



## **Mortgage Acts and Practices – Advertising Rules (MAP)**

The Federal Trade Commission (FTC) has implemented the Mortgage Acts and Practices – Advertising (MAP) rules, effective as of August 19, 2011. The MAP rules are designed to prohibit misrepresentations regarding mortgage products. Along with forbidding misrepresentations by a broad group of entities, including real estate agents and brokers, the rules also impose a new recordkeeping requirement that could affect the daily business practices of many Realtors®.

**Q: Where did this rule come from?**

**A:** Congress passed the Credit Card Accountability Responsibility and Disclosure Act – or Credit CARD Act -- in 2009. Though the bulk of this law applied to protecting consumers from various issues related to consumer credit cards, it also authorized the FTC to make rules related to unfair or deceptive practices regarding mortgage loans, loan modifications or foreclosure rescue services. Loan modification and foreclosure services were handled in the [MARS regulations](#); these regulations deal with mortgage loans.

**Q: Does the FTC really regulate these things anymore? Isn't there some new agency for that?**

**A:** Much of the FTC's former responsibility in this area has transferred to the Consumer Financial Protection Bureau ([CFPB](#)) as of July, 2011, but the rules had already been drafted before this change took effect. Moving forward, the CFPB will have responsibility for these rules, but because the rules are very similar to existing FTC regulations regarding general misrepresentations in advertising, the FTC will still have enforcement authority.

**Q: Aren't there already other rules about mortgage loans? Why do we need these?**

**A:** There are many existing laws, regulations, rules and policies regarding the truthfulness and accuracy of mortgage loan information. Many of those other rules are often very specific (for example, rules specifying how a loan APR must be calculated and disclosed) or very broad (general bans on misleading advertising). The MAP rules do not supersede any existing rules, but are meant to work in tandem with those rules to implement the obligations placed on the FTC.

**Q: What do the rules regulate?**

**A:** The MAP rules make it a violation “for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any terms of any mortgage credit product.” It also imposes a requirement that those who make commercial communications keep copies of the communications and certain other information for two years after the communication is made. See the questions below for definitions of each underlined term.

**Q: Who is covered? Does it only apply to lenders or mortgage brokers?**

**A:** The rules prohibit misrepresentations by “any person.” A “person” is defined as both individuals and corporate entities, so a real estate brokerage and mortgage brokers are subject to potential liability just as are individual agents or loan officers. Also, the commentary to the rule states that the FTC intends the term “any person” to apply as broadly as possible to any individual or entity that supplies information regarding a mortgage product – including real estate agents or even advertising agencies that pass along information that turns out to be misleading.

**Q: Are there any exclusions from the rules?**

**A:** The rules can only apply to entities over which the FTC has jurisdiction. This means that most banks and Federally-chartered credit unions are not covered by the rules – though mortgage brokers and state-chartered credit unions are. But the exclusion for certain lenders does **not** carry through to other entities distributing commercial communications with their information.

For example, if an exempt bank makes a misrepresentation, the FTC cannot prosecute. But if a real estate salesperson makes a misrepresentation based on information provided by the bank, the salesperson is not automatically exempt from prosecution.

**Q: What counts as a “material misrepresentation?”**

**A:** Section 321.3 of the rule contains a list of over 20 specific misrepresentations that are prohibited, including items such as the rate or amount of interest, the variability of interest rates, payment amounts and the terms under which a consumer can purchase any additional products such as credit insurance. The list is not exhaustive – misrepresentations not in the list are also prohibited – but this provides a good idea of what is being targeted.

**Q: How bad does it have to be in order to be a “material misrepresentation?” Does the whole communication have to be false? What if there’s something wrong in one paragraph, but it’s fixed somewhere else in a document?**

**A:** The rules are very broad in prohibiting “any” material misrepresentation. In the commentary, the FTC notes that a misrepresentation can be express or implied, and that if there are multiple ways to interpret a communication it is a possible violation if even one of those ways appears to be misleading. It also goes on to note that it applies to documents in multiple languages, so if a document contains misleading statements in a Spanish-language explanation, but the information is correct in English, it is still a potential violation.

**Q: What is a “mortgage credit product?”**

**A:** The definition of this term has two parts. First, it is “any form of credit that is *secured by real property or a dwelling.*” A “dwelling” includes any building with 1-4 residential units, and includes condominiums, cooperatives and [manufactured homes](#) (mobile homes). Second, the secured credit must be “offered or extended to a consumer *primarily for personal, family or household purposes.*”

To be covered, a loan must meet both criteria. For example, a business loan secured by a personal residence wouldn’t be covered, nor would a personal loan secured by a warehouse or a 20-unit apartment building.

**Q: What sorts of communications are covered?**

**A:** The rule only applies to potential misrepresentations in a “commercial communication,” defined as a written or oral statement “that is designed to effect a sale or create interest in purchasing goods or services.” Basically, it is meant to cover a communication in which the consumer receives specific information about a particular loan product, where the intent is to move the consumer closer to make a purchasing decision.

For example, a brochure that explains the mortgage process would not be a commercial communication because the purpose of the brochure is to educate consumers about the process, not to get them to actually buy a product. Similarly, making statements like “rates are near an all-time low” would probably not be covered because it is a general statement about the market.

