

# FTC's NPRM re Mortgage Advertising

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The Federal Trade Commission ("FTC") is seeking comment to a [proposed rule](#) regarding unfair or deceptive acts and practices in connection with advertising for mortgages. The proposed rule would prohibit misrepresentations in commercial communications regarding any term of any mortgage credit product and would impose recordkeeping requirements.

The FTC proposes the rule pursuant to the Omnibus Appropriations Act and the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Credit CARD Act"). States also have enforcement authority pursuant to those statutes. The FTC has identified a non-exclusive list of 19 misrepresentations that would violate the proposed rule, including misrepresentations about:

- The interest charged for the mortgage credit product;
- The annual percentage rate, simple annual rate, periodic rate, or any other rate;
- The existence, nature, or amount of fees or costs to the consumer, including misrepresentations that no fees are charged;
- The terms associated with any additional product sold in conjunction with the mortgage credit product;
- Any prepayment penalty;
- The variability of interest, payments, or other terms;
- The amount of the obligation or the existence of cash or credit available to the consumer in connection with the mortgage credit product;
- The existence, number, amount, or timing of any minimum or required payments;
- The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts;
- The consumer's ability to obtain any mortgage credit product or terms; and
- The availability or nature of any counseling services.

The proposed rule would also require entities subject to the rule to retain certain documents to evidence compliance for at least 24 months from the last date of dissemination of the commercial communication.

Comments to the proposed rule are due by November 15, 2010. Entities interesting in commenting

should contact a Kelley Drye attorney with expertise in this area.