Have I Got a Deal for You!

An Undercover Investigation of Mortgage Loan Modification Scams

Conducted by:

National Fair Housing Alliance
Connecticut Fair Housing Center
Housing Opportunities Made Equal of Virginia, Inc.
Miami Valley Fair Housing Center

April 6, 2011

National Fair Housing Alliance
1101 Vermont Avenue, NW
Suite 710
Washington, DC 20005
(202) 898-1661
www.nationalfairhousing.org

Executive Summary

Beginning in 2007–2008, the deluge of foreclosures in the United States was matched only by the early outbreak of mortgage modification scams that preyed on homeowners desperately trying to stay in their homes. The National Fair Housing Alliance (NFHA) began its investigation into mortgage scams in 2009 when mortgage modification scammers first started to proliferate and seemed to advertise everywhere—on the internet, on local radio and television, through direct mail advertising, in newspapers, on lampposts and store bulletin boards, and with flyers in neighborhood churches and laundromats.

Many experts agree that historically high levels of consumer debt, increased unemployment, and a stagnant housing market have contributed to the foreclosure crisis in this country; however, the underlying cause for this crisis is that Wall Street provided strong incentives for unsustainable loan products, including adjustable rate mortgages; mortgage bankers and brokers steered homebuyers and homeowners into these unsustainable products even when they qualified for prime loans.[1] The Center for Responsible Lending estimates 2.5 million foreclosures were completed from 2007–2009, with 8.1 million projected foreclosures in the next four years.[2]

The foreclosure crisis has made many homeowners desperate. Some homeowners have unwittingly turned to scammers posing as home loan modification companies that lure people in with tantalizing promises that include guarantees to reduce mortgage payments, eliminate delinquent payments and keep families in their homes. Attractive, professionally-designed scam websites often incorporate references to or the logos of credible companies or government agencies and make statements with "as seen on" CNN, MSNBC, FOX, or Oprah.

With one in nine homeowners more than 90 days behind on their mortgage payments,[3] NFHA predicted that an industry of mortgage modification and foreclosure prevention scams would emerge. NFHA successfully sought funding from Fannie Mae and the U.S. Department of Housing and Urban Development (HUD) to investigate these scams. NFHA also was funded by Freddie Mac to work closely with a public/private task force, the Loan Modification Scam Prevention Network, coordinated through NeighborWorks America to address mortgage loan scam activities.

In early 2010, through its competitive Fair Housing Initiatives Program (FHIP), HUD provided NFHA and three of its member organizations with the first substantial government funding to non-profit organizations to investigate mortgage scam activities. The Connecticut Fair Housing Center, Inc. (CFHC) in Hartford, CT; Housing Opportunities Made Equal of Virginia, Inc. (HOME) of Richmond, VA; and the Miami Valley Fair Housing Center, Inc. (MVFHC) of

---

[1] See Testimony of Julia Gordon, Center for Responsible Lending, before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, *Mortgage Lending Reform:* A Comprehensive Review of the American Mortgage System" March 11, 2009. See also Rick Brooks and Ruth Simon, "Subprime Debacle Traps Even Very Credit-Worthy," *Wall Street Journal*, December 3, 2007.
[2] Center for Responsible Lending fact sheet, "United States Foreclosures: Impacts and Opportunities," January 2009.
[3] Craver, Richard, "Area foreclosure rate rises, reversing recent trend," *Winston-Salem Journal*, March 23, 2011.

Dayton, OH, all of which are “qualified fair housing organizations” as defined by HUD,[4] worked collaboratively on a national scam investigation project that examined scamming techniques.

From April, 2010, until March, 2011, the project identified more than 150 companies suspected of being scammers based on information from their websites and initial contact with company representatives. The partner organizations conducted 94 investigations including testing of 80 companies. The very names of many websites appear designed to mislead the consumer into believing the organization is either an authentic government department or government-sponsored website. Many sites include the words “HUD,” “Fannie Mae,” “Freddie Mac,” “HAMP,” “Obama” or “Hope Now” in their web address or in the description of their services, in an apparent attempt to bolster the illusion of legitimacy. Some examples uncovered by the project include:

www.bailout.hud.gov.us
www.ushud.com/Loan-Modi
www.theeasyloansite.com/fanniemae
www.ObamaMortgageModification.org
www.obamahelpforeclosure.com
www.obamaarefinance.org/
www.affordablehomerecovery.org/obama

The investigation found that the market is rife with corrupt practices: firms are over-promising, under-delivering and charging for services that are readily available from nonprofit organizations for free. And**,** in a troubling trend, some companies are advising homeowners to commit acts of fraud against their lenders.

