

electronic form, as FHFA shall deem appropriate.

(d) No waiver of privilege. The release of information under this section does not constitute a waiver by FHFA of any privilege, or its right to control, supervise, or impose limitations on, the subsequent use and disclosure of any information concerning a Bank. To the extent that any reports of examination or other materials provided to a Bank or the Office of Finance pursuant to this section otherwise qualify as Unpublished Information under § 911.1 of this title or any successor provision, those materials shall continue to qualify as such and shall continue to be subject to the restrictions on disclosure set forth in part 911 of this title, or any successor provisions.

(e) Transition provision. Following the effective date of this section, FHFA will distribute promptly to each Bank and the Office of Finance a copy of the most recent report of examination of all other Banks. Each Bank shall have ten (10) business days following the effective date of this section within which to submit a written request to withhold information as described in paragraph (b)(1) of this section. Upon the expiration of the time period described in the preceding sentence, the distribution of the initial reports of examination shall proceed in accordance with paragraphs (b)(2) and (c) of this section.

Dated: September 24, 2010.

Edward J. DeMarco,
Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010-24578 Filed 9-29-10; 8:45 am]

BILLING CODE 8070-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Seattle, WA, Class B Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces three fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to revise the Class B airspace area at Seattle, WA. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during

these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: The informal airspace meetings will be held on Thursday, December 9, 2010, from 6:30 p.m.–9 p.m.; Tuesday, December 14, 2010, from 6:30 p.m.–9 p.m.; and Thursday, December 16, 2010, from 6:30 p.m.–9 p.m. Comments must be received on or before January 31, 2011.

ADDRESSES: (1) The meeting on Thursday, December 9, 2010, will be held at Snohomish County Auditorium, 2320 California Street, Everett, WA 98201. (2) The meeting on Tuesday, December 14, 2010, will be held at the Highline Performing Arts Center, 401 South 152nd Street, Burien, WA 98148. (3) The meeting on Thursday, December 16, 2010, will be held at The Theater at Auburn Mountainview, 28900 124 Avenue South East, Auburn, WA, 98092.

Comments: Send comments on the proposal, in triplicate, to: Clark Desing, Manager, Operations Support Group, AJV-W2, Western Service Center, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton WA 98057.

FOR FURTHER INFORMATION CONTACT: To obtain details including a graphic depiction regarding this proposal, please contact Everett Paul Delay, FAA Support Manager Seattle TRACON, Sea-Tac International Airport, 825 South 160th Street, Burien, WA 98148, (206) 214-4620.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) Doors open 30 minutes prior to the beginning of each meeting. The meetings will be informal in nature and will be conducted by one or more representatives of the FAA. A representative from the FAA will present a briefing on the planned modification to the Class B airspace at Seattle, WA. Each participant will be given an opportunity to deliver comments or make a presentation, although a time limit may be imposed. Only comments concerning the plan to modify the Class B airspace area at Seattle WA, will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings

will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of comments made at the meeting will be filed in the docket.

Agenda for the Meetings

- Sign-in.
- Presentation of meeting procedures.
- FAA explanation of the planned Class B airspace area modifications.
- Solicitation of public comments.
- Closing comments.

Issued in Washington, DC, on September 21, 2010.

Paul Gallant,
Acting Manager, Airspace and Rules Group.

[FR Doc. 2010-24543 Filed 9-29-10; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 321

[RIN 3084-AB18]

Notice of Proposed Rulemaking: Mortgage Acts and Practices – Advertising Rule

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: Pursuant to the 2009 Omnibus Appropriations Act (Omnibus Appropriations Act), as clarified by the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act), the Commission issues a Notice of Proposed Rulemaking (NPRM) relating to unfair or deceptive acts and practices that may occur with regard to mortgage advertising, the Mortgage Acts and Practices (MAP) – Advertising Rule (proposed rule). The proposed rule published for comment, among other things, would prohibit any misrepresentation in any commercial communication regarding any term of any mortgage credit product; and impose recordkeeping requirements. DATES: Comments must be received by November 15, 2010.

ADDRESSES: Interested parties are invited to submit written comments



with actual knowledge or knowledge fairly implied on the basis of objective circumstances that its practices were unfair or deceptive and violated the rule.¹⁷ In addition, states can enforce the rules by bringing civil actions in federal district court or another court of competent jurisdiction to obtain civil penalties and other relief. Before bringing such an action, however, a state must give 60 days advance notice to the “primary federal regulator” of the proposed defendant (unless such notice is not feasible), and the regulator has the right to intervene in the action.