Providing a buyer with a lender’s rate sheet listing the current rates for specific loan products would be covered as a commercial communication, however, since the intent of that information is to assist the consumer in making a decision on what loan to apply for. It is also likely that the rule covers a statement like “I can’t believe the FHA 30-year loan is at 4.25%” since that is a statement with detailed information about a specific mortgage product.

**Q: Do these statements have to be in particular format (e.g., written, spoken, etc.) to be covered?**

**A:** No; there are virtually no limitations on what constitutes a “communication.” The rule lists over 30 examples of types of communications, including letters and mailers, telemarketing or on-hold scripts, training materials provided to marketing partners, TV or radio ads, and website content, but also makes clear that a communication “in any other medium” is also included. **Given the breadth of the definition, it would also cover communications via email, text messaging and social media posts.** In short, any time you engage in any type of communication generally intended to spur interest in a specific mortgage product covered by the rule, you’re engaging in a commercial communication.

**Q: Who has to keep records under these rules?**

**A:** Any person who engages in commercial communications regarding mortgage products must maintain records of the communications, as well as records regarding the products themselves. In the context of a real estate transaction, this means that individual agents who provide mortgage information are required to maintain records, as are brokerages that provide information, and any entities that distribute the information created by the broker or agent.

For example, if a brokerage posts information about certain loan products on its website, it must maintain records of those postings. If an agent who works in the brokerage displays that same information on his own website, the agent should also maintain his own record of that display, as the agent is now presenting that communication. If the brokerage or agent provides that raw information to an advertising agency that develops a brochure, the advertising agency will need to maintain a record of the communication and the underlying information as well.

**Q: What records are covered by the recordkeeping requirements of the rules?**

**A:** First, the person making the commercial communication must maintain records of every “materially different” communication. This means that if you provide the same rate sheet to all clients for a week, you would be required to maintain only one copy of that rate sheet - although it may actually be easier to maintain a copy of each communication provided to a consumer in that consumer’s file rather than just keeping a master file and trying to figure out which document was given to which consumer.

Remember that you may be required retain records of relevant websites (if you post loan information on your site), emails, text messages and social media posts (tweets, status updates, etc.) if they fall under the broad definition of “commercial communications.” If these communications aren’t already in print, you may need to take steps to either store them electronically, if possible, or get them into print (taking screenshots of a website, or printing certain emails to PDF).

Second, you must also retain records of documents “describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication...” Generally, this means that in addition to the specific communications that are made, you should be keeping whatever descriptive documents you have regarding the products being discussed. For example, if you provide a consumer with excerpts from a list of products provided by a lender, you should keep the full list in your records. Or if you send an email saying “this adjustable rate has a cap limiting increases to 1% per year” you need to keep the loan documentation that contains this information.

**Q: Is there a required format for the records?**

**A:** No. The FTC allows for the records to be kept “in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business.” For most salespeople, it would probably be sufficient to maintain copies of client communications in existing client files, since that’s the place you would keep client communications, and in Pennsylvania most files are automatically kept for at least 3 years. Communications that are distributed beyond a specific client – websites, on-hold scripts, TV/radio commercials or brokerage brochures, for example – will probably need to be kept in a master file somewhere.

Also, remember that there may be different files for communications made by a brokerage and those made by an agent. Each individual agent would be responsible for maintaining communications, but if the brokerage prepares an item that is distributed to the agents, then the brokerage has to keep its own record of that communication.

**Q: What if I don’t keep the required records?**

**A:** Failure to keep records is a violation of the rules *even if you have not actually made a material misrepresentation*. That is, even if it turns out you didn’t make a misrepresentation, you can still be fined just for not having the correct records.

**Q: Is there any ‘safe harbor’ or other protection for agents/brokers that rely on information from others?**

**A:** There is no explicit safe harbor provision, but there are two potential protections. First, the FTC commentary to the rule suggest that “a disclaimer or qualifying statement may correct a misleading perception” if it is “sufficiently clear and prominent to convey the qualifying information effectively, i.e., it is both noticed and understood by consumers.”

By way of example, a salesperson providing mortgage rate information provided by a lender may be protected with a disclaimer that clearly and prominently notifies consumers that the rates are provided for informational purposes only, and that the consumer must contact the lender for final rates and a determination of eligibility (see [NAR sample disclaimer](#)).

Second, be sure to retain copies of the relevant program information as required to meet the recordkeeping requirements. If you inadvertently provide bad information to a consumer, you may gain some level of protection by showing investigators that you only passed on the information that was provided to you. Of course it will be hard to rely on this defense if you pass on information that is clearly incorrect.

**Q: Where can I get more information on the MAP rules?**

**A:** The issue is very new, but the following resources should help with understanding the regulations. If you come across other helpful links please notify PAR.

- FTC press release explaining the rules: <http://ow.ly/6aQt2>
- FTC rules with commentary: <http://ow.ly/6aQmC>
- NAR overview: <http://ow.ly/6aQoM>
- Article from FTC Beat: <http://ow.ly/6aQyl>
- Article from Mortgage Match: <http://ow.ly/6aQBf>