

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

*In the Matter of American Nationwide
Mortgage Company, Inc.
FTC File No. 0723168*

The Federal Trade Commission (“FTC”) has accepted, subject to final approval, an agreement containing a consent order from American Nationwide Mortgage Company, Inc. (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

The complaint alleges that respondent engaged in practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24 of Regulation Z, 12 C.F.R. § 226.24.

Section 5(a) of the FTC Act prohibits unfair or deceptive acts or practices. Respondent violated Section 5(a) of the FTC Act because it disseminated or has caused to be disseminated home loan advertisements which offer a low monthly payment amount and/or low rate, but fail to disclose, or fail to disclose adequately, that this monthly payment amount and/or low rate: (1) apply only for a limited period of time, after which they will increase; (2) do not include the amount of interest that the consumer owes each month; and (3) are less than the monthly payment amount (including interest) and/or the interest rate that the consumer owes, with the difference added to the total amount due from the consumer or total loan balance. This information would be material to consumers shopping for a mortgage loan and the failure to disclose, or failure to disclose adequately, this information is a deceptive practice. Respondent also violated Section 5(a) of the FTC Act because it misrepresented, expressly or by implication, that its advertised rate was a fixed rate for the full term of the loan.

TILA and Regulation Z require that closed-end credit advertisers who state a periodic payment amount must also provide additional information in the advertisement, including the terms of repayment; the annual percentage rate (“APR”); and if the APR may be increased after consummation, that fact. TILA and Regulation Z also require that if an advertisement states a rate of finance charge, it must state the rate as an APR. Currently, Regulation Z also requires that if the advertisement states a payment rate, it must include additional disclosures. Respondent’s advertisements failed to disclose, or failed to disclose clearly and conspicuously, this information required by TILA and Regulation Z. Respondent’s failure to disclose this information undermined consumers’ ability to compare these offers to others in the marketplace. Through its law enforcement actions, the Commission intends to promote compliance with the disclosure requirements of TILA and Regulation Z, and to foster comparison shopping for mortgage loans.

The proposed consent order contains provisions designed to prevent respondent from violating the FTC Act or failing to make clear and conspicuous disclosures required by TILA and Regulation Z, as amended, *see* 73 Fed. Reg. 44,522 (July 30, 2008), and as may be further amended in the future.

Part I of the proposed order prohibits respondent, in connection with closed-end credit, from advertising a monthly payment amount unless respondent discloses, clearly and conspicuously and in close proximity to those representations, as applicable, that the advertised monthly payment amount: (1) applies only for a limited period of time, after which it will increase; (2) does not include the amount of interest that the consumer owes each month; and (3) is less than the monthly payment amount (including interest) that the consumer owes, with the difference added to the total amount due from the consumer or total loan balance.

Part II of the proposed order prohibits respondent, in connection with closed-end credit, from advertising a rate lower than the rate at which interest is accruing, regardless of whether the rate is referred to as an “effective rate,” a “payment rate,” a “qualifying rate,” or any other term, provided that this provision does not prohibit advertisement of the “annual percentage rate” or “APR.” In light of respondent’s deceptive use of payment rates in its advertisements, and the Federal Reserve Board’s amendments to Regulation Z banning the use of such rates effective October 1, 2009, the proposed order prohibits respondent from advertising any such rate, to ensure that respondent’s advertisements do not deceive consumers. *See* 73 Fed. Reg. at 44,608.

Part III of the proposed order prohibits respondent, in connection with closed-end credit, from misrepresenting the nature and/or extent of the variability of any loan rate or payment amount, including but not limited to (1) an interest rate or APR; (2) whether it is fixed rather than adjustable or adjustable rather than fixed; and (3) for an interest rate or payment amount, the duration, or reasonably anticipated duration, of the fixed or variable interest rate or payment amount.

Part IV of the proposed order prohibits respondent, in connection with closed-end credit, from advertising the amount of any payment, the number of payments or the period of repayment, or the amount of any finance charge, without disclosing, clearly and conspicuously, all of the terms required by TILA and Regulation Z, including the terms of repayment; the APR; and if the APR may be increased after consummation, that fact.

Part V of the proposed order prohibits respondent, in connection with closed-end credit, from stating a rate of finance charge without stating the rate as an APR, as required by TILA and Regulation Z.

Part VI of the proposed order prohibits respondent from failing to comply in any respect with TILA or Regulation Z.

Part VII of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain all records that will demonstrate compliance with the proposed order.

Part VIII of the proposed order requires respondent to distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents and representatives having responsibilities with respect to the subject matter of the order.

Part IX of the proposed order requires respondent to notify the Commission of any changes in its corporate structure that might affect compliance with this order.

Part X of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part XI of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violations of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.