B. Advance Notice of Proposed Rulemaking

On June 1, 2009, the Commission published in the Federal Register an Advance Notice of Proposed Rulemaking (ANPR) soliciting comments on the contours of a possible rule that would prohibit or restrict unfair and deceptive acts and practices that may occur throughout the life-cycle of a mortgage loan,¹⁸ i.e., in the advertising and marketing of the loan, at the time of loan origination, in the home appraisal process, and during the servicing of the loan.¹⁹ The ANPR described these services generically as “Mortgage Acts and Practices,” and the rulemaking proceeding was entitled the Mortgages Acts and Practices (MAP) Rulemaking. In response to the ANPR, the Commission received a total of 55 comments, of which 46 were germane.²⁰ About half of the comments were from individuals, with the rest from industry trade associations or groups, consumer advocacy groups, credit unions, a

government-sponsored enterprise (GSE), a state attorney general, a group of state credit union regulators, and a labor union. Most of the comments express support for FTC regulatory action regarding various aspects of the mortgage loan life-cycle.²¹ Several comments, however, urge the FTC to focus its resources on enforcement or

¹⁷ See 15 U.S.C. 45(m)(1)(A). The Commission must refer any action for civil penalties to the Department of Justice, which may file the case or return it to the Commission for filing. See 15 U.S.C. 56.

¹⁸ The Omnibus Appropriations Act and the Credit CARD Act use the term “loan” in referring to mortgage credit generally and do not limit that term in any way. Accordingly, this NPRM and the proposed rule use the term “loan” to refer to any form of mortgage credit.

¹⁹ Mortgage Acts and Practices, ANPR, 74 FR 26118 (June 1, 2009). On the same date, the Commission issued another ANPR, the Mortgage Assistance Relief Services Rulemaking, addressing the acts and practices of for-profit companies that offer to work with lenders or servicers on behalf of consumers seeking to modify the terms of their loans or to avoid foreclosure on their loans. Mortgage Assistance Relief Services (MARS), ANPR, 74 FR 26130 (June 1, 2009). The Commission has issued an NPRM on the MARS Rule. 75 FR 10707 (Mar. 9, 2010).

²⁰ The other nine comments are duplicates, replacements, blank, or “test” submissions. Public comments associated with the MAP ANPR are available at (<http://www.ftc.gov/os/comments/map/index.shtm>). In addition, a list of commenters cited in this NPRM, along with their short citation names or acronyms used throughout the NPRM, is attached to this document. See Table A - List of Commenters and Short-names/Acronyms, *infra*.

²¹ See, e.g., MICA at 9; NAR at 2; AG Mass. at 1; NCLC at 1; NCRC at 1; CRL at 1.

²² See, e.g., MBA at 1; ABA at 6.

²³ See *infra* Parts III and IV.

²⁴ See CMC/AFSA at 7; HPC at 3; ABA at 5; MBA at 5; MICA at 3; CUNA at 2.

²⁵ See BECU at 3; NASCUS at 2; GCUA at 2.

²⁶ See, e.g., HPC at 3; MICA at 3; CMC/AFSA at 7; ABA at 6.

²⁷ 12 CFR 226. The Federal Reserve Board issued Regulation Z, which implements TILA, 15 U.S.C. 1601-1666j. The Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. 1639, is part of TILA.

²⁸ See, e.g., ABA at 6 (certain aspects of advertising rules for nonbank entities); CRL at 19.

The Commission has authority to obtain civil penalties for violations of rules that the Board promulgates under Section 129(l)(2) of TILA (part of HOEPA), 15 U.S.C. 1639(l)(2). See Omnibus Appropriations Act § 626(c). As discussed further below, see *infra* note 56, the Board issued mortgage-related rules in July 2008, some of which were promulgated under Section 129(l)(2) of TILA. See generally 73 FR 44522 (July 30, 2008).

In contrast, the Commission does not have specific authority to obtain civil penalties for violations of rules that the Board promulgates under Section 105 of TILA. 15 U.S.C. 1604. See generally Omnibus Appropriations Act § 626(c). Some provisions of the Board’s July 2008 mortgage rules were promulgated under Section 105. See 73 FR 44522-23. Incorporating the Board’s Section 105 rules into the proposed MAP – Advertising Rule would give the Commission authority to seek civil penalties for violations of the Section 105 rules. The advantages and disadvantages of incorporating the Section 105 rules, which include technical and complex advertising requirements, are discussed below. See *infra* Parts III.C.2 and IV.C.2.

²⁹ See, e.g., CMC/AFSA at 3; ABA at 4-5. For a discussion of the FTC’s jurisdiction, see *supra* Part I.A.2.

³⁰ See generally CUNA; NASCUS; BECU; Zager; GCUA. Among other things, various comments note that the Commission lacks jurisdiction to issue rules for federally-chartered credit unions. Some comments assert that credit union advertising is already regulated.

