

THE MORTGAGE ASSISTANCE RELIEF SERVICES RULE

A COMPLIANCE GUIDE FOR BUSINESS



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Homeowners facing foreclosure are often desperate for a way to hold on to their homes. Some companies claim they can help fight off foreclosure by negotiating new mortgage terms with lenders or servicers. The Federal Trade Commission (FTC), the nation's consumer protection agency, has issued a Rule to curb unfair and deceptive practices associated with mortgage assistance relief services. If you offer mortgage assistance relief services – or work with companies that do – it's wise to know about the provisions of the Mortgage Assistance Relief Services (MARS) Rule.

This guide, which represents the views of FTC staff and is not binding on the Commission, offers tips on complying with the Rule. Here are some compliance highlights:

- **It's illegal to charge upfront fees.** You can't collect money from a customer unless you deliver – and the customer agrees to – a written offer of mortgage relief from the customer's lender or servicer.
- **You must clearly and prominently disclose certain information before you sign people up for your services.** You must tell them upfront key information about your services, including:
 - ▶ the total cost,
 - ▶ that they can stop using your services at any time,
 - ▶ that you're not associated with the government or their lender, and
 - ▶ that their lender may not agree to change the terms of their mortgage.
- **If you advise someone not to pay his or her mortgage, you must clearly and prominently disclose the negative consequences that could result.** You must warn customers that failure to pay could result in the loss of their home or damage to their credit rating.

- **Don't advise customers to stop communicating with their lender or servicer.** Under the Rule, it's illegal to tell people they shouldn't communicate with their lender or servicer.
- **You must disclose key information to your customer if you forward an offer of mortgage relief from a lender or servicer.** You must give your customer a written notice from the lender or servicer describing all material differences between the terms of the offer and the customer's current loan. You also have to tell your customer that if the lender or servicer's offer isn't acceptable to them, they don't have to pay your fee.
- **Don't misrepresent your services.** Under the Rule, it's illegal to make claims that are false, misleading, or unsubstantiated.

? IS MY BUSINESS COVERED BY THE RULE?

If your business is a for-profit provider of mortgage assistance relief services, the Rule applies to you. Bona fide non-profit organizations aren't covered, but the Rule applies to companies that falsely claim non-profit status.

The Rule defines "mortgage assistance relief service" as a service, plan, or program that is represented, expressly or by implication, to help homeowners prevent or postpone foreclosure or help them get other kinds of relief, like loan modifications, forbearance agreements, short sales, deeds-in-lieu of foreclosure, or extensions of time to cure defaults or reinstate loans. The Rule applies whether you work directly with consumers' lenders or servicers to get mortgage relief or you offer services to help consumers do it on their own (for example, by conducting a "forensic audit" or other review of consumers' loan documents).

How does the Rule apply to businesses in the mortgage industry?

- **Mortgage Brokers.** The Rule covers mortgage brokers who promote loan origination or refinancing transactions as a way for homeowners to avoid foreclosure. Mortgage brokers who don't promote their services this way generally aren't covered by the Rule.
- **Real Estate Agents.** The Rule covers real estate agents who promote their services as a way to help consumers to avoid foreclosure, for example, by getting a lender's approval for a short sale. However, the Rule doesn't cover real estate agents who don't promote their services this way, and who only provide services to help people in buying or selling homes – like listing homes for sale, showing homes, or finding homes that meet buyers' needs.
- **Lenders and servicers.** The Rule doesn't cover lenders and servicers that offer mortgage assistance relief services in connection with loans they own or service. For example, the Rule wouldn't apply if a business that services a homeowner's loan helps the homeowner in modifying the loan to avoid foreclosure.
- **Accountants and Financial Planners.** The Rule doesn't cover professionals like accountants or financial planners as long as they don't claim expressly or by implication that using their services will help a homeowner get a loan modification or other mortgage relief.
- **Attorneys.** The Rule has special provisions for attorneys who provide mortgage assistance relief services. Read *Mortgage Assistance Relief Services Rule: A Compliance Guide for Lawyers* at www.business.ftc.gov to find out more. Having an attorney on your staff or using outside

attorneys to perform some of your services doesn't exempt you from the Rule. Nor does having an attorney place fees in a client trust account, by itself, allow you to collect fees in advance.

Even if you don't provide mortgage assistance relief services, you still may have obligations under the Rule. It's illegal to provide "substantial assistance" to someone if you know – or consciously avoid knowing – that they're violating the Rule. What amounts to substantial assistance depends on the facts. Activities like procuring leads (the contact information of potential customers) for MARS providers, helping a MARS provider with its back-room operations, reviewing customer files, processing customers' payments, or contacting customers' servicers are just a few examples. If you work with MARS providers, review their policies, procedures, and operations to make sure they're complying with the Rule because willful ignorance on your part simply isn't a defense.

