

Regulatory Update

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Provided by



New CFPB Leadership: What to Expect

- CFPB at age 10
- Director Chopra
 - Lessons from his time at CFPB and FTC
 - Early signals from his tenure as CFPB Director
- Other CFPB Senior Leadership
- CFPB Approach to Enforcement
- CFPB Priorities

UDAAP

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

- **Unfair** - An act or practice is “unfair” when:
 - It causes or is likely to cause *substantial injury* to consumers;
 - The injury is not *reasonably* avoidable by consumers; and
 - The injury is not outweighed by countervailing benefits to consumers or to competition.
- **Deceptive** - An act or practice is “deceptive” when:
 - The representation, omission, or practice misleads or is likely to *mislead* the consumer;
 - The consumer’s interpretation of the representation, omission, act, or practice *is reasonable* under the circumstances; and
 - The *misleading* representation, omission, or practice is material.
 - ❖ FTC’s 4 P’s test can assist in the evaluation of whether a representation, omission, act, or practice is likely to mislead:
 - ❖ **Prominence**- Is the statement *prominent* enough for the consumer to notice?
 - ❖ **Presentation**- Is the information *presented* in an easy-to-understand format that does not contradict other information in the package and at a time when the consumer’s attention is not distracted elsewhere?
 - ❖ **Placement**- Is the *placement* of the information in a location where consumers can be expected to look or hear?
 - ❖ **Proximity**- Is the information in close *proximity* to the claim it qualifies?
- **Abusive** - An act or practice is “abusive” when it:
 - *Materially* interferes with the ability of consumers to understand a term or condition of a consumer financial product or service; or
 - Takes *unreasonable advantage* of:
 - A lack of understanding on the part of the consumer of the *material* risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
 - The *reasonable* reliance by the consumer on the covered person to act in the interests of the consumer.

MAP RULE

Mortgage Acts and Practices - Advertising Rule (MAP Rule)

- Not all financial institutions are subject to the MAP Rule (only covers entities that the FTC has jurisdiction over)
 - E.g.,: Nonbank mortgage lenders and brokers, and the entities that advertise mortgage products on their behalf
- Prohibits any material misrepresentation in a commercial communication involving a mortgage credit product
- “Commercial Communication” is broadly defined to include “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 ... a mailer... a letter... an infomercial... the internet ... or any other medium”

Examples of MAP Rule Violations

- Misrepresentations about:
 - Payments- Existence, number, amount, or timing of any required payment(s)
 - Potential for Default- When a borrower would potentially be in default under the loan
 - T&I- Terms, amounts, payments, or other requirements related to T&I
 - Fees, Costs or Rates- Existence, nature, or amount of any fees, costs, interest charged, APR, or any other rate
 - Government Affiliation- Affiliation of a mortgage product or product provider to a governmental entity, including misrepresentation that the product is endorsed or sponsored by a government entity
 - Consumer’s Right to Reside in Dwelling- Right of the consumer to reside in the dwelling, including how long or under what conditions a reverse mortgage borrower can stay in his/her home
 - Source of Communication- Source of the communication, including misrepresentations that it is from or on behalf of the consumer's current lender
 - Likelihood of Obtaining Product/Term- Consumer's ability or likelihood to obtain any mortgage product or term

CFPB Enforcement Actions

October 8, 2021: CFPB filed a complaint and consent order against a reverse mortgage lender (“Company”) for UDAAP violations (and for violating a 2016 consent order), alleging that Company sent consumers mailers that included inflated estimated home values and falsely stated that Company had made “every attempt to ensure the home value information provided is reliable”

- Company agreed to the filing of the consent order to resolve all matters alleged in the complaint without admitting or denying the allegations in the complaint, including that Company violated its 2016 consent order

UDAAP Violations

- ***Deceptive Representations About Estimated Home Values***
 - Company induced consumers to enter into negotiations with Company by using *inflated* estimated home values
 - CFPB stated that this tactic was *deceptive* since it would likely lead a *reasonable consumer* to believe that he/she had more equity in the home than was actually available and could reap more proceeds from a reverse mortgage than were actually available to the consumer
 - Misrepresentations were *material* because a consumer would likely enter into negotiations with Company based on inflated estimated home value
- ***Deceptive Representations About Accuracy of Home Estimates***
 - Company *misrepresented* that it “makes every attempt to ensure the home value information provided is reliable”
 - CFPB claimed Company made no real attempt to ensure that the home valuations it provided were reliable
 - Misrepresentations were *material* because they induced consumers to rely on Company’s inflated estimates and enter into negotiations with Company

Consent Order

- **Civil Money Penalty:** \$1.1 million civil money penalty to CFPB
- **Consumer Redress:** \$173,400 in redress to consumers who were enticed by deceptive home values, paid for & received appraisals, & decided not to obtain a reverse mortgage
- **Prohibition:** Prohibited from violating UDAAP provisions or mispresenting any material fact to consumers in connection with advertising/sale of consumer goods or services
- **CFPB Reverse Mortgage Guides:** On all mail solicitations must include a link to CFPB’s *Reverse Mortgage: A Discussion Guide*. And in welcome communications to new reverse mortgage borrowers must include a link to CFPB’s Guide, *You Have a Reverse Mortgage: Know your Rights and Responsibilities*
- **Compliance Plan:** Must submit to CFPB a comprehensive compliance plan designed to ensure Company’s reverse mortgage advertising complies with the terms of the order
- **Compliance Monitoring and Reporting:** Must submit compliance progress reports to CFPB on an ongoing basis