³¹ Traditional mortgages are considered “closed-end credit,” generally consisting of installment financing where the amount borrowed and repayment schedule are set at the transaction’s outset. TILA and Regulation Z set various advertising and other requirements for closed-end credit. See, e.g., 12 CFR 226.17-.24.

³² HELOCs typically are “open-end credit,” which TILA defines as credit extended to a consumer under a plan in which: (1) the consumer reasonably contemplates repeated transactions; (2) the creditor may impose a finance charge from time to time on the outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the plan’s term is generally made available to the extent that any unpaid balance is repaid. See 15 U.S.C. 1602(i); 12 CFR 226.2(a)(10) and (20).

³³ See generally 12 CFR 226.33 (reverse mortgages under Regulation Z), and U.S. Department of Housing and Urban Development (HUD), Glossary, definition of “reverse mortgage,” available at (<http://www.hud.gov/offices/hsg/sfh/buying/glossary.cfm>).

³⁴ In an amortizing loan, the borrower pays

⁴⁵ Id. at 181.

⁴⁶ See, e.g. id. at 180; see also *In re Stouffer Food Corp.*, 118 F.T.C. 746 (1994); *In re Kraft, Inc.*, 114 F.T.C. 40, 124 (1991), *aff'd*, 970 F.2d 311 (7th Cir. 1992).

⁴⁷ Deception Policy Statement, *supra* note 9, at 180.

⁴⁸ See *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992); *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 165 (1984); see also *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999).

⁴⁹ See Deception Policy Statement, *supra* note 9, at 183.

⁵⁰ See *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994).

⁵¹ See *In re Peacock Buick*, 86 F.T.C. 1532, 1562 (1975), *aff'd*, 553 F.2d 97 (4th Cir. 1977); Deception Policy Statement, *supra* note 9, at 182-83.

⁵² See *In re Thompson Med. Co., Inc.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986).

⁵³ *Novartis Corp. v. FTC*, 223 F.3d 783, 786-87 (D.C. Cir. 2000).

⁵⁴ This discussion is not intended as a comprehensive list of all potentially applicable mortgage advertising and marketing laws.

⁵⁵ These other requirements include mortgage advertising mandates under the Helping Families Save Their Homes Act of 2009, Pub. L. 111-22, § 203, 123 Stat. 1632 (2009) (codified at 12 U.S.C. 5201 note), which HUD enforces, and advertising regulations and guidance for Federal Housing Administration programs, which HUD has issued. For example, FHA-approved lenders or mortgagees must use their HUD-registered business names in advertisements and promotional materials for FHA programs and maintain copies of their materials for two years. See 75 FR 20718 (Apr. 20, 2010), to be codified at 24 CFR 202. Lenders and others are permitted to distribute the FHA and fair housing logos in marketing materials to prospective FHA borrowers. HUD-approved mortgagees are required to establish procedures for compliance with FHA program requirements, including to avet5eunfoTj JbgÜ1-22, § 203, 123 Stat. 1632 (2009) (codified at 12 U.S.C. 5201 note), which HUD enforces, and advertising regulations and guidance for Federal Housing Administration programs, which HUD has issš"? UD has issš"? UD has issš"? UD has issš—CEUD enforces, and advertising

None of these federal or state measures duplicates the specificity and breadth of practices, and diversity of entities⁶⁹ covered in the proposed rule.

D. Consumer Protection Problems in Mortgage Advertising

The FTC has substantial law enforcement experience with mortgage advertising practices. Since 1995, the Commission has brought 18 law enforcement actions, including three in 2009, against individuals or companies that allegedly engaged in unfair or deceptive practices and/or violations of TILA in connection with mortgage advertising.⁷⁰ These actions have targeted large and small mortgage lenders, mortgage brokers, and others, located throughout the country.⁷¹ The cases have involved advertisements and marketing materials in various media, including print advertisements,⁷² unsolicited emails,⁷³ No. 0K12.-1.1556es TD4 1 Tf2 0 0 5.8,

U.S.C. 5101). Since the SAFE Act's enactment on July 30, 2008, the states have been moving to enact or amend laws to license mortgage loan originators. See generally (<http://www.csbs.org>); see also HUD SAFE Mortgage Licensing Act, available at (<http://hud.gov/offices/hsg/rmra/safe/sfea.cfm>). Various new state SAFE laws address advertising in different ways. See, e.g., H.B. 1085, 67th Gen. Assem., Reg. Sess. (Colo. 2009); S.B. 948, 2009 Gen. Assem., Reg. Sess. (Conn. 2009); S.B. 1218, 25th Leg., 1st Spec. Sess. (Haw. 2009); H.B. 4011, 96th Gen. Assem., Reg. Sess. (Ill. 2009); A.B. 3816, 213th Leg., 2nd Ann. Sess. (N.J. 2009). The federal banking agencies and Farm Credit Administration also are implementing a registration system and other requirements for mortgage loan originators. See 74 FR 27386 (June 9, 2009).

