

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## AN ALT & ASSOCIATES NEWSLETTER

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## **FEDERAL TRADE COMMISSION ISSUES FINAL RULE ON MORTGAGE ADVERTISING**

**On July 22, 2011 the Federal Trade Commission (FTC) issued its Final Rule relating to unfair and deceptive acts and practices that occur with regard to mortgage advertising. The Final Rule is effective August 18, 2011.**

**The FTS broadly has jurisdiction to proscribe unfair and deceptive acts and practices effecting commerce, in this case mortgage advertising. An act is deceptive if there is a material representation, omission of information, or practice that is likely to mislead consumers who are acting reasonably under the circumstances. Material means that it would likely affect the consumer's decision to purchase or use the service or product at issue.**

**The Rule does not cover banks, savings and loans, federal credit unions, non-profits and common carriers. It does cover entities that market and advertise mortgage products such as mortgage lenders, mortgage servicers and real estate brokers. In addition, advertising agencies, home builders, lien**

**generators, aggregators and others who may advertise mortgage products, may be covered.**

**The Rule itself is reasonably straight forward compared to other recent federal agency rule making.**

**It sets out the definition of a commercial communication which is regulated by the Rule, to mean any written or oral statement, illustration, or depiction that is designed to affect the sale or create interest in purchasing services. It then sets forth a laundry list of types of communications that would be covered. Suffice it to say that the list is all inclusive.**

**The communications must relate to a mortgage credit product which is any form of credit secured by real property or a dwelling when the offer is extended to a consumer who is a natural person and the credit is primarily for personal, family or household purposes.**

**The substance of the Rule prohibits material representations regarding the following, in any commercial communication regarding any mortgage credit product:**

- A. Interest**
- B. Annual percentage rate, simple annual periodic rate or any other rate**
- C. Existence, nature or amount of fees and costs**
- D. The existence, cost, payment, or other terms associated with any additional product or feature**
- E. The terms, amounts, payments or other requirements related to taxes or insurance associated with the mortgage credit**
- F. Prepayment penalties**
- G. Variability of interest payments or other terms**
- H. Comparison between rate or payment**
- I. The type of mortgage credit product, including statements concerning a product which is, or is represented to be, fully amortized**
- J. The amount of cash or credit available**
- K. The existence, number, amount or timing of any minimum or required payments**
- L. The potential for default under the mortgage credit product**
- M. The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in payment of debts**

- N. The association of a mortgage credit product or any provider of said product with any other person or program including but not limited to:**
- **Affiliation with any government entity or organization**
  - **Endorsement or sponsorship of any government agency or other program**
- O. Source of any commercial communication including a misrepresentation that a communication is made by or on behalf of the consumer's current lender or servicer**
- P. The consumer's ability or likelihood to obtain any mortgage credit product, including information about pre-approval or guarantees of credit**

**Entities that are subject to the Act are required to keep records for a period of 24 months from the last date the person made or disseminated the applicable communication. Records include copies of loan related material and commercial communications as well as training materials, marketing materials, documents describing home mortgage credit products available to consumers and documents describing additional products or services.**

**The Rule can be enforced by both the FTC and any State Attorney General or other officer of a state authorized to bring action under this Rule.**

**A copy of the final Rule is available on the FTC website at <http://business.ftc.gov/legal-recourses//23/3>.**

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**ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.**

**If you have any questions please contact:**

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