



November 15, 2010

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

Re: Mortgage Acts and Practices – Advertising Rulemaking, Rule No. R011013

Ladies and Gentlemen:

The American Financial Services Association (“AFSA”) appreciates the opportunity to comment on the Federal Trade Commission’s (“FTC”) notice of proposed rulemaking regarding mortgage acts and practices – advertising rulemaking (“Proposed Rule”). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

AFSA agrees with the FTC that advertising is the initial step and often a crucial part of the mortgage process. AFSA believes that it is important for advertising to be clear and accurate, as consumers may not make well-informed decisions if the information they receive through advertising is deceptive. Thus, AFSA generally supports the Proposed Rule.

Additionally, we support the FTC’s decision to focus the Proposed Rule exclusively on mortgage advertising practices. Several mortgage regulations have been enacted recently and even more are in the process of being finalized. The Federal Reserve Board (“Board”) has proposed rules to enhance consumer protections and disclosures in home mortgage transactions. The Board has also published interim final rules on appraisals and mortgage disclosures. The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) mandates many new rulemakings regulating the mortgage market. Mortgage lenders need time to comply with all of these new regulations and layering additional and possibly repetitive regulations would be counterproductive at this time. Keeping the rule focused on advertising ensures that consumers are protected during an important part of the mortgage process and prevents the duplication that can result with multiple rulemakings by different agencies.

We commend the FTC for the careful rule-writing which ensures that none of the federal or state measures dealing with mortgage advertising duplicates the specificity and breadth of

practices, and diversity of entities covered in the proposed rule. We hope that the FTC will enact a final rule that largely mirrors the Proposed Rule.

Requests for Comment

While AFSA generally supports the Proposed Rule, we do have a few comments that we ask the FTC to consider.

Section 321.3: Prohibited Representations – Question (2)

The Proposed Rule does not specifically address practices related to persons giving substantial assistance or support to those who make misrepresentations covered by the Proposed Rule and who know or consciously avoid knowing that those they assist are engaging in such conduct. AFSA understands that some individuals and companies engaged in unlawful practices may rely on the support and assistance of other persons. While AFSA does not condone this behavior, we believe that the final rule should not include a specific prohibition on the provision of substantial assistance or support to others who violate the rule. However, we ask that if the FTC includes such a prohibition in the final rule, that the FTC not make lenders liable for violations committed by persons giving substantial assistance or support. Lenders are in no position to police these persons, be they lead generators or brokers, and cannot be responsible for what they may say about a lender's product that a lender has not specifically authorized.

Section 321.3: Prohibited Representations - Question (3)

AFSA does not believe that the FTC needs to enact additional regulations to prevent the use of multiple languages – or “mixing” languages. AFSA understands the FTC's concern, but the use of bait and switch tactics, offering payments and other mortgage terms in promotions and then providing different terms in documents at closing, is already classified as a material misrepresentation under section 321.3 of the Proposed Rule, regardless of the languages the lender and borrower are using to communicate. No additional protection is warranted.

AFSA does not believe that it is helpful to the consumer to give all the disclosures in the consumer's preferred language when customer service and potential legal enforcement of the contract terms may all take place in English. Providing contracts in languages other than English falsely raises the consumer's expectation that they will be provided non-English language support throughout the relationship with the lender. This essentially creates a choice between a disadvantaged consumer at some stage post-loan closing or requiring lenders to operate every consumer-facing function in a multi-lingual way or face exposure under state unfair trade practices statutes for failing to provide multi-lingual support throughout the customer life cycle. This risk would force lenders to choose between advertising in other languages and supporting multi-lingual capability throughout the entire customer experience.

Advertisements in foreign languages help consumers who may not be traditionally served by the financial services community. Without advertisements in their own languages, these

consumers may not learn about advantageous offerings that consumers fluent in English may learn about. Additional regulation could reduce competition for non-English speakers' business, given the potential need to provide multi-lingual support throughout the customer life cycle.

AFSA members are concerned that they may have employees who currently converse with consumers in a language other than English, but because disclosures and contracts vary from state to state, lenders could not maintain these disclosures and contracts in all the potentially different languages used. If required to provide translations for these languages, the likely result would be that companies would require employees to have all discussion with consumers in English, resulting in less information provided to consumers, not more.

Section 321.5: Recordkeeping – Question (1)

The proposed 24-month document retention requirement is adequate for effective and efficient law enforcement. The FTC should not consider a longer retention period. The five-year time period given as an example in the question would impose unnecessary costs and is beyond any current recordkeeping requirement. (It is important to note that this requirement applies not just to lenders, but to third-party providers as well.) The 24-month requirement in the Proposed Rule is standard and in line with recordkeeping requirements mandated by the Truth in Lending Act and state statutes.

Effective Dates – Question (1)

The proposed effective date of 30 days following the publication of the final rule is appropriate, provided that the final rule substantially mirrors the Proposed Rule and does not include any affirmative requirements. If the final rule does include affirmative requirements, lenders will need additional time to implement those requirements.

Conclusion

AFSA thanks the FTC for the opportunity to comment on the Proposed Rule and commends the Commission for its work in protecting consumers. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,

/ Bill Himpler
Executive Vice President
American Financial Services Association