⁶⁹ See *infra* Part III.B.4.

⁷⁰ See Table B - List of FTC Mortgage Advertising Enforcement Actions, *infra*.

⁷¹ See, e.g., *FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv-19 (E.D. Tex. 2006); *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004); *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002); *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001); *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000).

⁷² See, e.g., *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (N.D. Ill. 2008); *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004).

⁷³ See, e.g., *FTC v. 30 Minute Mortg., Inc.*, No. 03-60021 (S.D. Fla. 2003); *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004).

⁷⁴ See, e.g., *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009); *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009); *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 GLT (ANx) (C.D. Cal. 2004); *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000); *United States v. Unicor Funding, Inc.*, No. SACV99-1228 (C.D. Cal. 1999); *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001); *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (N.D. Ill. 2008); *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000).

⁷⁵ See, e.g., *In re Shiva Venture Group, Inc.*, F.T.C. Dkt. No. C-4250 (2009); *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004).

⁷⁶ See, e.g., *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000).

⁷⁷ See, e.g., *id.*; *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001).

⁷⁸ See, e.g., *id.*; *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002); *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000).

⁷⁹ See, e.g., *FTC v. 30 Minute Mortg., Inc.*, No. 03-60021 (S.D. Fla. 2003).

⁸⁰ See, e.g., *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009); *In re Shiva Venture Group, Inc.*, F.T.C. Dkt. No. C-4250 (2009); *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009). The FTC also sent over 200 warning letters in 2007 to mortgage lenders, mortgage brokers, and media outlets regarding mortgage advertising claims, including teaser rates, that could be deceptive or violate TILA. See Press Release, FTC/FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive (Sept. 11, 2007), available at (<http://www.ftc.gov/opa/2007/09/mortsurf.shtml>).

⁸¹ See, e.g., *In re Am. Nationwide Mortg. Co., Inc.*, F.T.C. Dkt. No. C-4249 (2009).

⁸² See, e.g., *FTC v. Chase Fin. Funding, Inc.*, No. SACV04-549 (GLT) (ANx) (C.D. Cal. 2004); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002).

⁸³ See, e.g., *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002).

⁸⁴ See, e.g., *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001). The complaint in that case alleged, among other things, that the defendants included credit insurance products in the loan package without the borrower's knowledge.

⁸⁵ See, e.g., *FTC v. Capital City Mortg. Corp.*, No. 1:98CV237 (D.D.C. 1998).

⁸⁶ See, e.g., *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001). In addition, in making these statements, the lender allegedly did not reveal that the loans were interest-only and that borrowers would owe the entire principal amount in a large balloon payment at the end of the loan term.

⁸⁷ See, e.g., *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000).

⁸⁸ See, e.g., *In re Lomas Mortg. U.S.A., Inc.*, 116 F.T.C. 1062 (1993).

⁸⁹ See, e.g., *FTC v. 30 Minute Mortg. Inc.*, No. 03-60021 (S.D. Fla. 2003).

⁹⁰ See, e.g., *In re Michael Gendrolis*, F.T.C. Dkt. No. C-4248 (2009).

⁹¹ See, e.g., *United States v. Unicor Funding, Inc.*, No. SACV99-1228 (C.D. Cal. 1999).

⁹² See *FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv19 (E.D. Tex. 2006).

⁹³ See *In re Felson Builders, Inc.*, 119 F.T.C. 652 (1995).

⁹⁴ See, e.g., *In re Lenox Fin. Mortg., LLC*, No. 2007-017383 (Ariz. Sup. Ct. 2007) (assurance of discontinuance), available at (http://www.azag.gov/press_releases/sept/2007/LenoxFinancialAssurance&Approval.pdf).

⁹⁵ See, e.g., *State v. Lifetime Fin., Inc.*, No. LC080829 (Cal. Super. Ct. 2008), available at (http://www.ag.ca.gov/cms_attachments/press/pdfs/n1533_complaint_for_civil_penalties.pdf); *State v. Green River Mortg.*, No. 2009CV89 (Colo. Dist. Ct. 2009), press release available at (<http://www.coloradoattorneygeneral.gov/press/news/>).