The analysis of the 94 test reports and investigations uncovered common tactics used by scammers to entice homeowners to use their services.

- 59 percent of the companies required an upfront fee to start work or required a low initial fee to conduct minimal work on behalf of the homeowner, such as reviewing loan documents.

- 48 percent of the companies guaranteed or promised they could secure a loan modification even before learning about the homeowners’ financial limitations.

- 24 percent of the companies advised or encouraged homeowners to stop making their mortgage payments or to stop contacting their lenders.

- 17 percent guaranteed a new, much lower interest rate ranging between two and 6 percent on modified loans.

---

[4] “Qualified fair housing enforcement organizations” have “at least two years of experience in complaint intake, complaint investigation, testing for fair housing violations, and meritorious claims in the three years prior to the filing of their application” to HUD.
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHIP/fhip

- 12 percent discouraged homeowners from seeking free government supported services from HUD-approved housing counseling agencies.

- 8 percent encouraged homeowners to create fraudulent documents or provide fraudulent information in order to improve their chances of getting a modification.

The majority of the companies investigated by the partnership were located in California or Florida, but doing business nationwide.

The vast majority of online organizations investigated were shown to be fraudulent or working on the fringes of lawful activity. Companies demanded large upfront fees and made outrageous promises on which they never delivered. Some of the practices discovered appear to violate state laws, federal fraud laws, and/or the Federal Trade Commission's new Mortgage Assistance Relief Services (MARS) rule. Evidence from several tests has already been turned over to the appropriate authorities for further investigation, while NFHA and its partners continue to work with enforcement agencies to address the pernicious practices uncovered during the project.

This report includes a brief description of the foreclosure crisis, the steps that the four partners in this project took to investigate scammers, what they found, and the recommendations they propose to begin addressing this problem.

Foreclosure Crisis Leads to Onslaught of Loan Modification Scams

Early on, fair housing and consumer advocates recognized irresponsible subprime lending as a disaster on the horizon and began calling upon the government and industry to supply the tools necessary to defend America's neighborhoods.[5] Sadly, advocates' calls were ignored. When the financial disaster finally started registering for the government and industry, it was too late for many homeowners. Although the foreclosure crisis began in urban core neighborhoods and communities of color, precipitated by reckless mortgage lending, the devastation has spread to suburban and rural communities throughout the United States, destroying the foundation of the American Dream and worsening an already precarious economic situation. Along with unemployment and underemployment, the massive devaluation caused by the housing crisis, including properties suddenly worth twenty to forty percent less than they were just a few years ago, has made mortgage debt unsustainable for many homeowners. Now, families, homeowners, neighborhoods, municipal governments and states are struggling to rebuild.

As the housing crisis continues, housing counseling agencies across the country have been inundated by wave after wave of delinquent homeowners facing foreclosure. Unfortunately, counselors discovered that many of these homeowners—duped into paying fees for services that are readily available free of charge—are now less able to qualify for legitimate loan modifications. Thus, counselors can only refer these homeowners to federal, state and local law enforcement for possible assistance.

At the same time that consumer protection attorneys at nonprofit organizations began investigating complaints, many people contacted the FTC to report being scammed and the FTC began its own undercover operations. However, because these companies tend to be fly-by-night, tracking them down—let alone holding them accountable for fraudulent activities—is difficult, if not impossible. As of November 19, 2010 the FTC brought 30 MARS type complaints while state and federal law enforcement agencies have brought hundreds more.[6]

A company offering loan modification services is known as a Mortgage Assistance Relief Service (MARS). Several state attorneys general and the federal government became aware of the prevalence of MARS scammers[7] and many states—including New York, Illinois, and California—passed laws to address these scammers, resulting in several successful prosecutions. Now the federal government also has MARS regulations—created and administered by the FTC—which went into full effect on January 31, 2011.

