

# Lenders Compliance Group

Wednesday, November 21, 2012

## CFPB and FTC: Warning Letters - Misleading Advertisements

The Consumer Financial Protection Bureau (CFPB), in coordination with the Federal Trade Commission (FTC), has issued warning letters to twelve mortgage lenders and mortgage brokers advising them to remove or revise misleading advertisements. The warnings concern advertisements that target veterans, seniors, and other consumers.\*

Additionally, the CFPB announced that it has begun formal investigations of six companies believed to have committed more serious violations of the law.

After reviewing hundreds of mortgage advertisements, the FTC staff has also sent warning letters to twenty companies, warning them that their ads may be deceptive. The FTC sent its warning letters to real estate agents, home builders, and lead generators, urging them to review their advertisements for compliance with the Mortgage Acts and Practices Advertising Rule and the FTC Act.

The collaboration between the CFPB and the FTC are characterized as a "sweep" - a review conducted by these agencies of about 800 "randomly selected mortgage-related ads across the country, including ads for mortgage loans, refinancing, and reverse mortgages." The agencies looked at ads in newspapers, on the Internet, and from mail solicitations, and advertisements that were the subject of consumer complaints.

I really can't emphasize enough how important it is to control all the advertising your firm publishes - and I mean advertisements in any media. Just adopting a policy and procedure is insufficient.

In my view, **several components must be included in advertising compliance:**

a formally adopted **policy and procedure;**

an **advertising manual** that is signed for and attested to by the employee;

**checklists, model forms, ad formats, and authorizations;**

an **easy reference guide** for employees;

periodic **training;**

and **auditing.**

If you are not implementing at least these risk management practices, you are certainly falling short of the controls you need to manage the regulatory challenges posed in advertising of mortgage loan products.

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### The Sweep

The following problems were identified by the sweep:

**Potential misrepresentations about government affiliation.**

For example, some of the ads for mortgage products contained official-looking seals or logos, or have other characteristics that may be interpreted by consumers as indicating a government affiliation (i.e., advertisements containing statements, images, symbols, and abbreviations suggesting that an advertiser is affiliated with a government agency).

**Potentially inaccurate information about interest rates.** For example, some ads promoted low rates that may have misled consumers about the terms of the product actually offered. These are advertisements offering a very low "fixed" mortgage rate, without discussing significant loan terms (i.e., advertisements "guaranteeing" approval and offering very low monthly payments, without discussing significant conditions on these offers).

**Potentially misleading statements concerning the costs of reverse mortgages.** For example, some ads for reverse mortgage products claimed that a consumer will have no payments in connection with the product, even though consumers with a reverse mortgage are commonly required to continue to make monthly or other periodic tax or insurance payments, and may risk default if the payments aren't made.

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Potential misrepresentations about the amount of cash or credit available to a consumer. For example, some ads contained a mock check and/or suggested that a consumer has been pre-approved to receive a certain amount of money in connection with refinancing their mortgage or taking out a reverse mortgage, when a number of additional steps would customarily need to be completed before the consumer would qualify for the loan.

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### The Rule

The [Mortgage Acts and Practices Advertising Rule](#) ("**MAP-AD Rule**" or "**MAP Rule**"), known as **Regulation N** since rulemaking authority for it transferred from the FTC to the CFPB, is applied to advertising compliance relating to mortgage loan products. (We have discussed the MAP Rule previously. See, for instance, our [September 2, 2011](#) newsletter, [FTC: Adopts Mortgage Advertising Rule](#).)

The MAP Rule prohibits material misrepresentations in advertising or any other commercial communication regarding consumer mortgages. The FTC and the CFPB share enforcement authority over non-bank mortgage advertisers such as mortgage lenders, brokers, servicers, and advertising agencies. Mortgage advertisers that violate the MAP Rule may be required to pay civil penalties. HUD mortgagees may be subject to additional sanctions by the Mortgagee Review Board.

The MAP Rule was issued as a [Final Rule](#) by the FTC on July 22, 2011 (the day after the CFPB received its enumerated authorities) and given the [compliance effective date of August 19, 2011](#). On July 21, 2011, the Commission's rulemaking authority for the MAP Rule transferred to the CFPB, but the FTC, the CFPB, and the states all have authority to enforce the MAP Rule.

It applies to all entities within the FTC's jurisdiction that advertise mortgages - mortgage lenders, brokers, and servicers; real estate agents and brokers; advertising agencies; home builders; lead generators; rate aggregators; and others. The MAP Rule, however, does not cover banks, thrifts, federal credit unions, and other entities that are outside the Commission's jurisdiction.

The [MAP Rule lists 19 examples of prohibited deceptive claims](#), including misrepresentations about the:

- existence, nature, or amount of fees or costs to the consumer associated with the mortgage;
- terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage;
- variability of interest, payments, or other terms of the mortgage;
- type of mortgage offered;
- source of an advertisement or other commercial communication; and
- consumer's ability or likelihood of obtaining a refinancing or modification of a mortgage or any of its terms.

Section 5 of the FTC Act generally prohibits advertisers from making false or misleading claims. The MAP Rule parallels this legal principle and further allows the FTC to seek appropriate relief (including civil penalties) against those who engage in deceptive mortgage advertising.

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### The Warning

The CFPB's generic warning letter and the FTC's generic warning letter do not substantively differ, although the CFPB has issued an additional warning letter regarding misleading advertising that targets veterans. In general, the agencies state in their warning letters that determinations have not yet been made regarding whether the advertisements violate the law, and that by sending the warning letter neither the CFPB nor the FTC waive their right to take any action based on past or future violations of federal law, including violations contained in, or relating to, the advertisement(s) that may be the subject of the warning letter.

