



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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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: Notice of Proposed Rulemaking: Mortgage Acts and Practices – Advertising Rule, 16 CFR Part 321

Transmitted electronically to: <https://ftcpublic.commentworks.com/ftc/mapadrulenprm>

Dear Chairman Leibowitz:

I am writing on behalf of the 1.1 million members of the National Association of REALTORS® (NAR) to request that real estate agents and brokers be exempted as covered individuals under the Mortgage Acts and Practices (MAP) – Advertising Rule (Proposed Rule). The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

NAR supports the adoption by the Federal Trade Commission (FTC) of regulations applicable to advertising and marketing of mortgage credit products by non-bank financial companies such as mortgage lenders, mortgage brokers, and mortgage servicers. NAR believes that fair and accurate information is critical to the decisions consumers make throughout the mortgage origination process and that our members, when acting in their capacity as real estate agents and brokers, should not be covered by this Rule.

The Proposed Rule would prohibit misrepresentations in any commercial communication regarding any term of any mortgage credit product. Other unfair or deceptive acts and practices that may occur with regard to mortgage loan advertising would also be prohibited under the Proposed Rule. The Rule would also impose a recordkeeping requirement that would cover a period of 24 months from the last date of dissemination of the applicable commercial communication.

Real estate professionals, who provide incidental or *de minimis* advice about mortgage lending to consumers, do so to provide mortgage options as information only, not for advertising or

marketing of a particular mortgage credit product. Often, information disseminated to consumers is provided on request by the consumer as a routine part of our business. Real estate professionals are often contacted by clients who are having problems knowing where to start or whom to contact in the mortgage origination process. Real estate agents and brokers owe a fiduciary duty to their clients and rely on these clients for referrals and future real estate brokerage business. We have a strong motivation to act in the best interest of our clients and to make sure they do not receive false or misleading information.

NAR believes the Commission should exempt from the Rule real estate professionals who often provide advice to homeowners as a routine part of our business, but do not provide mortgage credit product services or collect fees for such advice. In a case where a real estate professional is compensated as a loan originator or by a loan originator for this service, we believe the Rule should apply. Additionally, the recordkeeping requirement places an onerous burden on real estate agents and brokers who would need to keep materials that track the weekly changes in mortgage rates even though they are not acting as a loan originator or on their behalf.

This Rule should not include a specific prohibition on the provision of substantial assistance or support to others who violate the Rule. This may have the unintended consequence of consumers having less access to information regarding mortgage credit options. If covered by the Rule, it would create a disincentive for the real estate professional to provide such advisory assistance, leaving the consumer without a valuable and knowledgeable resource from a trusted advisor. Real estate professionals, concerned with unknowingly providing substantial assistance or support to those who make misrepresentations, would be reluctant to provide any information, leaving the consumer without assistance from this trusted advisor.

There is no need for an additional layer of regulation for real estate professionals. REALTORS® are already required to adhere to a strict REALTOR® Code of Ethics, and all real estate professionals must be licensed by their respective states. Rules and enforcement actions apply under the Code and state law.

Once again, NAR supports efforts to ensure that consumers are provided with accurate information in marketing and advertising of mortgage credit products. The Rule should cover those providers who receive compensation for the advice and intermediation they provide acting as lenders or their representatives, but NAR strongly believes that our members, when acting in their capacity as real estate agents and brokers, should not be covered by the Proposed Rule.

Thank you for your time and consideration of this matter. If you would like additional information or an opportunity to discuss our concerns, please contact Jeff Lischer, NAR's Managing Director for Regulatory Policy, at [jlischer@realtors.org](mailto:jlischer@realtors.org) or 202.383.1117.

Sincerely yours,

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO  
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