The FTC's new regulations are the first federal attempt to define what constitutes illegal activity by MARS providers. For MARS providers that are not law firms, the regulations completely prohibit upfront fees of any kind. MARS providers may only collect money when they deliver—and customers agree to—written offers of mortgage relief from the customers' lenders or

---

[5] See *Fair Housing Enforcement: Time for a Change*, 2009 Fair Housing Trends Report, National Fair Housing Alliance, May 1, 2009.

[6] FTC news release, "FTC Issues Final Rule to Protect Struggling Homeowners from Mortgage Relief Scams," November 19, 2010. www.ftc.gov/opa/2010/11/mars.shtm.

[7] Federal Register, "Part IV Federal Trade Commission 16 CFR 322 Mortgage Assistance Relief Services; Final Rule," December 1, 2010.

servicers. MARS providers may not collect any money at all from homeowners who do not accept such offers. The rule also prohibits MARS firms from making enticing, yet untrue, promises of low interest rates and low monthly payments. And under the new rule, MARS firms can no longer tell consumers to stop communicating with their lenders or to stop making monthly payments, unless the MARS firms also warn the consumers of the possibilities of foreclosure or other negative effects of nonpayment.

None of these prohibitions applies to an attorney who is licensed to practice in the homeowner's state of residence and whose practice is not limited solely to MARS work. This latter requirement is important. For example, the office of the Illinois Attorney General routinely takes to task attorneys advertising loan modifications but requiring upfront retainers because these attorneys limit their legal practices to loan modifications only. Such attorneys are warned to stop charging any fees unless and until they deliver mortgage modifications.

The FTC rule also prohibits upfront fees for other products of dubious value sometimes offered by MARS firms, such as an analysis of the initial loan documents for possible predatory loan characteristics, a product sometimes called a forensic loan audit.

The Partner Organizations for This Project

Organizations involved in this project have decades of experience conducting undercover investigations of discriminatory housing, mortgage lending, and homeowners insurance practices, producing evidence that has withstood comprehensive legal scrutiny. Thus, they are uniquely situated to pioneer investigation of home mortgage scam companies. All of the partners diverted their own funds from other enforcement work to develop the investigative methodology and multi-city enforcement strategy used in this project.

Founded in 1988, the **National Fair Housing Alliance** is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., NFHA, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

The **Connecticut Fair Housing Center** (CFHC) is a statewide nonprofit organization which promotes fair housing. CFHC's core mission is to ensure that all of Connecticut's residents have access to the housing of their choice. In response to the current foreclosure crisis, CFHC has expanded its core anti-discrimination work to include foreclosure prevention efforts and now regularly advises and represents homeowners facing foreclosure while collaborating with housing counselors, consumer attorneys, and policy makers on foreclosure prevention, responsible lending, and mortgage lending discrimination issues.

Housing Opportunities Made Equal of Virginia, Inc. (HOME) is a private, nonprofit fair housing organization founded in 1971. HOME serves Virginia with a mission of ensuring equal access to housing for all people. To meet this mission, HOME's fair housing staff works under federal and Virginia fair housing laws to address instances of discrimination in housing and to assist victims with their rights. HOME also assists Virginians with foreclosure counseling, down payment assistance, financial literacy, homebuyer education and public policy.

The **Miami Valley Fair Housing Center** (MVFHC) is a comprehensive full-service fair housing center in Dayton, Ohio, with experience in auditing and testing activities, anti-predatory lending investigation and remedy, mortgage rescue scam intervention, foreclosure prevention counseling, mortgage modifications as well as fair housing and fair lending education and outreach. MVFHC works throughout the Miami Valley to eliminate housing discrimination and ensure equal housing opportunity for all people in its region.

Although the HUD grant is now ending, most of the organizations involved in the project continue to work closely with law enforcement and government agencies in an effort to stunt the pervasiveness of this problem in their service delivery areas.