HOW DO TRUTH-IN-ADVERTISING PRINCIPLES APPLY TO CLAIMS WE MAKE ABOUT OUR SERVICES?

Under the Rule, it's illegal to misrepresent, either expressly or by implication, any "material aspect" of your services. That includes any information that's likely to affect a consumer's decision to use your service or choose one service over another. Here are some examples of claims that would be material:

- the likelihood of negotiating, getting, or arranging a specific form of mortgage relief;
- how long it will take to get the advertised mortgage relief;

- an affiliation with the government, public programs, or lenders or servicers;
- the terms and conditions of homeowners' mortgages, including how much they currently have to pay;
- your refund and cancellation policies;
- whether homeowners will be getting legal services;
- the benefits and costs of using alternatives to for-profit MARS providers;
- the amount homeowners may save if they use your service;
- the total cost of your service; and
- the terms, conditions, or limitations of a lender or servicer's offer of mortgage relief, including how much time the homeowner has to accept the offer.

In addition, if you make claims about the benefits, performance, or efficacy of your services, your statements must be truthful and you must have competent and reliable evidence to back them up. So, for example, if you make claims about how much your customers will save – like "We can reduce your mortgage payments by 20% to 50%" – your claims must accurately reflect the results you've achieved for previous customers. Similarly, if you claim that your customers have reduced their mortgage debt by "up to 50%," it's likely you're conveying to new customers that they, too, will get savings of around 50%. If you don't have solid proof to back up that claim, your claim is considered deceptive.

Beyond requiring that your claims are truthful, the Rule makes it illegal to tell a customer or potential customer to stop communicating with their lender or servicer.

? WHAT INFORMATION MUST I DISCLOSE TO CUSTOMERS OR PROSPECTIVE CUSTOMERS?

The Rule spells out several key pieces of information you must disclose clearly and prominently to consumers. (See page 9) for more on how to make disclosures clear and prominent.) Some disclosures must be made in all advertising for general audiences. Other disclosures must be made in one-on-one communications you have with prospective customers, like telephone calls, letters, or email. A third type of disclosure must be made when you give a customer an offer of mortgage relief from his or her lender or servicer. The Rule also requires that if you ever tell a customer that he or she should stop making timely mortgage payments, you must tell them, using these words, **“If you stop paying your mortgage, you could lose your home and damage your credit rating.”**

Disclosures you must make in ads meant for a general audience

The Rule requires certain disclosures in what it calls “general commercial communications” – that is, advertising meant for a general audience, like ads on TV, radio, or the Internet. In those ads, you must clearly and prominently disclose two key facts, in these words:

1. “[Name of your company] is not associated with the government, and our service is not approved by the government or your lender;” and
2. “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

The two disclosures must be presented together. The Rule has specific requirements for presenting them.

Disclosures you must make in communications with prospective customers

The Rule requires additional disclosures in any “consumer-specific commercial communication” – that is, a letter, phone call, email, text, or the like, directed at a specific person you’re soliciting for your service. In every communication you have with prospective customers, the Rule requires that you clearly and prominently disclose three key facts, in these words:

1. **“You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert amount or method for calculating the amount] for our services.”**
2. “[Name of your company] is not associated with the government, and our service is not approved by the government or your lender;” and
3. **“Even if you accept this offer and use our service, your lender may not agree to change your loan.”**

The three disclosures must be presented together. The Rule has specific requirements for presenting these disclosures to prospective customers.

Disclosures you must make when you give customers an offer of mortgage relief from their lender or servicer

Under the Rule, when you give a customer an offer of mortgage relief from their lender or servicer, you have additional disclosure requirements:

1. You have to give your customer a separate written page that clearly and prominently says **“This is an offer of mortgage assistance we obtained from your lender**

[or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount you disclosed upfront] for our services.”

2. You have to give your customer a separate one-page written notice *from the customer’s lender or servicer* that explains all material differences between the offer of mortgage relief you got from the lender or servicer and the customer’s current loan. Some examples of differences in loan terms that would be material to customers – and would have to be disclosed – include:

- ▶ the principal balance;
- ▶ the interest rate on the loan, including the maximum rate and any adjustable rates;
- ▶ the number of payments on the loan;
- ▶ how much the customer must pay each month for principal, interest, taxes, and any mortgage insurance;
- ▶ any delinquent payments the customer owes;
- ▶ any fees or penalties; and
- ▶ the duration of the loan.