Continued

¹⁰⁷ Covered alternative loans include, for example, hybrid ARMs, teaser rate or teaser payment loans with low rates or payments that expire after a short period, interest-only and balloon mortgages, negative amortization mortgages, shared equity and shared appreciation mortgages, buydowns, and payment option ARMs. For a discussion of the various types of mortgage loans and their features, see generally Interagency Subprime Mortgage Statement and Interagency Nontraditional Mortgage Guidance, *supra* note 39; Conference of State Bank Supervisors (CSBS), Guidance on Nontraditional Mortgage Product Risks for State-Licensed Entities (Nov. 14, 2006), available at (http://www.banking.mt.gov/content/pdf/CSBS-AARMR_FINAL_GUIDANCE.pdf) (issuing parallel guidance to federal bank regulatory agencies for residential mortgage brokers and mortgage bankers); CSBS et al., Statement on Subprime Mortgage Lending (July 16, 2007), available at (http://www.csbs.org/regulatory/policy/policy-guidelines/Documents/Final_CSBS-AARMR-NACCA_StatementonSubprimeLending.pdf) (issuing similar guidance to federal bank regulatory agencies for residential mortgage brokers and mortgage bankers).

¹⁰⁸ See *supra* note 33 and accompanying text.

¹¹⁹ Cliffdale , 103 F.T.C. at 165.

¹²⁰ Id. ; see also Novartis, 223 F.3d.at 786; supra notes 48-53 and accompanying text.

¹²¹ See, e.g. In re Shiva Venture Group, Inc. , F.T.C. Dkt. No. C-4250 (2009); In re Michael Gendrolis , F.T.C. Dkt. No. C-4248 (2009); In re Am. Nationwide Mortg. Co., Inc. , F.T.C. Dkt. No. C-4249 (2009); FTC v. OSI Fin. Servs., Inc. , No. 02-C-5078 (N.D. Ill. 2002); United States v. Mercantile Mortg. Co., No. 02-C-5029 (N.D. Ill. 2002); FTC v. Capital City Mortg. Corp. , No. 1:98CV237 (D.D.C. 1998).

¹³³ For example, the FTC charged a company with misrepresenting that a loan was fully amortizing when, in fact, it consisted of interest-only payments with a large balloon payment. *FTC v. Capital City Mortg. Corp.*, No. 1:98CV237 (D.D.C. 1998).

¹³⁴ See *FTC v. Assocs. First Capital Corp.*, No. 1:01-00606 JTC (N.D. Ga. 2001) (alleging deceptive representations about loan amounts in home equity mortgages); *FTC v. First Alliance Mortg. Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000) (same as above); see also *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002) (alleging deceptive representations about cash dispersal amounts in home equity loans or refinances); *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002) (same as above).

¹³⁵ This provision covers, for example: (1) misrepresentations about whether certain payments are part of the loan (see, e.g., *FTC v. OSI Fin. Servs., Inc.*, No. 02-C-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.*, No. 02-C-5079 (N.D. Ill. 2002)); (2) false claims that an aspect of the loan would cover the payments due (see *FTC v. Ranney*, No. 04-F-1065 (MJW) (D. Colo. 2004)); and (3) 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. See FFIEC Reverse Mortgage Guidance, *supra* note 39, at 50809 (although reverse mortgages generally do not require the consumer to remit payments for principal, interest, and related loan costs during the time the consumer remains in the home, repayment of these amounts can become due if the consumer moves out of the home; also, reverse mortgages generally do not include escrow accounts for taxes and property insurance, and if the consumer does not remit payments separately for these amounts, the consumer could lose the home).

¹³⁶ For example, it would violate this section for a reverse mortgage lender to represent 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.

¹³⁷ Proposed § 321.3(m) has broader applicability than a similar provision in Regulation Z, which applies only to closed-end dwelling-secured credit. See 12 CFR 226.24(i)(5).

¹³⁸ Thus, this provision covers false or misleading claims of debt elimination, debt forgiveness, or savings associated with mortgage credit products. See, e.g., *In re FirstPlus Fin. Group, Inc.*, F.T.C. Dkt. No. C-3984 (2000); *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (D.C. Ill. 2008).

¹³⁹ The FTC has challenged many of these types of claims in its loan modification cases, including in cases where the defendants allegedly claimed, in part through the use of names, seals, or symbols, that the mortgage credit product was a government benefit or that the lender was affiliated with the government.

¹⁴⁴ See Deception Policy Statement, *supra* note 9, at 176-77.

¹⁴⁵ A failure to disclose also can be an unfair practice if it causes or is likely to cause substantial consumer injury that is not outweighed by countervailing benefits and is not reasonably avoidable. See, e.g., *In re Int'l Harvester Co.*, 104 F.T.C. 949, 1062 (1984). Omissions may be unfair in the mortgage advertising context if the information that is not disclosed concerns aspects of the transaction that are so central to making an informed decision that its omission is likely to be injurious. See *id.* Much of this information is already required to be disclosed by TILA and Regulation Z.