In Virginia, for example, HOME worked with the Virginia Office of the Attorney General (VOAG) by updating staff on HOME investigations throughout the project time period. HOME continues to work with the VOAG on possible enforcement action on completed investigations. HOME has also submitted investigation evidence on companies with cases pending with the Federal Trade Commission (FTC) and continues to work with the FTC on other collaborative efforts. In addition, HOME has reached out to other civil rights organizations on ways to collaborate to stop practices which appear to be in violation of state and federal laws.

In Ohio, MVFHC has regularly communicated matters it has uncovered to the Ohio Attorney General's Consumer Protection Section, for any appropriate follow-up. In addition, MVFHC collaborated with the U.S. Attorney's Office, the Ohio Attorney General's Office, HUD's Office of the Inspector General, the Internal Revenue Service, and the Federal Bureau of Investigation to sponsor a seminar, approved by the Ohio Supreme Court for three hours of continuing legal education, for attorneys and legal staff who want to be better equipped and knowledgeable about what mortgage fraud is and how to address it. MVFHC is also partnering with the HomeOwnership Center of Greater Dayton to continue its work to identify and intervene to prevent mortgage rescue scams over the next twelve months.

In Connecticut, CFHC has worked with several state agencies such as the Office of the Attorney General, the Department of Banking, the Department of Consumer Protection, and the Office of the Chief Disciplinary Counsel; non-profit agencies like HUD-approved counselors and legal services organizations; and private parties such as legitimate consumer attorneys. In addition, CFHC has begun a forum for attorneys representing homeowners in foreclosure to discuss litigation strategies, report foreclosure rescue scams, and get advice about how to help affected homeowners.

Identifying Scammers through Undercover Investigations

The use of testing in the field of fair housing has a long and respected history in identifying discriminatory policies and practices in rental housing, real estate sales, mortgage lending and homeowners insurance and has long been upheld by the courts as a valid and reliable means to collect evidence.[8] Testing is a method of investigation using individuals (testers) posing as customers seeking financial services. NFHA has successful methodologies for testing a variety of real estate and lending practices. In this investigation, NFHA and its partners were able to develop testing methodologies for other financial services and, in particular, for mortgage scam practices.

For this project, testers posed as homebuyers who were at various stages of delinquency on the mortgages of their primary residences. Trained to interact with potential scammers, all testers were instructed to remain objective and to seek the same information as would be sought by a typical homeowner. Test results were analyzed for possible violations, and additional investigations were conducted regarding business practices of any firms appearing suspect based upon initial testing.

The investigation included retaining complete digital recordings of screen shots of websites, including the sites' menus and links, a practice that proved crucial since web pages that were operational one day may well be gone or altered the next. Scammers frequently changed their websites' names and logos as well as what they purported to guarantee. Scammers also routinely changed their toll-free numbers, which meant that testing and follow up investigations needed to be completed rapidly. Retaining digital copies of website information allowed testers to preserve exact copies of scammers' written promises, useful in real time as testers talked on the phone to scammers' representatives, who typically held themselves out to be mortgage modification experts.

Multi-tiered Effort to Investigate Scammers

Fair housing advocates developed a multi-tiered effort to identify fraudulent service providers; other early responders included NeighborWorks America's education campaign (www.LoanScamAlert.org) and the HOPE NOW Alliance's toll-free hotline (1-888-995-HOPE) providing direct assistance to homeowners. HUD's FHIP grant to NFHA proved a valuable extension of these efforts. NFHA and its three partners joined with the Lawyers' Committee for Civil Rights Under Law, allowing for use of the Lawyers' Committee's database of scam complaints to identify targets for investigation and to share the names of companies identified by the project as potential scammers. NFHA and its partners also conducted independent research to identify potential scammers. The partners compiled a central registry of suspected scammers that eventually numbered more than 150. Of these, 80 firms were chosen, and 94 tests were conducted.

Each tester had a complete financial profile, including monthly income and expense information, mortgage payment details, employment profile and other characteristics. Each tester also had a significant hardship which required seeking a loan modification. Because of the project's geographic diversity, companies offering services to residents in Washington, DC, Maryland, Virginia, Ohio and Connecticut were tested.

