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November 15, 2010

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

Re: [Docket No. RIN 3084-AB18]; Mortgage Acts and Practices – Advertising
Rulemaking, Rule No. R011013

Dear Sir or Madam:

This letter responds to the Federal Trade Commission's ("FTC" or "Commission") proposed rule that would ban misrepresentations for all mortgages and would allow the FTC and the states to seek civil penalties against those who violate the rule ("Proposed Rule"). This comment letter describes the views of the National Reverse Mortgage Lenders Association ("NRMLA").

NRMLA is the principal nationwide trade association for financial services companies that originate, service, and invest in reverse mortgages. NRMLA was founded to enhance the professionalism of those engaged in reverse mortgage lending, and NRMLA is dedicated to assuring quality and integrity in reverse mortgage lending. Over 90% of the reverse mortgages in the United States today are originated or purchased by NRMLA members, and over 95% of the reverse mortgages originated in the United States at this time are home equity conversion mortgage ("HECM") loans insured by the FHA.

The Commission's Proposal

The Proposed Rule would prohibit any material misrepresentation, expressed or implied, in any commercial communication regarding any term of any mortgage credit product. The Proposed Rule would require specific categories of records to be retained for a period of 24 months from the last date of dissemination. Failure to maintain such records would be an independent violation of the Proposed Rule. Additionally, the Proposed Rule sets forth a non-exhaustive list of misrepresentations that would violate the Proposed Rule. Specifically, it would be a violation of the Proposed Rule for any person to make a material misrepresentation in connection with:

- The interest charged for the mortgage credit product;
- The annual percentage rate, simple annual rate, periodic rate, or any other rate;
- The existence, nature, or amount of fees or costs to the consumer;

- The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product;
- The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product;
- Any prepayment penalty associated with the mortgage credit product;
- The variability of interest, payments, or other terms of the mortgage credit product;
- Any comparison between: (1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product, and (2) Any actual or hypothetical rate or payment;
- The type of mortgage credit product;
- The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product;
- The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;
- The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;
- The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts;
- The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that: (1) The provider is, or is affiliated with, any governmental entity or other organization, or (2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;
- The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;
- The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;
- The consumer's ability or likelihood to obtain any mortgage credit product or terms;
- The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit product or terms; and

- The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product term.

NRMLA Comments

NRMLA shares the Commission's concern regarding deceptive mortgage advertising and supports the Commission's efforts to eliminate such deceptive mortgage advertisements from the marketplace. NRMLA believes that deceptive advertising creates reputational risk for NRMLA's members and that any action to thwart such deceptive advertising will prove beneficial not only to consumers but also to NRMLA's members. In this regard, we note that NRMLA has its own Code of Ethics, with provisions directed specifically at ethical advertising. For these reasons, NRMLA believes that it and the FTC have a shared best interest in providing consumers with accurate and non-misleading information to facilitate informed decisions.

Note that reverse mortgage lenders that are NRMLA members are expected to comply with the NRMLA Code of Ethics, which specifically addresses ethical advertising. For example, the Code of Ethics prohibits members from engaging in any "conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly making a material false or misleading statement to consumers or others." Note that many NRMLA members incorporate the NRMLA Code of Ethics into their contractual provisions with their business partners, so that the Code can apply directly to members, and contractually to non-members contracting with such NRMLA members.

NRMLA's Suggested Revisions to Improve the Proposed Rule

As noted above, NRMLA supports the FTC's effort to eliminate deceptive mortgage advertising with the Proposed Rule. Additionally, NRMLA offers the following suggestions to better achieve the FTC's goals of providing consumers with adequate and accurate information regarding mortgage credit products.

As an initial matter, NRMLA suggests that the Proposed Rule be revised to require any commercial communication relating to a reverse mortgage loan to state that the communication relates to a reverse mortgage loan. NRMLA believes that this will allow consumers to identify communications relating to reverse mortgages at the outset, which is important given that reverse mortgage loans are a unique subset of mortgage credit products. As a result, NRMLA believes that this suggested revision to the Proposed Rule would better prevent deceptive advertising and allow informed decisions by consumers.

NRMLA also suggests revising the Proposed Rule to require any commercial communication offering to make a reverse mortgage loan to state whether the party making the communication is the lender in connection with the loan, and, to the extent that the party making the communication is not the lender, to state the role of the entity making the communication and their purpose for collecting information about the prospective borrower. NRMLA believes that this modification to the Proposed Rule would allow consumers to better understand the different parties involved with a reverse mortgage loan.

Additionally, by allowing consumers to identify the parties involved with an advertised reverse mortgage loan, NRMLA believes that the Proposed Rule would protect against deceptive advertising and facilitate informed consumer decisions.

NRMLA also suggests revising the Proposed Rule to make clear that it is not a violation of proposed section 321.3(k) if the advertisement makes clear there are no regular monthly repayment installment obligations by the borrower under the loan, but that the borrower must pay his or her real estate taxes and hazard insurance.

NRMLA also suggests revising the Proposed Rule to make clear that it is not a violation of proposed section 321.3(n)(2), and such section does not prohibit a person from advertising that it offers FHA-insured home equity conversion mortgages or HECM loans, if in fact such person does offer such loans.

NRMLA also suggests revising the Proposed Rule to make clear that it is not a violation of proposed section 321.3(p) if the advertisement makes clear that the borrower must maintain the collateral property, satisfy any occupancy requirements, and timely pay his or her real estate taxes and hazard insurance, if and as required and applicable per the terms of the loan agreement.

