

FEDERAL TRADE COMMISSION

16 CFR Part 322

[RI N 3084-AB18]

NOTICE OF PROPOSED RULEMAKING: MORTGAGE ASSISTANCE RELIEF SERVICES

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COMMENTS TO NOTICE OF PROPOSED RULEMAKING

The Westside Ministers Coalition (WMC) located on the westside of Chicago, Illinois in the Austin community is an organization of churches, ministers, community groups, business, and social service organizations. The Austin community historically has been one of the top ten neighborhoods with a high foreclosure rate. WMC has partnered with other groups to provide foreclosure assistance and welcome the Federal Trade Commission's proposed rulemaking concerning the activities and practices of for-profit mortgage assistance relief services (MARS) providers.

The coalition's comments concern aspects of the advance fee and the exemptions. Advance fee charges related to MARS, specifically section 322.5 makes it a violation to receive fees until the provider gives the achieved result and the consumer receives documentation of the achieved result. The advance fees charged for credit cards, work at home schemes, and extensions of credit are a good analogy for not charging advance fees for MARS. Whenever the full amount is paid prior to the service will not be performed or completed by the provider. The consumer is at the mercy of the provider, who maybe in another state, cannot be located, has absconded with consumer's funds. And any contact information is no longer valid. The consumer loose. Though these advance fees are smaller then the fees for MARS, the result is the same.

Advance fees for mortgage services should be prohibited. Consumers are vulnerable to any communication that creates the possibility that their homes can be saved from foreclosure through loan modification. Consumers will pay practically lucrative business. The elimination of the advance fee will cull the ranks. As an alternative, the proposed rulemaking suggests using an initial fee or set-up fee or using escrow accounts.

If initial fees are allowed, what services are to be performed for the fee, will this fee encompass an interview, review of mortgage, or consultation? The commission should set standards for this fee so that a consumer will receive some service for this fee, and based on the service may opt not to proceed with this provider. As for escrow

accounts, does the consumer or provider decide when and how funds are released, are there benchmarks i.e. at what stage in the process are funds released, what if the consumer decides not to proceed, what accounting procedures are in place and when are the funds disbursed? Escrow accounts complicate rather than streamline MARS to the detriment of the consumer.

As a layer of protection, the consumer should have the right of rescission, which should not be a complement to advance fees. The right of rescission is an effective tool that allows the consumer to reflect and make informed decisions without pressure tactics. Purchases of certain goods and services usually give the consumer 3 days to rescind; however given the impact of these services on the consumer more times is warranted. Further any right to rescind must mandate written and oral disclosures, with a written acknowledgment by the consumer who retains a copy of this acknowledgment and the written disclosure.

Finally in regards to the attorney exemption, the commission seeks to “strike a balance” with attorneys who are not engaged in unfair and deceptive practices dealing with MARS. To this extent attorneys who are bankruptcy practitioners or involved with a court or administrative proceedings are exempt. If a new or existing client retains an attorney to work out a loan modification (there is no bankruptcy petition or other proceedings), is this attorney characterized as a MARS provider? If a borrower contacts a mortgage broker or loan originator for a loan modification (there is no bankruptcy (there is no bankruptcy petition or other proceedings pending) will this conduct be subject to MARS regulation. These scenarios should be considered by the commission. The commission should consider exemption coverage to include these types of situations.

The WMC has a commitment to assist residents in jeopardy of losing their homes through foreclosure. The Commission’s proposed rulemaking will assist organizations such as WMC toward its goal of protecting and stabilizing homeownership in the black community.