---

[8] The use of fair housing testing evidence has uniformly been accepted by the courts, including the United States Supreme Court. See e.g. *Havens Realty Corp v. Coleman*, 455 U.S. 363, 373-374 (1982).

Making contact with a fraudulent loan modification service proved much easier than finding a legitimate service. The project targeted primarily those websites promising high rates of success, guaranteeing certain terms of modification, or trying to convince consumers of an organization's special relationship with the government. The project also examined particular online providers about which project partners had received previous complaints from local residents. In most cases, testers completed online applications. Some sites asked only for minimal information and others asked for detailed profiles, but all required telephone numbers and email addresses. Next, testers would often receive emails or telephone calls requesting additional information, usually from firms appearing to have no relationship whatsoever to the organizations to which the testers had initially applied online. It was commonplace for the information testers provided on the initial online applications to be sold or transferred to multiple firms. What follows is an example of a disclosure from an investigated scam site:

> ***Vendors****—We sometimes share some of the information we collect with companies, such as marketing partners or other third parties that provide certain services for us such as marketing services. We may use the personal information that you supply to us and we may work with other third parties to bring selected retail opportunities to you via direct mail, email and telemarketing. These companies only have access to personal information necessary to deliver their service, and may not share it with others or use it for any other purpose—these limits are specified in confidentiality and other legal agreements with us.*
>
> ***Who Do You Share My Information With?***
> *We may make your name, e-mail addresses, and telephone numbers available to other reputable businesses whose products or services may be of value to you.*

Once a single online application was completed, a tester might receive multiple phone calls and emails from the targeted firm, as well as from different firms all hustling for quick upfront fees ranging from $3,000 to $4,500. Several firms requested credit card numbers from testers for monthly charges in exchange for the services the organizations purported to offer.

Early in the investigation, scammers would typically ask a few basic questions and then promise or guarantee that they could secure loan modifications. Over time, as these types of companies came under increased scrutiny from federal and state law enforcement agencies, the organizations started to ask more detailed questions about testers' finances.

Even so, many firms often asserted during initial telephone calls that testers would qualify for reductions in mortgage payments—even though testers' debt-to-income ratios were so significantly out of line that they were very unlikely to qualify for any loan modifications. In fact, scammers often did more than pretend to predict testers would get loan modifications—they guaranteed them. One scammer said, "I should not be saying this, but I can already tell that you qualify for a loan mod." Another said, "We don't take cases we can't win, and we will take your case." Other scammers promised that if their "board[s] approved" the applications they could almost guarantee loan modifications. After one tester said she would rather not pay the fee and would try one of the free housing counseling groups, the scammer angrily replied, "Good luck. You'll call me back when they don't do anything for you."

Overall Results of Scam Tests

According to supervisors at the HOPE NOW Alliance, nearly 80 percent of the thousands of monthly hotline callers report that they first tried to get loan modifications or payment reductions from their own lenders. Some homeowners said when they first called their lenders they were still current in their payments but knew that they would be unable to sustain the payments. For example, a spouse might still be collecting unemployment insurance that was about to run out, or a homeowner might have had an unexpected medical expense, leaving him unable to make a full mortgage payment. Although these homeowners were trying to be responsible by negotiating—in advance—lower rates with their lenders, these homeowners reported that their banks or servicers said there was no mechanism to reduce mortgage rates or monthly payments unless and until homeowners were delinquent.

Hotline supervisors said some of their callers actually negotiated trial modifications with their lenders or servicers for periods of three to four months. When such trial modifications expired, the homeowners not only did not know how to proceed but also could not reach anyone at their lenders or servicers. Predictably—unable to find anyone authorized to make their loan modifications permanent—these homeowners eventually fell back into foreclosure.

Unable to find assistance from their own lenders, homeowners often searched the internet for help with loan modifications, often primed and ready to listen to anyone who claimed to supply guarantees of quick service, low rates, new lower house payments or the elimination of all delinquent debt.

The analysis of the 94 test reports and investigations conducted by all four fair housing organizations uncovered common tactics used by scammers to entice homeowners to use their services.

- 59 percent of the companies required an upfront fee to start work or required a low initial fee to conduct minimal work on behalf of the homeowner, such as reviewing loan documents.

