

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION**

**on**

***“Foreclosure Rescue and Loan Modification Scams”***

**Before the**

**HOUSE COMMITTEE ON FINANCIAL SERVICES  
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**Washington, D.C.  
May 6, 2009**

## **I. Introduction**

Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee, I am Peggy Twohig, Associate Director of the Division of Financial Practices at the Federal Trade Commission (FTC or Commission).<sup>1</sup> I appreciate the opportunity to appear before you today to discuss the Commission's efforts to protect consumers from foreclosure rescue and loan modification scams.

With the rapid increase in mortgage delinquencies and foreclosures, the FTC has intensified its efforts to protect consumers from foreclosure rescue and loan modification scams and to halt the proliferation of these types of scams. In a little over a year, the Commission has brought eleven cases targeting mortgage foreclosure rescue and loan modification scams. Most recently, on April 6, 2009, the FTC – along with other federal and state regulators – announced law enforcement actions and consumer education initiatives as part of a broader crackdown on loan modification and foreclosure rescue entities. In addition, the Commission announced a new consumer outreach and education initiative to reach borrowers directly with the help of a broad array of government, non-profit organizations, and mortgage industry members. Through this initiative, borrowers will receive materials about how to spot and avoid mortgage rescue scams directly from their mortgage companies, at housing counseling outreach centers, and online. These efforts are part of a larger focus on financial services: for example, the Commission has brought more than 70 enforcement actions in the past five years and provided \$465 million in redress to American consumers in financial services cases in the last ten years.

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<sup>1</sup> The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions are my own, however, and do not necessarily reflect the views of the Commission or any particular Commissioner.

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<sup>2</sup> 15 U.S.C. 45(a)(1).

15 U.S.C. 1601-1666j (mandates disclosures and other requirements in connec

Fair Credit Reporting Act (FCRA),<sup>7</sup> the Equal Credit Opportunity Act,<sup>8</sup> the Credit Repair Organizations Act, the Electronic Funds Transfer Act, the Telemarketing and Consumer

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<sup>7</sup> 15 U.S.C. 1681-1681x (imposes standards for consumer reporting agencies and information furnishers; places restrictions on the use of consumer report information). The Fair and Accurate Credit Transactions Act of 2003 amended the FCRA. Pub. L. No. 108-159, 117 Stat. 1952 (2003).

<sup>8</sup> 15 U.S.C. 1691-1691f (prohibits creditor practices that discriminate on the basis of race, religion, national origin, sex, marital status, age, receipt of public assistance, and the exercise of certain legal rights).

<sup>9</sup> 15 U.S.C. 1679-1679j (mandates disclosures and other requirements in connection with credit repair organizations, including a prohibition against charging fees until services are completed).

<sup>10</sup> 15 U.S.C. 1693-1693r (establishes the rights and responsibilities of institutions and consumers in connection with electronic fund transfer services).

<sup>11</sup> 15 U.S.C. 6101-6108 (provides consumer protection from telemarketing deception and abuse and requires the Commission to promulgate implementing rules).

<sup>12</sup> 15 U.S.C. 6801-6809 (requires financial institutions to provide annual privacy notices; provides consumers the means to opt out from having certain information shared with non-affiliated third parties; and safeguards customers' personally identifiable information).

<sup>13</sup> *See* 15 U.S.C. 45(a)(2).

jurisdiction under the FTC Act over non-profit organizations.<sup>14</sup>

### **III. FTC’s Protection of Consumers from Foreclosure Rescue and Loan Modification Scams**

In this current economic crisis, homeowners in financial distress are particularly vulnerable to unfair, deceptive, and otherwise unlawful business practices. The rate of mortgage loan delinquency and foreclosure has risen to the highest level in three decades.<sup>15</sup> With the rapid increase in mortgage delinquencies and foreclosures, the Commission has intensified its efforts to protect consumers in the financial services marketplace from foreclosure rescue and loan modification scams. As detailed below, the FTC is employing all of its tools – law enforcement, consumer outreach and education, and policy development – to halt the proliferation of mortgage relief s

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<sup>14</sup> See 15 U.S.C. 44. The FTC does, however, have jurisdiction over for-profit entities that provide mortgage-related services as a result of a contractual relationship with a non-profit organization. See *Nat’l Fed’n of the Blind v. FTC*, 420 F.3d 331, 334-35 (4<sup>th</sup> Cir. 2005). In addition, the Commission asserts jurisdiction over “sham charities” that operate as for-profit entities in practice.

<sup>15</sup> See Mortgage Bankers Association (MBA), *Delinquencies Continue to Climb in Latest MBA National Delinquency Survey* (Mar. 5, 2009), available at <http://www.mbaa.org/NewsandMedia/PressCenter/68008.htm>. According to the MBA’s National Delinquency Survey, the delinquency rate for mortgage loans on one-to-four unit residential properties rose to a seasonally adjusted rate of 7.88% of all loans, as of the end of the fourth quarter of 2008, which is the highest rate ever based on data dating back to 1972. Over 11% of loans are either in foreclosure or delinquent by at least one payment, which is the highest rate ever recorded in the MBA national delinquency survey.