¹⁴⁶ See, e.g.

¹⁵¹ Credit CARD Act § 511(a)(2).

¹⁵² See 16 CFR 310.9.

¹⁵³ The Commission has previously included “assisting and facilitating” counts in at least two dozen cases filed under the TSR. See, e.g., FTC v.

others? For example, is there evidence that lead generators or third-party vendors provide substantial assistance

¹⁵⁴ According to the 2000 Census, at least 18% of the population (47 million people) speak a language other than English at home. See U.S. Census Bureau, Language Use and English-Speaking Ability: 2000, at 2 (Oct. 2003), available at (<http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>).

¹⁵⁵ See supra note 111.

¹⁵⁶ See *FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv-19 (E.D. Tex. 2006). GAO is currently studying the relationship between English fluency and financial literacy and whether individuals whose native language is a language other than English are impeded in their financial affairs. See Credit CARD Act § 513.

¹⁵⁷ See *Laborers Int'l Union* at 4-5.

¹⁵⁸ See supra Parts III.C.2 and IV.C.2 and note 28.

¹⁵⁹ See, e.g., 12 CFR 226.16 and 226.24(c), (d), (e), (f), and (g), respectively.

¹⁶⁰ See, e.g., 12 CFR 226.2 (definitions); 12 CFR 226.4 (finance charge calculation); 12 CFR 226.14 (open-end APR calculation); and 12 CFR 226.22 (closed-end APR calculation).

¹⁶¹ See, e.g., 12 CFR 226.24(b). The Commission is aware that different formulations of the “clear and conspicuous” standard are used in Regulation Z, including, in some instances, requirements for “equally prominent,” “closely proximate,”

¹⁷⁴ No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: (1) 51,000 mortgage lenders and mortgage brokers – from various online state regulatory agency resources and the Nationwide Mortgage Licensing System and Registry Consumer Access, see (<http://www.nmlsconsumeraccess.org>) (last visited between May 17 - June 28, 2010); (2) 60 mortgage servicers – from several sources including lists of servicers participating in various federal programs, available at (http://makinghomeaffordable.gov/contact_servicer.html) and (<http://hopenow.com/members.php>) (both last visited June 28, 2010) (excluding lenders who are also servicers under these programs); and (3) 1.3 million others – see supra note 169 (explaining estimate).

¹⁷⁵ Staff estimates that the annual labor cost for

further reduce any burden, the proposed rule would permit covered entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business. The proposed rule also attempts to avoid imposing any unnecessary burden by limiting the recordkeeping requirements only to, for example, “materially different ” commercial communications. It also limits the timeframe for recordkeeping to 24 months.

E. Duplicative, Overlapping, or Conflicting Federal Rules

As noted above, TILA (including HOEPA) and Regulation Z regulate mortgage advertisements. The states have also enacted various laws or regulations that address aspects of deceptive mortgage advertising practices. None of the federal or state measures duplicates the specificity and breadth of practices, or diversity of entities covered in the proposed rule. In addition, the Commission does not believe that its proposed rule conflicts with any of these other requirements, but it invites comment on this issue. ¹⁷⁹

As noted above, the Commission is not proposing any affirmative disclosure requirements, but it has requested comment on whether any such disclosures are needed to prevent deception related to commercial communications for mortgage credit

products. ¹⁸⁰ However, such disclosures could raise substantial conflicts with other mortgage advertising requirements, including those in TILA and Regulation Z. The Commission is interested in receiving comments in this area. ¹⁸¹

F. Significant Alternatives to the Proposed Rule Amendments

As previously noted, the proposed rule is intended to prevent deceptive acts and practices in mortgage advertising. The proposed rule is intended to achieve that goal without creating unnecessary compliance costs. Thus, the Commission does not propose to impose any affirmative disclosure requirements for advertisements at this time. Further, as discussed above, Commission staff believes that many covered entities already retain in the ordinary course of business the types of documents that the proposed rule would require be retained. In addition, proposed § 321.5(b) states that entities may keep such records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business.

The proposed rule also limits the types of information that must be retained to avoid imposing any unnecessary burden. For example, covered persons must retain only “materially different ” versions of commercial communications and

related materials. Finally, the proposed rule calls for a 24-month record retention period, which the Commission believes would strike an appropriate balance between ensuring efficient and effective compliance efforts, while avoiding the imposition of unnecessary costs.

Furthermore, the recordkeeping requirements are format-neutral; they would not preclude the use of electronic methods that might reduce compliance burdens. In addition, the Commission is not aware of any feasible or appropriate exemptions for small entities because the proposed rule attempts to minimize compliance burdens for all entities.

