

New Advertising Requirements and Restrictions

The final rule contains new advertising requirements for both closed- and open-end mortgage loans. These changes are meant to improve the clarity of information included in mortgage-related advertisements as well as provide outright bans on certain misleading advertising practices.

Significant Closed-End Loan Advertising Rules

Clear and Conspicuous Standard. The Board added a specific clear and conspicuous standard that applies to all closed-end loan advertisements. This new standard complements the existing clear and conspicuous standard in Regulation Z that applies to all closed-end credit disclosures. The accompanying commentary outlines several practices needed to comply with the clear and conspicuous standard for loans secured by dwellings.

Disclosure Changes to Advertisements for Dwelling-Secured Loans. Under the new rules, advertisements for home-secured loans may include only the simple annual interest rate, or the rate at which interest will accrue, along with and not more conspicuously than the disclosed APR. In addition, if an advertisement for a dwelling-secured loan includes a simple annual interest rate, such as a teaser rate, and more than one rate may apply during the loan's term, the advertisement must include:

- each simple annual rate of interest that will apply;
- the time period for which the rate will apply; and
- the loan's APR.

If an advertisement for a dwelling-secured loan states any payment amount, the advertisement must include:

- the amount of each payment that will apply during the loan's term, including any balloon payment;
- the period of time each payment will apply; and
- the fact that the payments do not include taxes and insurance premiums if a first-lien loan.

The additional disclosures discussed above must be equally prominent and in close proximity to the advertised payment or rate that triggered the required disclosures.

Prohibited Advertising Practices. The final rule prohibits a number of advertising practices for dwelling-secured loans deemed to be unfair, deceptive, associated with abusive lending practices, or otherwise not in the borrower's interest. These prohibited practices are:

1. using the term "fixed" when advertising a variable- rate loan or a transaction with a planned payment increase without including information about the time period for which the rate or payment is fixed and stating "ARM," if applicable;
2. comparing the advertised rate or payment to an actual or hypothetical rate or payment without disclosing the rates or payments that will apply during the entire loan's term, and that they do not include taxes and insurance, if applicable;
3. misrepresenting that a loan is government endorsed;

4. using the name of the borrower's current lender without including the actual advertiser's name and disclosing that the current lender is not associated with the advertisement;
5. making a misleading claim that debt will be eliminated or waived rather than replaced;
6. using the term "counselor" to refer to a for-profit mortgage broker or creditor; and
7. providing an advertisement in one language while providing required disclosures in another.

Significant New Open-End Advertising Rules

The final rule also includes new advertising requirements for HELOCs that include promotional rates or promotional payments. Specifically, if a HELOC advertisement includes a promotional rate or a promotional payment amount, the advertisement must include (1) the period of time during which the promotional rate or payment will apply; and (2) information about rates and payments that will apply at the end of the promotional period. A promotional rate is essentially a temporary rate – a rate provided under a variable-rate plan that is not tied to the loan's index and margin used to make later rate adjustments. A promotional payment is one under a variable-rate plan that is not tied to the loan's index and margin for calculating minimum payments. Under a nonvariable-rate plan, a promotional payment is one that is less than required under the plan's terms.

Yield Spread Premium Rule: Not Adopted

One high profile part of the Board's original proposal concerned significant restrictions on payments to mortgage brokers known as yield spread premiums (YSP). In this arrangement, a lender compensates a broker if it originates a loan at a higher rate than a borrower qualified for on the lender's rate sheet. A YSP is a fee or premium paid to the broker based on the difference between the two rates. Under the proposed rule, payment of a YSP to a mortgage broker would be permitted only if:

- the consumer agreed in advance and in writing to the YSP, and
- the broker disclosed that the consumer would ultimately bear the cost of the YSP, even if paid directly by the creditor, and that the YSP arrangement could influence the broker to provide the consumer with mortgage products or terms not necessarily in the consumer's best interest.¹⁴

The Board initiated this proposal to address concerns that YSP arrangements can be unfair and deceptive to consumers. Specifically, creditor payments to brokers based on a loan's interest rate create an incentive to brokers to place borrowers into loans with higher rates than they qualify for. In addition, consumers are often unaware of these compensation arrangements and may wrongly assume the broker is working in their best interest when finding a loan. The Board intended that the proposed rule would help reduce the broker's incentive to charge higher rates and provide the consumer with more leverage in negotiating with the broker.

Although the Board continues to have concerns about unfair acts or practices associated with mortgage broker compensation arrangements, this particular proposal has been withdrawn. The Board found through consumer testing that some aspects of the proposal could confuse and mislead consumers; in fact, the testing showed consumers did not sufficiently understand some major aspects of the proposed disclosures. As a result, the Board withdrew the proposal but intends to explore additional ways of addressing the potentially unfair aspects of mortgage broker