

What is considered an advertisement?: MAP Ad Rule

- Covers a “commercial communication,” which is “any written or oral statement, illustration, or depiction . . . that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in [various media, including:]”
 - Newspapers, magazines, brochures, leaflets, or pamphlets
 - Radio, television, or cable television
 - Internet or cellular network
 - Letter or insert
 - Poster, billboard, or public transit card
 - Audio program transmitted over a telephone system, telemarketing script, or on-hold script

What is considered an advertisement?: State Law

- State definitions of advertisement vary
 - Reg. Z definition
 - MAP Rule definition
 - SAFE Act
- Example – “material used or intended to be used to induce the public to apply for a mortgage loan and includes any printed or published materials, audio or visual material, website, or descriptive literature concerning a mortgage loan whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display.”
- What about promotional items?

Sources of mortgage loan advertisement requirements

- TILA Regulation Z (12 CFR Part 1026)
 - HELOC, 1024.16. General open-end plus specific HELOC requirements.
 - Trigger terms requiring additional disclosures
 - Variable rate disclosures
 - Initial discounted or premium rate disclosures
 - Detailed promotional rate and payment disclosures
 - Balloon payment disclosures
 - Tax implications disclosures
 - Prohibition on use of term “free money” or similar misleading terms

Sources of mortgage loan advertisement requirements

- TILA Regulation Z (12 CFR Part 1026)
 - Closed-end, 1024.24. General plus mortgage-specific requirements.
 - Trigger terms requiring additional disclosures
 - Variable rate disclosures
 - Detailed rate and payment disclosures
 - Balloon payment disclosures
 - Tax implications disclosures
 - Seven prohibited acts or practices
 - Misrepresentations of government endorsement
 - Misleading advertising of “fixed” rates and payments, rate or payment comparisons, use of current lender’s name, claims of debt elimination, use of term “counselor,” and use of foreign language

Sources of mortgage loan advertisement requirements

- Mortgage acts and practices advertising rule, Regulation N (12 CFR Part 1014)
 - Prohibition against material misrepresentations of any mortgage credit term, including:
 - The amount of interest a customer pays each month and whether unpaid interest is added to the amount due
 - APR, fees and costs, and prepayment penalties
 - The true costs of ancillary products such as credit insurance
 - The amount of insurance and taxes required for the loan
 - The variability of the interest and incorrectly using the term “fixed”
 - Comparisons between rates or payments and rates or payments only available for a portion of the term of the loan

Sources of mortgage loan advertisement requirements

- Mortgage acts and practices advertising rule, cont.
 - Prohibition against material misrepresentations of any mortgage credit term:
 - The amount of credit or cash available
 - The existence, number, amount, or timing of any minimum or required payments
 - The potential and circumstances for default
 - The effectiveness of the loan to consolidate or restructure debt
 - The association of the loan, program, or provider with governmental entities or programs
 - The source of the customer communication
 - The likelihood that the customer will obtain the loan, refinancing, or modification, including if the customer is preapproved
 - The availability of counseling

Sources of mortgage loan advertisement requirements

- Unfair, deceptive, or abusive act or practice laws
 - If one regulator or enforcement agency finds the practice unfair or deceptive, then it is likely others will also.
 - Use of calculators or graphs
 - Use of flags
 - Use of depictions of currency
 - Proper disclosure practices
 - Consumer testimonials

Sources of mortgage loan advertisement requirements

- State laws
 - Reg. Z “trigger terms”
 - Restrictions on use of another lender’s name
 - Disclaimer re: source of loan information
 - Disclosure of NMLS Unique ID
 - Loan comparisons
 - Licensing disclosures
 - Use of certain terms – preapproved, prequalified
 - Name(s) on license(s)

Hot-button advertisement issues for the CFPB and FTC

- CFPB's Naughty List
 - Potential misrepresentations of government affiliation
 - Suggesting with a VA loan that the rate being offered was part of an “economic stimulus plan” that will expire shortly
 - Potential inaccurate information about interest rates, such as indicating a “fixed” rate for a variable rate loan
 - Potential misleading statements that consumers with reverse mortgages (1) would have “no payments” even though tax and insurance payments may still be required or (2) will have the opportunity to receive a discount on existing credit card debt
 - Potential misrepresentations that the consumer is pre-approved for or guaranteed specific rates or terms

Hot-button advertisement issues for the CFPB and FTC

- **FTC Naughty List**
 - Advertisements offering a very low “fixed” mortgage rate, without discussing significant loan terms
 - Advertisements containing statements, images, symbols, and abbreviations suggesting that an advertiser is affiliated with a government agency
 - Advertisements “guaranteeing” approval and offering very low monthly payments, without discussing significant conditions on these offers

The risks presented by loan officer websites/social media

- Status of websites and social media as advertisements
- Marshall McLuhan stated that “The medium is the message.”
- With advertising requirements, the focus is on the message and not the medium.
 - Regulation Z—An advertisement is a commercial message in any medium.
 - MAP Ad Rule—A commercial communication is a statement designed to effect a sale or create an interest in purchasing goods or services appearing in various formats, including the Internet or any other medium.

The risks presented by loan officer websites/social media

- Evaluate how social media is going to be used and apply traditional rules accordingly
- Take care about re-purposing comments received through social media for commercial communications.
- Protect against liability for content posted by third parties.
- Disclosure of “tag lines,” NMLS ID, trigger terms, etc.
 - Space limitations
- LO branding v. licensee branding

Potential consequences for violating advertisement requirements

- Regulation Z advertisement disclosure requirements, 1026.16 and 1026.24 (other than 1026.24(i))
- Regulation Z prohibited acts or practices with closed-end mortgage advertisements, 1026.24(i)
- MAP advertising rule, Regulation N, Part 1014
- Dodd-Frank UDAAP, state and federal UDAP
- State laws

The need for policies and procedures requiring the review of all consumer advertisements and marketing materials

- Companies must have policies and procedures requiring an appropriate and prior review of all consumer advertisements and marketing materials for legal compliance.
- Employee training must emphasize the need for the review of all advertisements and marketing materials.
- Techniques (“best practices”) to provide for appropriate review with limited compliance resources.
 - Manuals and guides
 - Examples of “good” and “bad” ads
 - Templates