#### Targeting Consumers (CFPB)

Here's the salient text of the CFPB's generic warning letter regarding misleading advertising that targets consumers:

This letter is to advise you that you may have advertised a mortgage credit product or service in a misleading manner in violation of federal law.

The CFPB enforces federal consumer financial laws, including laws that prohibit material misrepresentations in advertisements for mortgage credit products. The Mortgage Acts and Practices – Advertising rule, or "MAP Rule," provides that it is a violation of federal law for any person to make a "material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product." A mortgage credit product is "any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes." The CFPB also enforces 12 U.S.C. § 5536(a)(1), which prohibits unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services, including in the marketing or sale of mortgage credit products.

We have reviewed one or more of your mortgage advertisements and it appears that they may violate federal law to the extent that they: (1) suggest, through the incorporation of "Government Loan Department" in your company's return address at the top of the advertisement, the use of a logo very similar to that of the United States Department

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of Housing and Urban Development, and the prominent display of a website address that includes the initials of the Federal Housing Administration, that your company is affiliated with a government agency or government-sponsored program; (2) suggest that consumers who enter into a reverse mortgage will have "no payments," notwithstanding that such consumers may continue to be responsible for tax and insurance payments; (3) indicate that a consumer is pre-approved for, or guaranteed, specific loan rates or terms; and (4) indicate that a consumer entering into a reverse mortgage will have the opportunity to receive a discount on existing credit card debt in connection with the loan. Copies of the advertisements referred to in this letter are attached hereto for your reference. While this letter refers specifically only to the attached advertisements, you should also consider whether other advertising you disseminate in any form, including internet advertisements, may require modification in order to comply with federal laws.

### Targeting Consumers (FTC)

Here's the salient text of the FTC's generic warning letter regarding misleading advertising that targets consumers:

This letter is to advise you that you may have advertised a mortgage financing product or service in a misleading manner.

The Federal Trade Commission (FTC), the nation's consumer protection agency, enforces Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC Act requires that advertising, including claims about mortgage financing, be truthful and non-misleading. The FTC also enforces the Mortgage Acts and Practices-Advertising Rule, Regulation N (MAP-AD Rule), 12 C.F.R. Part 1014, which specifically prohibits material misrepresentations in any commercial communication regarding the terms of any mortgage financing.

FTC staff attorneys have evaluated your advertisements or other commercial communications for mortgage financing. They have reviewed your [website at www.xyz.com; your ads in XYZ paper; or your email solicitations] and think the ad may include claims that violate Section 5 of the FTC Act or the MAP-AD Rule.

We have attached a copy of one of your ads, and direct your attention to [statements and images; or statements] in the ad [that may suggest your Company is affiliated with a government agency or government-sponsored loan program; that may offer unqualified low rates; that may offer unqualified low monthly payments; that may suggest no fees or costs are associated with the mortgage financing offered; or that may suggest guaranteed approval for the mortgage financing offered].

### Targeting Veterans (CFPB)

Here's the salient text of the CFPB's warning letter regarding misleading advertising that targets veterans:

This letter is to advise you that you may have advertised a mortgage credit product or service in a misleading manner in violation of federal law.

The CFPB enforces federal consumer financial laws, including laws that prohibit material misrepresentations in advertisements for mortgage credit products. The Mortgage Acts and Practices – Advertising rule, or "MAP Rule," provides that it is a violation of federal law for any person to make a "material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product." A mortgage credit product is "any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes." The CFPB also enforces 12 U.S.C. § 5536(a)(1), which prohibits unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services, including in the marketing or sale of mortgage credit products.

We have reviewed one or more of your mortgage advertisements and it appears that they may violate federal law to the extent that they: (1) suggest, through the use of a logo very similar to that of the United States Department of Veterans Affairs, the prominent display of a website address that includes the acronym "VA," and the use of language stating "the VA is offering you" the advertised product, that your company is affiliated with a government agency or government-sponsored program; (2) indicate that a specific "fixed" rate is available for a "30 year" loan when, in fact, the stated rate is for an adjustable rate loan; and (3) suggest that the rate being offered is part of an "economic stimulus plan" that will expire shortly, notwithstanding that the Department of Veterans Affairs' loan guarantee programs do not have an expiration date. Copies of the advertisements referred to in this letter are attached hereto for your reference. While this letter refers specifically only to the attached advertisements, you should also consider whether other advertising you disseminate in any form, including internet advertisements, may require modification in order to comply with federal laws.

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### The Remedy

The CFPB urges you to review your marketing materials to ensure that you comply with the applicable laws and the FTC recommends that you review your ads and other commercial communications for mortgage financing, on your website, or in newspapers and in any other medium, to ensure they comply with the FTC Act and the MAP Rule.

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### Library



Warning Letter - Misleading Advertising - Target: Consumers (CFPB)  
Warning Letter - Misleading Advertising - Target: Veterans (CFPB)  
Warning Letter - Misleading Advertising - Target: Consumers (FTC)

Consumer Financial Protection Bureau warn Companies against

Consumer Financial Protection Bureau Warns Companies Against  
Misleading Consumers with False Mortgage Advertisements  
Press Release (11/19/12)

FTC Warns Mortgage Advertisers that Their Ads May Violate Federal Law  
Press Release (11/19/12)

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\*Jonathan Fox is the President & Managing Director of Lenders Compliance Group



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