the opportunity cost associated with the companies' typically poor service and the out-of-pocket financial cost charged to the consumer. Moreover, the hefty costs placed on homeowners do not appear to substantially differ between foreclosure consultants, mortgage modification companies, and forensic loan auditors.

Likewise, while foreclosure consultants, mortgage modification companies, and forensic loan auditors have gone to great lengths to differentiate the services that each provides, the *relief* promised to homeowners is consistently the same. Specifically, each company implicitly or explicitly promises to provide homeowners with relief from overly burdensome mortgage payments. Moreover, the likelihood of receiving meaningful relief does not vary between each service, as all of these entities consistently fail to provide any meaningful relief to their customers.

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[1] This Office has sued the following foreclosure consultants and mortgage modification companies since its July 15, 2009 comments: American Modification Consultants LLC; Hope4Homeowners Corporation; INQB8 LLC d/b/a Mortgage Relief and Discount Mortgage Relief; Modificaciones de Presamos, LLC d/b/a Minnesota Loan Modifications; Mortgage Assistance Solutions, LLC.

This Office is encouraged that the proposed rule explicitly prohibits the collection of up-front fees from mortgage assistance relief servicers. As noted in this Office's July 15, 2009 comments, the prohibition of up-front fees is an essential part of any law regulating mortgage assistance relief servicers. Recently, this Office has recognized several mortgage assistance relief servicers that have attempted to circumvent existing state regulation prohibiting up-front fees by collecting the fees after they perform a minimal or meaningless "initial" service. The Commission should be mindful of these bit-by-bit fee arrangements as it drafts and adopts a final rule. For good reason, the proposed rule appears to address this conduct by prohibiting up-front fees until the provider has "achieved *all* of the results" that it represents it will achieve.

III. The Industry's Claims of "Over-Regulation" Are Unfounded

The recent growth of the mortgage assistance relief service industry has been due largely to its pervasive misleading marketing tactics, which are used to target prospective clients during a highly emotional period; it has not been due to any significant benefits provided by these entities. Accordingly, the restrictions placed on mortgage assistance relief servicers by the proposed rule serve simply to ensure that consumers who enter into business relationships with mortgage assistance relief servicers do so with a complete understanding of the services to be provided, and that consumers do not pay for any services until they have, in fact, been provided.

This Office supports the proposed rule's provision providing enforcement powers to state attorneys general. *See* Mortgage Assistance Relief Services, 75 Fed. Reg. 10707 (proposed Feb. 4, 2010) (to be codified at 16 C.F.R. pt. 322), at § 322.10. State attorneys general are often on the "front-lines" of the fight against fraudulent businesses, including mortgage assistance relief servicers. However, as noted in this Office's July 15, 2009 comments, mortgage assistance relief servicers often target homeowners across state lines, which can complicate state enforcement efforts. Allowing both state attorneys general and the Commission to prosecute these entities provides a powerful and much needed tool to assist victims.

We appreciate the Commission's consideration of these comments in connection with its Notice of Proposed Rulemaking: Mortgage Assistance Relief Services. As noted above, this Office fully supports the prompt adoption of the proposed rule. Please feel free to contact our Office if there is any additional information that we might be able to provide that would be helpful to the Commission in achieving its regulatory objectives.

Sincerely,

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