Nonetheless, the Commission seeks additional comment regarding: (1) the existence of small entities for which the proposed rule would have a significant economic impact, and (2) suggested alternatives, including potential exemptions for small entities, that would reduce the economic impact of the proposed rule on such small entities. If the comments filed in response to this document identify any small entities that would be significantly affected by the proposed rule, as well as alternatives that would reduce compliance costs on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into any final rule.

TABLE A - LIST OF COMMENTERS AND SHORT-NAMES/ACRONYMS

Short-name/Acronym	Commenter
Adcock	Adcock
ABA	American Bankers Association
ASA	American Society of Appraisers
Anderson	Anderson, Lisa
AG Mass.	Attorney General, Commonwealth of Massachusetts
Beasley	Beasley
BECU	Boeing Employees' Credit Union
Bracco	Bracco, Larry
CRL	Center for Responsible Lending
Ciavarella	Ciavarella (3 comments)
CMC/AFSA	Consumer Mortgage Coalition and American Financial Services Association
CUNA	Credit Union National Association
Crosby	Crosby, Tracy
EJF	Empire Justice Center
Freddie Mac	Federal Home Loan Mortgage Corporation
Feinman	Feinman, Anita
Flaker	Flaker
Franciulli	Franciulli, Patricia
GCUA	Georgia Credit Union Affiliates
Goodman	Goodman, Al
Harris	Harris, Kathleen
HPC	Housing Policy Council
Howard	Howard, Marilyn (2 comments)
Kochanski	Kochanski, David
Laborers Int'l Union	Laborers International Union of North America
MBA	Mortgage Bankers Association
MICA	Mortgage Insurance Companies of America

¹⁷⁹ See supra notes 117-118 and accompanying text.

¹⁸⁰ See supra Parts III.C.2 and IV.C.2.

¹⁸¹ See id.

TABLE A - LIST OF COMMENTERS AND SHORT-NAMES/ACRONYMS—Continued

Short-name/Acronym	Commenter
NAR	National Association of REALTORS
NASCUS	National Association of State Credit Union Supervisors
NCRC	National Community Reinvestment Coalition
NCLC	National Consumer Law Center
Norman	Norman
Obduskey	Obduskey, Dennis (2 comments)
P.	P. (Anonymous)
Reid	Reid, Harry (United States Senate)
Rice	Rice, Richard
Scheu	Scheu, Toni
Smith	Smith, J.
Tucker	Tucker, James
Yachovich	Yackovich, Beverly G. & Edward
Yoshida	Yoshida, Gena
Zager	Zager, Jeremy (Sterling Van Dyke Credit Union)

TABLE B - LIST OF FTC MORTGAGE ADVERTISING ENFORCEMENT ACTIONS

- , No. 1:01-00606 (N.D. Ga. 2001)
- , No. 1:98CV237 (D.D.C. 1998)
- , No. SACV04-549 GLT (ANx) (C.D. Cal. 2004)
- , No. SACV 00-964 DOC (EEx) (C.D. Cal. 2000)
- , No. 4:06-cv-19 (E.D. Tex. 2006)
- , No. 04-F-1065 (MJW) (D. Colo. 2004)
- , No. 1:09-cv-00535-HHK (D.D.C. 2009)
- , No. 02-C-5078 (N.D. Ill. 2002)
- , No. 08-C-1185 (N.D. Ill. 2008)
- , No. 03-60021 (S.D. Fla. 2003)
- , F.T.C. Dkt. No. C-4249 (2009)
- , 119 F.T.C. 642 (1995)
- , F.T.C. Dkt. No. C-3984 (2000)
- , 116 F.T.C. 1062 (1993)
- , F.T.C. Dkt. No. C-4248 (2009)
- , F.T.C. Dkt. No. C-4250 (2009)
- , No. 02-C-5079 (N.D. Ill. 2002)
- , No. 9901228 (C.D. Cal. 1999)

VIII. Proposed Rule

List of Subjects in 16 CFR part 321

Advertising, Communications,
Consumer protection, Credit, Mortgages,
Trade practices

■ For the reasons set forth in the
preamble, the Federal Trade

primarily for personal, family, or household purposes.

(f) "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(g) "Term" means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

§ 321.3 Prohibited representations.

It is a violation of this rule for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning: (1) the amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due, or (2) whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) 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, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about: (1) whether separate payment of taxes or insurance is required, or (2) the extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but

not limited to misrepresentations using the word "fixed;"

(h) 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;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) 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, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) 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;

(l) 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;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;

(n) 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

which each commercial communication was disseminated, including but not limited to the names and terms of each such additional product or service available to consumers.