- 48 percent of the companies guaranteed or promised they could secure a loan modification even before learning about the homeowners' financial limitations.

- 24 percent of the companies advised or encouraged homeowners to stop making their mortgage payments or to stop contacting their lenders.

- 17 percent guaranteed a new, much lower interest rate ranging between two and 6 percent on modified loans.

- 12 percent discouraged homeowners from seeking free government supported services from HUD-approved housing counseling agencies.

- 8 percent encouraged homeowners to create fraudulent documents or provide fraudulent information in order to improve their chances of getting a modification.

The majority of the companies investigated by the partnership were located in California or Florida, but doing business nationwide. The following sections describe these tactics in more detail.

Telling Homeowners to Pay Scammers, Not Their Lenders

In consultation with the staff of the HOPE NOW Alliance, this project's staff learned that many homeowners reported to hotline counselors that they had done exactly what a scammer had suggested: they stopped paying their mortgages, thinking scammers were actually working on their behalf, and had sent as much as $4,000 or more to scammers as upfront fees—before any work had been done on their behalf. Invariably these homeowners would receive foreclosure notices from their lenders because of non-payment.

> ***"I'd be breaking the law if I told you to stop paying your mortgage, but friend-to-friend, you won't get a loan modification until you are behind on your mortgage."***

The evidence gathered by the project documents this devious practice as being common to many mortgage scammers. Scammers strongly encouraged testers to default on their mortgages, telling testers that if they did not miss payments, lenders would have no incentive to offer reduced-payment deals.

Some notable quotes from scammers tested in this project include:

- "I cannot legally tell you this, but if you are not behind on your mortgage, you cannot get a loan modification;"
- "It may be illegal for me to say this, but you need to stop paying your mortgage if you want to get a loan modification;"
- "I'd be breaking the law if I told you to stop paying your mortgage, but friend-to-friend, you won't get a loan modification until you are behind on your mortgage;"
- "Your loan will get priority attention if you are past due. The lender doesn't want to work with you unless you are 60–90 days past due;"
- "We don't take clients who are current on their mortgage. The [lender] won't even look at you if you aren't late."

Throughout the investigation, many scammers demanded full payment of upfront fees before they would do any work. Many of the firms tested professed to be law firms and called the upfront fees "retainers." Some explained that the amount of money might seem high but alleged that because it was a "flat fee," it was therefore more economical than hourly rates typically charged for legal services. Most agents also wanted testers to fill out detailed financial profiles and provided testers with lists of documents to be submitted, often including proof of employment, utility bills, tax returns, driver's licenses, third party authorization forms, and bank authorizations for payment.

Often the fee agreement given to testers promised a "money-back guarantee" if the tester was not satisfied; however, in reality, customers tend not to receive a refund. In December, 2010, the FTC noted that a recent survey of state and local consumer agencies found that "the fastest growing category of complaints concerned the failure of MARS providers to fulfill their promises to help save consumers' homes from foreclosure."[9]

The investigation found that scammers made various specious promises.

- A typical pitch was that the homeowner would owe nothing more than a reduced monthly mortgage amount with a new, low interest rate—and that all delinquent payments, fees, penalties, etc. would be eliminated.

- Some agents said the past due mortgage payments and lender's attorney fees would be tacked on to the loan amount, but the financial ramifications of this arrangement were never explained.

- Scammers promised interest rates as low as two percent and as high as five percent and routinely made reference to former clients whom they claimed to have helped in achieving rates as low as two percent.

Encouraging Homeowners to Falsify Data

As testers would list their monthly financial income and expense commitments for the scammers—everything from salary to car payments and credit card debt—the scammers would simultaneously calculate the testers' debt-to-income ratios. Many tester profiles involved extremely high debt-to-income ratios—so high that no legitimate mortgage modification company would have qualified them for loan modifications. However, agents were repeatedly quick to suggest changes to testers' financial data in order to improve testers' chances of getting loan modifications. Of course this meant that scammers were telling testers to commit crimes, by knowingly submitting fraudulent data to banks or servicers.

One agent said, "If you don't qualify, we modify expenses for you. They [the lenders] don't check it. No one knows what you spend on groceries. We make you qualify by playing with the numbers."