scams. In a little over a year, the FTC has brought eleven cases targeting mortgage foreclosure rescue and loan modification scams<sup>16</sup> and is actively engaged in ongoing, non-public investigations. On April 6, 2009, the FTC – along with Treasury Secretary Geithner, Attorney General Holder, HUD Secretary Donovan, and Illinois Attorney General Madigan – announced law enforcement actions and consumer education initiatives as part of a broader crackdown on loan modification and foreclosure rescue entities.<sup>17</sup> In connection with this effort, the Commission also sent warning letters to 71 companies for marketing potentially deceptive mortgage loan modification and foreclosure assistance programs.<sup>18</sup>

The FTC’s law enforcement actions regarding foreclosure rescue and loan modification schemes typically allege the following:

First, the defendants use terms like “guarantee” and “97% success rate” to mislead

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<sup>16</sup> *FTC v. Federal Loan Modification Law Center, LLP*, Case No. SACV09-401 CJC (MLGx) (C.D. Cal. filed Apr. 3, 2009); *FTC v. Thomas Ryan*, Civil No. 1:09-00535 (HHK) (D.D.C. filed March 25, 2009); *FTC v. Home Assure, LLC*, Case No. 8:09-CV-00547-T-23T-SM (M.D. Fla. filed Mar. 24, 2009); *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. New Hope Property LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. National Foreclosure Relief, Inc.*, No. SACV09-117 (C.D. Cal. Feb. 2, 2009); *FTC v. United Home Savers, LLP*, No. 8:08-cv-01735-VMC-TBM (M.D. Fla. Sept. 3, 2008); *FTC v. Foreclosure Solutions, LLC*, No. 1:08-cv-01075 (N.D. Ohio April 28, 2008); *FTC v. Mortgage Foreclosure Solutions, Inc.*, No. 8:08-cv-388-T-23EAJ (M.D. Fla. Feb. 26, 2008); *FTC v. National Hometeam Solutions, Inc.*, No. 4:08-cv-067 (E.D. Tex. Feb. 26, 2008); *FTC v. Safe Harbour Foundation*, No. 08 C 1185 (N.D. Ill. Feb. 25, 2008).

<sup>17</sup> See Press Release, *Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams* (Apr. 6, 2009), available at <http://www.ftc.gov/opa/2009/04/hud.shtm>; Press Release, *Federal, State Partners Announce Multi-Agency Crackdown Targeting Foreclosure Rescue Scams, Loan Modification Fraud* (Apr. 6, 2009), available at <http://www.ftc.gov/opa/2009/04/loanfraud.shtm>.

<sup>18</sup> An example of these letters is available at <http://www.ftc.gov/os/2009/04/090406warningletter.pdf>.

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<sup>19</sup> Additionally, some entities claim to be associated with or to have good relationships with the consumer's mortgage servicer. *See FTC v. Home Assure, LLC*, Case No. 8:09-CV-00547-T-23T-

may also make express or implied misrepresentations that Members of Congress or other government officials endorse their services or products. In one case, against Federal Loan Modification Law Center LLP, the FTC alleged that the defendants misrepresented that they were part of or affiliated with the federal government and that they could obtain FDIC-insured loans.

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(D.D.C. filed Mar. 25, 2009).

<sup>23</sup> *FTC v. Federal Loan Modification Law Center, LLP*, Case No. SACV09-401 CJC (MLGx) (C.D. Cal. filed Apr. 3, 2009). See also Press Release, *Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams* (Apr. 6, 2009), available at <http://www.ftc.gov/opa/2009/04/hud.shtm>.

<sup>24</sup> *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J. filed Mar. 17, 2009); *FTC v. New Hope Property LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. filed Mar. 17, 2009).



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*See,*

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<sup>26</sup> See Press Release, *Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams* (Apr. 6, 2009), available at <http://www.ftc.gov/opa/2009/04/hud.shtm>; FTC Publication, *A Note to Homeowners*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/real6.pdf>.

<sup>27</sup> Omnibus Appropriations Act 2009, Pub. L. No. 111-8, § 626, \_\_ Stat. \_\_ (Mar. 11, 2009).

<sup>28</sup> 5 U.S.C. 553. Section 626 of the Omnibus Appropriations Act authorizes use of these procedures in lieu of the procedures set forth in Section 18 of the FTC Act, 15 U.S.C. 57a. Note that, because this rulemaking is not undertaken pursuant to section 18(a)(1)(B) of the FTC Act, 15 U.S.C. 57a(a)(1)(B), federal banking agencies are not required pursuant to sec(.S.i Section 2800 0.0000 TD(

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<sup>31</sup> For example, the proceeding to promulgate the FTC’s Credit Practices Rule, 16 C.F.R. Part 444, using Magnuson-Moss procedures took almost ten years. In contrast, the proceeding to promulgate the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310, using APA procedures took one year.

<sup>32</sup> *See, e.g.*, Financial Product Safety Commission Act of 2009, S. 566, 111<sup>th</sup> Cong. (1<sup>st</sup> Sess. 2009); Consumer Credit Safety Commission Act of 2008, S. 3629, 110<sup>th</sup> Cong. (2d Sess. 2008); Consumer Credit Safety Commission Act of 2008, H.R. 7258, 110<sup>th</sup> Cong. (2d Sess. 2008); Cong. Oversight Panel, “Special Report on Regulatory Reform: Modernizing the American Financial Regulatory System: Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability” (Jan. 2009) at 34; U.S. Department of the Treasury, “Blueprint for a Modernized Fina