(b) Any person subject to this rule may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this rule.

§ 321.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to Section 626(b) of the Omnibus Appropriations Act of 2009, sec. 626, Pub. L. 111-8, 123 Stat. 524 (2009) (15 U.S.C. 1638 note), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, sec. 511, Pub. L. 111-24, 123 Stat. 1734 (2009) (15 U.S.C. 1638 note).

§ 321.7 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2010-24353 Filed 9-29-10; 8:45 am]

BILLING CODE 6750-01-S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-119046-10]

RIN 1545-BJ54

Requirements of a Statement
Disclosing Uncertain Tax Positions;
Correction

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Correction to notice of proposed
rulemaking and a notice of public
hearing.

SUMMARY: This document contains a
correction to a notice of proposed
rulemaking and a notice of public
hearing that was published in the
Federal Register on Thursday,
September 9, 2010 (75 FR 54802)

allowing the IRS to require corporations
to file a schedule disclosing uncertain
tax positions related to the tax return as
required by the IRS.

FOR FURTHER INFORMATION CONTACT:
Kathryn Zuba, (202) 622-3400 (not toll-
free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the
subject of this document is under
section 6012 of the Internal Revenue
Code.

Need for Correction

As published, the notice of proposed
rulemaking and notice of public hearing
(REG-119046-10) contains an error that
may prove to be misleading and is in
need of clarification.

Correction of Publication

Accordingly, the publication of the
notice of proposed rulemaking and
notice of public hearing (REG-119046-
10), which was the subject of FR Doc.
2010-22624, is corrected as follows:

On page 54802, column 3, under the
caption DATES, lines 4 and 5, the
language "public hearing scheduled for
October 15, 2010, at 10 a.m., must be
received" is corrected to read "public
hearing scheduled for October 19, 2010,
at 10 a.m., must be received"

LaNita Van Dyke,

Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel, (Procedure and Administration).

[FR Doc. 2010-24488 Filed 9-29-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation
and Enforcement

30 CFR Part 901

[SATS No. AL-075-FOR; Docket ID: OSM-
2010-0009]

Alabama Regulatory Program

AGENCY: Office of Surface Mining
Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment
period and opportunity for public
hearing on proposed amendment.

SUMMARY: We, the Office of Surface
Mining Reclamation and Enforcement
(OSM), are announcing receipt of a
proposed amendment to the Alabama
regulatory program (Alabama program)
under the Surface Mining Control and
Reclamation Act of 1977 (SMCRA or the
Act). Alabama proposes revisions to its

Program regarding their Surface Mining
Commission, who is eligible to apply for
and obtain a mining license, hearing
officers, license fees, and several minor
editorial changes throughout the
document such as changing "him" to
"him or her" and "chairman" to "chair".
Alabama intends to revise its program to
improve operational efficiency.

This document gives the times and
locations that the Alabama program and
proposed amendment to that program
are available for your inspection, the
comment period during which you may
submit written comments on the
amendment, and the procedures that we
will follow for the public hearing, if one
is requested.

DATES: We will accept written
comments on this amendment until
4 p.m., c.d.t., November 1, 2010. If
requested, we will hold a public hearing
on the amendment on October 25, 2010.
We will accept requests to speak at a
hearing until 4 p.m., c.d.t. on October
15, 2010.

ADDRESSES: You may submit comments,
identified by SATS No. AL-075-FOR by
any of the following methods:

- E-mail: swilson@osmre.gov. Include
"SATS No. AL-075-FOR" in the subject
line of the message.

- Mail/Hand Delivery: Sherry Wilson,
Director, Birmingham Field Office,
Office of Surface Mining Reclamation
and Enforcement, 135 Gemini Circle,
Suite 215, Homewood, Alabama 35209.

- Fax: (205) 290-7280.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the
instructions for submitting comments.

Instructions: All submissions received
must include the agency name and
docket number for this rulemaking. For
detailed instructions on submitting
comments and additional information
on the rulemaking process, see the
"Public Comment Procedures" heading
of the SUPPLEMENTARY INFORMATION
section of this document.

Docket: For access to the docket to
review copies of the Alabama program,
this amendment, a listing of any
scheduled public hearings, and all
written comments received in response
to this document, you must go to the
address listed below during normal
business hours, Monday through Friday,
excluding holidays. You may receive
one free copy of the amendment by
contacting OSM's Birmingham Field
Office or going to <http://www.regulations.gov>.

Sherry Wilson, Director, Birmingham
Field Office, Office of Surface Mining
Reclamation and Enforcement, 135
Gemini Circle, Suite 215, Homewood,
Alabama 35209, Telephone: (205) 290-
7282, E-mail: swilson@osmre.gov.