Repeatedly, scammers had no qualms about recommending creative ways to cheat on loan modification applications. Often a solution was simply to manufacture additional income. One scammer recommended that the tester claim a fictional renter paying $500 in rent per month. The scammer noted there were enough bedrooms in the house for the homeowner to have plausibly rented out one of them. The scammer emailed a dummy rental agreement to the homeowner to include with the

[9] FTC rule 16C CFR 322 , page 75096.

mortgage modification package to be submitted to the lender. The scammer also suggested that the tester put $500 into her own checking account at the beginning of every month in case a lender checked for evidence of a renter. The agent assured the tester that she did not need to keep the money in the account for more than a few days each month.

Another suggestion from a scammer for fraudulently increasing household income was to have the homeowner pretend she "had a little business" on the side for her unemployed husband to run out of their home. The scammer told the tester she needed more income and that a fictional business would help her secure a loan modification. Another agent said that expenses like utilities and groceries were "just an opinion" and that "we can manipulate those." And one agent said, "If you don't qualify, we modify expenses for you. They [the lenders] don't check it. No one knows what you spend on groceries. We make you qualify by playing with the numbers."

Making Broken Promises and Bogus Guarantees

More than one tester had a scammer offer a "fresh start." Frequently, testers found scam agents who claimed to sympathize with their situations and told stories of former clients' hardships that they claimed to have helped resolve as well as stories purportedly about their own family hardships in dealing with health issues, job loss and the need for loan modifications. For example:

One agent justified his fee by saying, "It's expensive in relative terms, but our success rate is 100%."

- Scammers made promises about their success rate both on their websites and on the telephone. The websites contained pages and pages of promises of success. One firm's site claimed it "enjoys a 97% success rate" and said it had "saved over 2,000 homes over the past 5 years and perfected the process."

- Another claimed it had helped over 250,000 homeowners and the modification would be done in two to six weeks.

- All too often, terms were used to make the homeowner believe the firm was uniquely qualified to provide assistance. One agent justifying his fee said, "It's expensive in relative terms, but our success rate is 100%." Other results offered by agents and purported as guaranteed boasted of success rates at "85%," "97.35%" and "100% success rate on cases we take."

Time and time again, testers heard variations of the claims "We don't take cases we can't win" or "If you qualify, you will get a loan modification." Very few companies would truthfully say they could not guarantee loan modifications, promising instead to do their best work.

Below are a few examples of scenarios that played out multiple times when testers sought assistance from MARS companies advertising on the internet.

- An agent explained to a tester that he should discontinue making his mortgage payments because the bank had no incentive to modify a loan that was being paid. He explained that unless homeowners are 90 days late, the bank does not work with them. The agent went on to explain that the money for the mortgage could be used for other expenses or items that the tester wanted to purchase.

- Another agent stated that any loan with an interest rate over 5 percent is considered a predatory loan and the banks are aware of this. The agent explained that since the tester's rate was 5.25 percent, he would be able to secure a 30-year fixed rate loan for the tester, at an annual percentage rate of 3 percent, even though the tester's profile was constructed so that most reputable MARS firms would find it to be ineligible for a loan modification.

- One agent returned a call to a tester with "great news." The agent stated he had spoken with the tester's lender and had negotiated a new payment of $1,116 per month that included the principal, interest, taxes, and insurance. The original monthly payment presented by the tester was $1,411, not including taxes and insurance. The agent explained that his firm's computer was directly tied into the lender's computers and this made the process much faster; however, the agent did not realize that he was working with a fictitious name provided by the tester and without a valid loan number.

Scammers also frequently claimed positive ratings or affiliations with agencies such as the Better Business Bureau, TrustLink and state bar associations in an apparent attempt to use these organizations' positive public perceptions to entice the tester into using their companies.

Blatant Violations of Recent FTC Mortgage Assistance Relief Services Regulations

Of the seven tests completed after January 31, 2011, five of the seven firms appear to be operating in violation of the new federal regulation regarding MARS. For two firms, there was not enough evidence to make a clear determination.

