



FTC's Mortgage Acts and Practices Advertising Rule May Not Help Consumers

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The FTC recently issued the Mortgage Acts and Practices – Advertising Final Rule. This rule is the FTC's response to a congressional directive to address unfair or deceptive acts in the mortgage loan industry. Briefly, the MAP Rule (1) gives the FTC and state authorities the ability to seek civil penalties for deceptive mortgage advertising, (2) clarifies and provides examples of what constitutes deceptive mortgage advertising, and (3) institutes record-keeping requirements on mortgage advertisers.

FTC Commissioner Edith Ramirez asserted in her concurring statement that the “[t]he MAP Rule is narrow in scope — addressing only the advertising phase of the mortgage lifecycle by those subject to the Federal Trade Commission’s jurisdiction — and does not render unlawful any conduct that is not already banned by the prohibition on deception in Section 5 of the FTC Act.”

At first blush, one might think that the new rule merely states the obvious, i.e. that deceptive advertising, unlawful in other industries, is also unlawful in the mortgage industry and that the rule does nothing more than to provide guidelines for what may be considered unfair or deceptive. If that were all, the rule might have deserved a resounding “duh.”

However, the record-keeping requirements that are a part of this rule should instead inspire an “ugh.” The MAP Rule requires anyone subject to the rule (essentially, everyone involved in mortgage advertising with the exception of banks and other financial institutions specifically exempted from FTC oversight) to maintain records of:

- Commercial communications, sales scripts, training materials, and marketing materials regarding any term of any mortgage credit products; and
 - Documents describing or evidencing all mortgage credit products and all additional products or services that may be offered in conjunction with the products at the time of the communication.
- Under the rule, this documentation must be maintained for 24 months. And failure to keep these records could constitute an independent violation of the MAP Rule.

Considering that the MAP Rule touches everyone in commercial mortgage communications who is not specifically exempted, these record-keeping requirements are hefty. Not just lenders and brokers, but also real estate agents and brokers, ad agencies, affiliate marketers, and lead generators will be subject to the rule as long as they are involved in disseminating information on mortgage products. Compliance will require advertisers to monitor and keep records of downstream ads and will require the tracking of weekly changes in mortgage rates regardless of whether one is acting on behalf of loan originators.

The FTC justifies this burden as helpful in enforcement actions. But the costs of compliance with the MAP Rule outweigh this negligible benefit. How many companies that were once involved in dissemination of mortgage product information will simply decide not to communicate? This may be especially true, considering that the record-keeping requirements come with their own penalty for compliance failures. The result will be that the MAP Rule will discourage real estate agents, brokers and others from providing mortgage-related information to clients. It will create barriers to entry for those not large enough to afford a compliance program.



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The FTC, in its press announcement on the final MAP Rule, claims the rule “is designed to create a level playing field for legitimate businesses to compete in the marketplace.” Instead, it appears that the FTC is reducing the size of the playing field by creating compliance costs that will discourage market entrants/players. How will the consumer benefit from fewer options?

Given the fact that the record-keeping requirements were not a part of the congressional directive regarding mortgage ads, we look forward to seeing someone in the industry challenge them in court.

FTC Beat is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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