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

**RE: Comment of Massachusetts Attorney General Martha Coakley concerning Mortgage Assistance Relief Services Rulemaking, Rule No. R911003**

Dear Commissioners of the Federal Trade Commission,

In addition to joining the comment to be submitted this week on behalf of several state attorneys general ("Multistate Comment"), I write separately to reply to three questions posed by the FTC in the notice of proposed rulemaking. These comments are based on our particular experience here in Massachusetts, where we have focused on combating foreclosure assistance scams since at least 2007.

Thank you for the opportunity to comment on the important issues being addressed in the Mortgage Assistance Relief Services Rulemaking, Rule No. R911003. I previously submitted a comment in June 2009, in which I detailed the unfair and deceptive practices of parties offering to obtain loan modifications or other similar relief, and of parties attempting to convince desperate homeowners to transfer ownership of their homes with illusory promises that the homeowners will regain title once their economic troubles have passed. I applaud the FTC's efforts to address these unfair and deceptive practices and I support the rule the FTC has proposed.

**I. Use of Fee Caps and Rights of Rescission**

The FTC sought comment regarding measures such as fee caps or a right of rescission and whether such measures could be used in place of an advance fee prohibition or whether such measures should be used in conjunction with the advance fee prohibition to provide additional protection. Consistent with the Multistate Comment, I consider the advance fee prohibition to be the lynchpin of any regulatory scheme governing mortgage assistance relief services. I advocate a right of rescission and appropriate fee caps as additional consumer protections. However, based on the experiences of my Office, I believe that fee caps and a right of rescission would not provide adequate protection if used *in place of* the advance fee prohibition.



As evidenced by the cases brought by the FTC and many of the states, providers of mortgage assistance relief services often fail to provide any meaningful results for the homeowner and disappear before the homeowner can obtain a refund. Were state and federal law to allow advance fees, fee caps and a right of rescission would not adequately address these situations because once payment has been made, homeowners are effectively prevented from obtaining refunds. Thus, I caution the FTC from including fee caps or a right of rescission in place of or as an alternative to the advance fee prohibition.

Instead I encourage the FTC to consider fee caps and a right of rescission as beneficial *additional* protections for homeowners. Providers of mortgage assistance relief services commonly charge up to several thousands of dollars, and due to desperation homeowners have readily agreed, even when the amount charged requires the homeowner to forego making their mortgage payment and to borrow from friends and family. Providers cannot be permitted to assess fees so high that they defeat the goal of the homeowner – to relieve financial distress and avoid foreclosure.

Both a right of rescission of a meaningful period, which would allow a consumer the opportunity to rethink the contractual commitment, and a fee cap that would protect consumers from exorbitant fees, would serve as valuable supplements to the advance fee prohibition. As I discussed in my comment of June 2009, a fee cap in the form of a sliding scale that bases the allowed fees on the success of the completed services is an appropriate protection worthy of the FTC's further consideration.

## **II. No Exemptions from the Advance Fee Prohibition Based on What Results Providers Promise**

The FTC sought comment regarding (a) whether providers who promise a specific result should be allowed to charge partial or piecemeal fees for intermediate results, and (b) whether providers who do not promise a particular result should be exempt from the advance fee prohibition. Based on the practices my Office has observed, both of these promise-based exemptions would likely be dangerously abused by unscrupulous providers.

First, under an exemption for piecemeal fees, providers would continue the widespread current practice of front loading piecemeal fees, so that the provider quickly obtains a substantial payment that is disproportionate to the amount of services provided. Upon receiving such significant piecemeal fees, the provider has no incentive to continue actively working on the homeowner's behalf and indeed, may abandon the homeowner. As a result, the homeowner would have paid substantial fees for minimal services despite being led to believe that the provider would obtain specific results. Therefore, the ultimate goal of avoiding foreclosures would not be furthered by such an exemption.

Second, an exemption for providers who do not promise a particular result would not adequately protect homeowners. Because the homeowner is effectively unable to obtain a refund from unscrupulous providers, any exemption that allows a fee prior to obtaining results undermines the important protections of the advance fee prohibition. Unscrupulous providers could easily abuse the exemption by charging the advance fee and then failing to assist the

homeowner in avoiding foreclosure. Furthermore, to enforce the regulation against such a provider would require a time consuming, fact intensive inquiry for each individual homeowner, thus frustrating enforcement agencies' attempts to address the basic unfairness of advance fee schemes.

### **III. Required Disclosures**

The FTC sought comment regarding whether the disclosures required to be included in commercial communications are sufficient. I support the types of disclosures required in the proposed rule and encourage the FTC to consider requiring all commercial communications to include the disclosures currently proposed for those communications directed at a specific homeowner.

Providers have very effectively used communications such as radio or television ads and internet websites to attract homeowners, and these homeowners would benefit from the additional disclosures in the same way as homeowners who receive communications directed specifically to them. A clear declaration of the actual total price the consumer must pay is an important detail that homeowners should hear at an initial stage. Because not all homeowners who purchase mortgage assistance relief services may receive a communication directed at the homeowner specifically, some homeowners may not benefit from the required price disclosure in the proposed rule. Similarly, a clear statement such as that proposed by the FTC - "even if you buy our service, your lender may not agree to change your loan" - is a critical check on misleading guarantees by unscrupulous providers. Accordingly, I encourage the FTC to require these disclosures not only in direct-to-homeowner communications, but also in commercial communications that are not directed at a specific homeowner.

### **IV. Conclusion**

I strongly support the protections provided by the FTC's proposed rule, and hope my responses to questions raised by the FTC will help the FTC to craft appropriate and effective protection for our consumers. If I can provide any further information or assistance related to the FTC's proposed rule, or any other of our common objectives, please do not hesitate to contact me.

Respectfully Submitted,

**Martha Coakley**  
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