The new regulations limit an attorney's actions in several ways: if an attorney charges an upfront fee, the attorney cannot draw down on it until a service is rendered or an expense is due. Also, the attorney's law practice must be in the same state as the homeowner or property, a requirement that is routinely ignored. In February, 2011, a tester spoke with an agent who proudly spelled the name of the chief lawyer for his firm and urged the tester to check out the link to an A-rating for the attorney from the Better Business Bureau as well as a link showing that the attorney was in compliance with his state's bar association. But the state bar association that licensed the attorney was in Florida while the tester and the subject house were in Ohio.

The new regulations prohibit what the investigation has found to have been the modus operandi of almost all of the 80 tested firms: fee-splitting between a scammer's agent, who makes initial telephone contact after receiving an online application and who identifies him- or herself as a legal assistant, paralegal or intake specialist, and attorneys in the agent's firm whom the agent promises will do actual negotiations with the homeowner's lender. Such fee-splitting between lawyers and non-lawyers is expressly forbidden by the FTC regulations.

Scammers are thriving because so many homeowners in default or facing foreclosure are desperate to save their homes. Scammers ask to be paid with credit cards or cash so that it is difficult or impossible to recover these fees. One scammer told a tester that his firm completed 450 applications a month. The upfront fee for that firm is $2,850. Assuming those numbers are accurate, the firm is grossing more than $1.2 million a month in upfront fees.

Recommendations

Industry and government at all levels need to do more to protect unsuspecting and desperate homeowners from being preyed upon during their hour of need. Based upon the work encompassed in this project, the National Fair Housing Alliance and its collaborative partners make the recommendations below.

FTC regulations must be strengthened to prohibit upfront fees for all MARS providers *without exception*. California used to allow attorneys to charge retainers while all other providers were not allowed to charge these fees, but California state law now prohibits anyone from charging a fee before a service is completed, no matter what term—upfront fee or retainer—is used to describe it. Federal regulations should be the same.

The federal government must do more to protect the public from loan modification scams. Congress should appropriate more funds to law enforcement agencies targeting mortgage rescue scams, so they can focus both on large national companies as well as on smaller local companies, all of which prey on unsuspecting homeowners in need of assistance with their mortgage payments. The FTC and the U.S. Department of Justice should partner directly with nonprofit organizations conducting scam investigations, so that telephone conversations with possible scammers may be recorded in states requiring two-party consent. And federal enforcement agencies should implement an easier and streamlined complaint process for homeowners who they feel they have been victims of mortgage rescue scams; currently the process is so time-consuming that often scammers have changed their names, addresses and phone numbers by the time enforcement agencies receive complaints.

The federal government must do more to educate the public about loan modification scams. The federal government should provide additional funding to HUD-approved housing counseling agencies to hire and train more counselors in a wide range of languages so that homeowners facing default or foreclosure can access honest, reliable, expedient assistance free of charge. The government should continue to support a strong multi-media campaign including both public service and paid advertising to educate homeowners that their first line of help is a HUD-approved housing counselor. The public education message must include a strong warning against upfront fees by any MARS provider.

The financial services industry must do more to encourage and implement loan modifications. Lenders and servicers must hire and properly train more people about how loan modification programs are intended to operate, so they can provide accurate and timely assistance to homeowners in crisis.

Internet search engines must limit their advertising to HUD-approved counseling agencies, law firms or attorneys who can prove that they have no complaints pending against them, that they fully comply with MARS and other state requirements, and that they provide a full range of legal services in addition to MARS services. Internet search engines should also make sure that credible websites appear first in any search results. These sites include www.makinghomeaffordable.gov, the Treasury Department and HUD's website, and www.ftc.gov, the Federal Trade Commission's site. Additional such sites are those belonging to all HUD-approved housing counseling agencies as well as HOPE NOW.

The American Bar Association and state bar associations should work to implement stronger ethics requirements regarding practices to ensure that law firms working on retainer for mortgage modification services are following requirements under law and meeting their clients' and the public's needs.

EQUAL HOUSING OPPORTUNITY

Disclaimer: The work that provided the basis for this publication was supported by funding under a grant/cooperative agreement with the U.S. Department of Housing & Urban Development. The substance and findings of this work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in the publication.