

Lenders Compliance Group

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FTC Adopts New Rules Banning Deceptive Mortgage Advertisements

The Federal Trade Commission (FTC) has adopted the Final Rule (Rule) that bans deceptive claims in mortgage loan advertisements.

According to the FTC, the Rule covers all entities that are under the agency's authority that advertise mortgages, including: mortgage lenders, brokers and servicers; real estate agents and brokers; advertising agencies; and home builders. Financial institutions such as banks, thrifts and credit unions are not covered.

The FTC has substantial law enforcement experience with unfair or deceptive practices involving mortgage advertising practices or violations of Truth in Lending Act mortgage advertising.

Advertising includes, but is not limited to:

- Print advertisements
- Unsolicited e-mails
- Direct mail marketing
- Internet advertisements and Web sites
- Telemarketing
- In-person sales presentations

Effective: August 19, 2011

Claims and Violations

Alleged violations have included deceptive claims - often made to subprime borrowers - about key terms and other aspects of the loans, such as:

- Misrepresentations of the loan amount or the amount of cash disbursed.
- Claims for loans with specified terms, when no loans with those terms were available from the advertiser.
- Claims of low "teaser" rates and payment amounts, without disclosing that the rates and payments would increase substantially after a limited period of time.
- Misrepresentations that rates were fixed for the full term of the loan.
- Misrepresentations about, or failure to adequately disclose, the existence of a prepayment penalty or large balloon payment due at the end of the loan.
- Claims about the monthly payment amounts that the borrower would owe, without disclosing the existence, cost, and terms of credit insurance products "packed" into the loan.
- Claims that the loans were amortizing, when, in fact, they involved interest-only transactions.
- Claims of mortgage payment amounts that failed to include loan fees and closing costs of the kind typically included in loan amounts.
- False or misleading savings claims in high loan-to-value loans.
- False or misleading claims regarding the terms or nature of interest rate lock-ins.
- False claims that an entity was a national mortgage lender.
- Failure to disclose adequately that the advertiser, not the consumer's current lender, was offering the mortgage.
- False or misleading claims to consumers that they were "pre-approved" for mortgage loans.

Outline of Final Rule

- Covers misrepresentations about interest charged for the product, including, but not limited to, misrepresentations about (1) the amount of interest owed each month that is included in the consumer's payments, loan amount, or total amount due; or (2) the interest owed each month that is not included in the payments but is instead added to the total amount due.
- Bars misrepresentations about the APR, simple annual rate, periodic rate, or any other rate, including, but not limited to, a payment rate.
- Bars misrepresentations about the existence, nature, or amount of fees or costs associated with any mortgage credit product. It also prohibits false or misleading claims that no fees are charged.

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▼ September (1)

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► June (5)

► May (7)

- Covers misrepresentations about terms associated with additional products or features that may be sold in conjunction with a mortgage credit product.
- Covers misrepresentations relating to the taxes or insurance associated with a mortgage credit product.
- Bars misrepresentations about the existence or amount of any penalty for making prepayments on the mortgage.
- Prohibits misrepresentations pertaining to the variability of interest, payments, or other terms of mortgage credit products, including, but not limited to, misrepresentations using the word "fixed" when terms are, in fact, variable or limited in duration.
- Bars false or misleading comparisons between rates or payments, including, but not limited to, comparisons involving savings.
- Prohibits misrepresentations about the type of mortgage credit product being offered (i.e., false claims that a mortgage is fully amortizing).
- Bars misrepresentations about the amount of the obligation or the existence, nature, or amount of cash or credit the consumer could receive from the loan.
- Prohibits misrepresentations about the existence, number, amount, or timing of any minimum or required payments.
- Prohibits misrepresentations about the potential for default on the mortgage credit product, including, but not limited to, misrepresentations about the circumstances under which the consumer could default for nonpayment of taxes or insurance, failure to maintain the property, or non-compliance with other obligations.
- Bars misrepresentations about the effectiveness of the mortgage credit product in helping consumers resolve problems in paying debts.
- Prohibits misrepresentations about the association between a mortgage credit product or a provider of such product and any other person or program, including, but not limited to, any affiliation with an organizational or governmental program, benefit, or entity.
- Covers misrepresentations about the source of the mortgage credit product and the commercial communications for it, including, but not limited to, claims that the communication is made by or on behalf of the consumer's current mortgage lender or servicer.
- Prohibits misrepresentations about the consumer's right to reside in the dwelling that is the subject of the mortgage credit product, including, but not limited to, false or misleading claims about how long or under what conditions a consumer can stay in the dwelling.
- Bars misrepresentations about the consumer's ability or likelihood to obtain any mortgage credit product or term, or a refinancing or modification of any mortgage credit product or term. This includes false or misleading claims about whether the consumer has been preapproved or guaranteed for any such product or term.
- Bars misrepresentations about the availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including, but not limited to, the qualifications of those offering the services or advice.

Dodd-Frank and the CFPB

The Dodd-Frank Act did not remove or revise the FTC's rulemaking authority prior to the July 21, 2011 transfer date of certain enumerated laws to the Consumer Financial Protection Bureau (CFPB). The FTC has concluded that it is in the public interest to implement the Rule on the effective date.

The Rule essentially codifies existing deception law under Section 5 of the FTC Act. The FTC, the CFPB, and the states will enforce the Rule and obtain civil penalties for violations.

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Federal Trade Commission

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- ▶ February (14)
- ▶ January (13)
- ▶ 2010 (86)
- ▶ 2009 (8)

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