NRMLA also suggests making clear whether, with respect to reverse mortgages, proposed section 321.3(s) applies primarily to counselors and counseling agencies, or also applies to lenders and loan originators. If proposed section 321.3(s) applies to lenders and loan originators, the Proposed Rule should be clarified such that any professional designations may be indicated in advertising as long as a lender or loan originator has in fact obtained such designation. Such designations could include, by way of example, a Better Business Bureau indication for an entity, or a Certified Reverse Mortgage Professional for a loan originator.

NRMLA also suggests making clear that, with respect to the use of symbols, or logos that resemble those of a government entity, organization, or program, that such rule except the use of such logos when the use of such logos are required or allowed, such as the use of an Equal Housing lender logo.

Finally, NRMLA suggests revising the Proposed Rule to provide a safe harbor or alternative disclosure mechanism for commercial communications delivered by radio. NRMLA notes that radio is a unique channel for delivering advertisements in that there is only medium—the spoken word—to deliver content. As a result, any disclosure that may be required to protect against a potential violation of the Proposed Rule would require airtime in addition to that used for the advertisement itself (e.g. unlike a television advertisement, which can include both audio and video content). Accordingly, NRMLA requests that the FTC provide a safe harbor or alternative disclosure mechanism for commercial communications delivered by radio. For example, the Proposed Rule might be revised to allow the party making the communication, as long as they are in compliance with all other applicable laws and regulations, to make a brief specified disclosure or refer listeners to a website containing additional information. NRMLA believes that this would strike an appropriate balance between protecting consumers and accommodating the characteristics of radio advertisements.

The Federal Reserve Board's Proposed Amendments to Regulation Z Deal Specifically with Reverse Mortgages

As the Commission is aware, the Federal Reserve Board recently proposed amendments to Regulation Z. As described below, we believe that the Federal Reserve Board's proposed amendments to Regulation Z protect against misrepresentations in connection with reverse mortgage loans. Accordingly, to avoid confusion, NRMLA believes that it is in the shared best interest of consumers and market participants to ensure consistency between the terms and application of the Proposed Rule and Regulation Z.

As you know, advertisements for reverse mortgages are subject to general requirements under Regulation Z. After an extensive review of reverse mortgage advertisements conducted by Federal Reserve staff, the Federal Reserve Board proposed additional requirements ("FRB Proposal") for reverse mortgages to ensure advertisements contain accurate and balanced information. The FRB Proposal amends Regulation Z by requiring all reverse mortgage advertisement to disclose certain "clarifying information" if the advertisement contains certain types of statements. Specifically, the FRB Proposal would require reverse mortgage advertisements to include clarifying information if the advertisement contains one or more of the following types of statements: (1) a reverse mortgage is a "government benefit"; (2) a reverse mortgage provides payments "for life" or a consumer need not repay a reverse mortgage "during your lifetime"; (3) a consumer "cannot lose" or there is "no risk" to a consumer's home with a reverse mortgage; (4) a consumer or a consumer's heirs "cannot owe" or will "never repay" more than the value of the consumer's home; (5) payments are not required for a reverse mortgage; (6) government fee limits apply to a reverse mortgage; or (7) a reverse mortgage does not affect a consumer's eligibility for or benefits under a government program.

As you know, it appears that several provisions of the Proposed Rule dealing with reverse mortgages mirror provisions in the FRB Proposal. For example, § 321.3(k) of the Proposed Rule would address misrepresentations about the "existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product." According to the Proposal, this provision will address claims that "no payments" are required on a reverse mortgage that falsely imply that consumers never have to repay the loan or make related tax and insurance payments. However, it appears that such claims would be subject to § 226.33(e)(7) of the FRB Proposal, which would require an advertisement which states that payments are not required for a reverse mortgage to disclose that a consumer must pay taxes and insurance premiums. Accordingly, to the extent that market participants are subject to both the Proposed Rule and Regulation Z, NRMLA believes that it is in the best interests of consumers and market participants to ensure consistency between the two, thus avoiding confusion regarding their scope or application.

Similarly, as you know, § 321(l) of the Proposed Rule would address misrepresentations about the “potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations.” According to the Proposal, this provision would prohibit a reverse mortgage lender from representing that “no matter what, you can stay in your home for life,” when the lender can force the sale of the property if the consumer does not adequately maintain the property. However, it appears that such claims would be subject to § 226.33(e)(5) of the FRB Proposal, which would require clarifying information in connection with a statement that a consumer cannot lose his or her home or that there is no risk of foreclosure to a consumer’s home. Accordingly, as noted above, NRMLA believes that reducing confusion by ensuring consistency between the terms and application of the Proposed Rule and Regulation Z is in the best interests of consumers and market participants.

NRMLA Supports the FTC’s Rulemaking

As noted above, NRMLA shares the Commission’s concerns about deceptive mortgage advertising and supports the Commission’s efforts to eliminate such deceptive mortgage advertisements. Additionally, NRMLA believes it is in shared best interest of the FTC and NRMLA’s members to ensure that consumers are provided with accurate and non-deceptive information to allow informed decisions. For these reasons, NRMLA supports the Proposed Rule and requests that the Commission consider NRMLA’s proposed revisions to the Proposed Rule.

Conclusion

NRMLA appreciates the Commission’s consideration of its comments with respect to this important Proposal. Should questions about them arise, or additional information be helpful, please do not hesitate to contact the undersigned, at 202-939-1741 or at PBell@dworbell.com.

Very truly yours,



Peter Bell
President

cc: James A. Brodsky
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