

HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE



1001 PENNSYLVANIA AVENUE, N.W.
SUITE 500 SOUTH
WASHINGTON, D.C. 20004
Tel. 202.289.4322
Fax 202.628.2569

November 1, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania, NW
Washington, D.C. 20580

**RE: Mortgage Acts and Practices - Advertising Rulemaking Rule No.
R011013**

Dear Secretary Clark:

We are pleased to submit these comments on behalf of the Housing Policy Council of The Financial Services Roundtable. The Housing Policy Council ("HPC") is a trade association that represents 30 mortgage originators, servicers, insurers and other mortgage market participants. In total, our members originate 75% of all mortgages in the U.S. Many of our members are not directly subject to the jurisdiction of the Commission, but many are, and we choose to make our comments on behalf of all of our members.

Our membership supports prohibitions against misleading mortgage advertising, and supports the efforts of the Federal Trade Commission ("Commission") to promulgate rules that will implement those prohibitions. Misleading consumers at the beginning of their search for home purchase financing, or other real-estate related financing, can make it difficult for consumers to make informed decisions about deciding whether to proceed and, if so, under what kind of a mortgage instrument.

From the perspective of our membership, our preference is for the consumer to be well-informed, since both the consumers and we are better served when they become long-term customers who are able to regularly make their periodic payments on time. Consumers have a better opportunity to be good customers when they have not been subjected to misleading advertising.

While we do not have comments on specific language in any of the proposed rules, we would like to comment on one of the specific questions for comment, namely, that found in numbered paragraph (3) of 2. Section 321.3: Prohibited Representations.

Our membership serves consumers in every part of the country. Just as the country has many groups of individuals who have a language other than English as their primary language, so to do our customers.

Our membership has addressed that issue in a variety of ways. We have advertised in both English and foreign languages and, while occasionally, one or more of our members will translate legal documents evidencing the agreement into a foreign language and use that language as the basic language of the agreement, almost unanimously our membership uses only English language documents as the underlying legal documents evidencing the agreement. It is crucial in the judgment of most of our members that there be uniformity to contracts entered into between themselves and consumers, and therefore the legal documents that memorialize those meanings from transaction to transaction are best if they are in one language.

Our members do not bait and switch consumers, advertising certain terms and conditions as available for a consumer in their own language advertising, and then using different terms and conditions in the legal documents. We agree that doing so should be prohibited and could in many circumstances amount to material misrepresentations.

There would also likely be a serious unintended consequence flowing from an agency rule that requires transaction documents to be in the same language as marketing or advertising in a language other than English – a dramatic reduction in the use of other languages to make necessary products and services available to a broad range of consumers whose principal language is not English. This result arises out of the potential high level of administrative burden and cost required to develop, maintain, update and manage the many documents necessary to originate, fulfill and service a product or service in any number of languages. For example, many banks serve discrete populations of cultures in their markets, whether they be Mandarin Chinese, Korean, Latino, Polish or Russian. If a bank would be deemed to have committed an unfair or deceptive practice unless it fulfilled and serviced a loan or other bank product in the same language in which it advertised, that bank would need to weigh the burdens, cost, liability and benefits of complying with such a rule. In our view, the benefit side of this equation would not outweigh the detriment side, and the bank would elect not to advertise in any other language so as to avoid those detriments.

Another issue that has not been fully considered is whether any transaction documents required to be publicly filed (e.g., mortgages, UCC security instruments, etc.) would legally be permitted to be filed with various county recorders' offices if they are in languages other than English.

The solution that clearly works best to maintain desired outreach to customers of all languages is to deem an underlying fraud or misrepresentation as the illegality, not the simple use of different languages as between advertising and documenting the transaction. We would also note that most financial institutions that advertise in different languages maintain staff or translation services fluent in other languages to facilitate customer service needs and answer questions that may arise in other languages. The Commission should not turn an issue traditionally dealt with as a customer service issue into a disincentive to offer products and services to all customers.

We believe the language of Section 321.3, is sufficient as drafted to cover such misrepresentations as those and others outlined in the request for comments. The key, of course, is whether there is a misrepresentation, not whether there is a foreign language that is used to

communicate. Whether that misrepresentation is found in the foreign language, whether it is found in the English language or whether it is found in the mingling of the two languages is irrelevant; it is the misrepresentation that is significant and that is prohibited by the statute.

Our response to the questions in (3), therefore, can be summarized by saying that additional verbiage would not expand the coverage of the rule, that those who attempt to mislead through manipulation of various languages do not avoid the protection afforded consumers by the rule, and that any suggestion that the use of multiple languages alone can mislead consumers is meaningless unless the representations themselves are misleading in whatever language they are expressed or when read together.

Thank you for permitting us to comment on the proposed rule. If you have any questions, please contact Katie Wechsler at (202) 289-4322.

With best wishes.

John H. Dalton
President
Housing Policy Council
The Financial Services Roundtable