3. If the offer of mortgage relief you get for a customer is a trial loan modification – that is, a loan modification that’s temporary – the written notice you give your customer from his or her lender or servicer also must disclose the material terms, conditions, and limitations of this type of relief, including:

- ▶ That it’s a trial loan modification and the duration of the trial period;

- ▶ That the customer may not qualify for a permanent mortgage loan modification; and
- ▶ If the customer doesn’t qualify, the likely amount in suspended payments, arrears, or fees the customer would owe once the trial loan modification period ends.

The Rule has specific requirements for presenting these disclosures to customers.



HOW DO I MAKE DISCLOSURES CLEAR AND PROMINENT?

One goal of the Rule is to make sure that key disclosures about the nature of mortgage assistance relief services are read – and understood – by consumers. That’s why the Rule requires you to present disclosures clearly and prominently. These requirements apply to “general commercial communications” – advertising meant for a general audience, like ads on TV, radio, or the Internet – and to “consumer-specific commercial communications” – letters, phone calls, email, and the like directed at a specific person who has not yet signed up for your service. What makes a disclosure clear and prominent depends on the method you use to communicate with prospective customers. The Rule has more details on how to make sure your disclosures are clear and prominent.



? WHEN CAN I COLLECT MY FEE?

The Rule says you can't collect any fee from a customer until you've met three requirements:

1. **You get an offer of mortgage relief from your customer's lender or servicer.** You must have persuaded your customer's lender or servicer to reduce, modify, or otherwise change the terms of the customer's mortgage loan;
2. **You give your customer the written offer.** You must provide your customer with a written agreement from the lender or servicer to reduce, modify, or otherwise change the terms of the customer's mortgage loan; and
3. **Your customer accepts the written offer.** The customer's acceptance must be in the form of an executed written agreement with the lender or servicer that incorporates the changes to the terms of his or her mortgage loan.

You can't collect any fees for intermediate steps you take as part of the process. For example, it would be illegal to charge separately for:

- conducting an initial consultation with a customer;
- reviewing or auditing a customer's mortgage or foreclosure documents to detect errors, including robo signing or title problems;
- gathering financial or other information from a customer;
- sending an application for mortgage relief or any other request to a customer's lender or servicer;
- communicating with a lender or servicer on a customer's behalf; or
- responding to requests for information from a customer's lender or servicer.

? DOES THE RULE HAVE RECORD-KEEPING OR MONITORING REQUIREMENTS?

The Rule requires you to keep certain records for at least two years from the date the document is created, generated, or received:

- **Advertising and promotional materials.** You must keep a copy of each substantially different advertisement, brochure, telemarketing script, website, training document, or other material related to the advertising or marketing of your service. You don't have to keep separate copies of documents that have minor, immaterial differences.
- **Sales records.** You have to keep records showing the name, last known address, and telephone number of each of your customers; the services they bought from you; and how much they paid you. You need to maintain records relating only to customers who agree to use your services. You don't have to keep records relating to people who asked about your services, but didn't sign up.
- **Communications with customers.** You must keep copies of all written communications between you and customers that occurred before they agreed to use your service.
- **Agreements with customers.** You must keep copies of all contracts or other agreements between you and your customer.

You also must take reasonable steps to ensure that your employees and independent contractors comply with the Rule. At a minimum, that would include:

- performing random, blind monitoring and recording of sales and customer service calls involving your employees or people who do telemarketing on your behalf;
- establishing a procedure for receiving and responding to consumer complaints and investigating each one promptly and thoroughly;
- determining the number and nature of consumer complaints related to transactions involving individual employees or contractors and taking corrective action – which may include training, discipline, or termination – if they’re not complying with the Rule;
- keeping records sufficient to establish that you’re meeting your monitoring responsibilities under the Rule.

FOR MORE INFORMATION

MARS Rule –

www.ftc.gov/os/fedreg/2010/december/R911003mars.pdf

Mortgage Assistance Relief Services Rule: A Compliance Guide for Lawyers

<http://business.ftc.gov/documents/bus77-mortgage-assistance-relief-services-rule-lawyers>

The BCP Business Center: Your Link to the Law

www.business.ftc.gov

Questions about the MARS Rule? Contact:

Division of Financial Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, DC 20580
(202) 326-3224

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair practices in the marketplace and to provide information to businesses to help them comply with the law. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a video, *How to File a Complaint*, at www.ftc.gov/video to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad. For free compliance resources, visit the Business Center, www.business.ftc.gov.

Opportunity to Comment. The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency’s responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.



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