CFPB Enforcement Actions

April 27, 2021: CFPB issued a consent order against a reverse mortgage broker and lender (“Company”) for MAP Rule and Reg. Z violations (which also constituted violations of the CFPA), alleging that Company sent seniors and financial professionals hundreds of thousands of misleading Ads

- Company agreed to the issuance of the consent order without admitting or denying any of the findings of fact or conclusions of law

MAP Rule Violations

- ***Misrepresentations About Fees, Costs, or Payments, 12 C.F.R. §§ 1014.3(c) and (k)***
 - Company distributed Ads that contained misrepresentations that taxes would not be assessed
 - Also misrepresented that borrowers did not have to make additional payments after they took out a reverse mortgage loan (even though they are still required to pay T&I)
- ***Misrepresentations about Taxes and Insurance, 12 C.F.R. § 1014.3(e)***
 - Ads misrepresented the borrower’s responsibility for paying T&I
 - For example, some Ads stated that Company offered a loan “that allows senior homeowners to immediately increase their monthly cash flow TAX FREE” and “accomplish their goals without touching savings, investments, or current income”
- ***Misrepresentations about the Potential for Default and Right to Reside in the Dwelling, 12 C.F.R. §§ 1014.3(l) and (p)***
 - Ads contained misrepresentations about the circumstances under which the consumer could default
 - Also misrepresented the borrower’s right to reside in the dwelling, including that the borrower could not be forced out of his/her home with a reverse mortgage
- ***Misrepresentations about the Association of Product or Provider, or Source of Communications, 12 C.F.R. §§ 1014.3(n) and (o)***
 - Ads misrepresented the nature of the mortgage credit product it offered to consumers or the source of the solicitation letters
 - They also made it seem as if the communication was from or on behalf of the consumer’s current lender or servicer
- ***Misrepresentations about Available Cash or Credit, 12 C.F.R. § 1014.3(j)***
 - Ads contained misrepresentations that the consumer would receive a certain, specific amount of cash or credit when Company lacked the information needed to make those statements

CFPB Enforcement Actions

MAP Rule Violations (cont'd)

- *Misrepresentations about the Likelihood to Obtain a Particular Term or Refinancing, 12 C.F.R. §§ 1014.3(q) and (r)*
 - Ads contained misrepresentations that consumers could obtain or had a high likelihood of obtaining a reverse mortgage (or refinancing their current reverse mortgage) with specific terms based on their individualized circumstances when Company lacked the information necessary to make those determinations

Regulation Z Violations

- *Inadequate Disclosure of Payment Terms, 12 C.F.R. § 1026.24(f)(3)(i)*
 - Ads represented that no payment was required but did not state that this did not include amounts for T&I and that the actual payment obligations would be greater, or did not disclose that fact clearly and conspicuously
 - Under Reg. Z, if an Ad for closed-end credit secured by a dwelling (e.g., a fixed rate reverse mortgage) states the amount of any payment, it must disclose in a clear and conspicuous manner: (1) the amount of each payment that will apply over the term of the loan (additional requirements for closed-end ARMs); (2) the period of time during which each payment will apply; and (3) for first lien loans, the fact that the payments do not include amounts for T&I, if applicable, and that the actual payment obligation will be greater

Consent Order

- **Civil Money Penalty:** \$140,000 civil money penalty to CFPB
- **Prohibition:** Prohibited from violating MAP Rule/Reg. Z provisions or mispresenting any material fact to consumers in connection with advertising/sale of mortgage products
- **Advertising Review:** Company must review Ad templates/Ads to ensure that they are compliant with MAP Rule, TILA/Reg. Z, CFPA, and the order
- **Compliance Plan:** Must submit to CFPB a comprehensive compliance plan designed to ensure Company's mortgage advertising complies with all applicable federal consumer financial laws and the terms of the order
- **Compliance Monitoring and Reporting:** Must submit compliance progress reports to CFPB on an ongoing basis

FTC Endorsements & Testimonials

October 13, 2021: FTC sent a Notice to 700 large companies, retailers, and advertisers, outlining conduct in endorsements and testimonials that the FTC has determined to be deceptive or unfair (i.e., UDAP violations) in prior FTC administrative cases

- While the Notice does not suggest that the companies have engaged in deceptive or unfair conduct, it warns them that the FTC could seek civil penalties (\$43,792 per incident) against a company that engages in conduct that it knows (e.g., through this “notice”) has been found to be unlawful in previous FTC administrative orders

Notice listed the following endorsement- and testimonial- related acts or practices FTC has previously determined to be deceptive or unfair:

- Claiming that a third party has endorsed a product or its performance when, in fact, they have not done so
- Misrepresenting that an endorsement reflects the experience, views, or opinions of users of a product or service
- Misrepresenting an endorser as an actual, current, or recent user of a product or service
- Continuing to advertise an endorsement unless the advertiser has good reason to believe the endorser continues to subscribe to the views presented in the endorsement
- Using testimonials to make unsubstantiated or otherwise deceptive performance claims
- Failing to disclose a connection between an endorser and seller of a product or service, if such connection might materially affect the weight or credibility of the endorsement and if the connection would not be reasonably expected by consumers
- Misrepresenting that the experience of an endorser represents the typical or ordinary experience of users of the product or service

FTC Endorsements & Testimonials

Why is the FTC's Notice Important?

- Endorsements and testimonials are used in a lot of reverse mortgage Ads
- You can't spell UDAAP without UDAP
- It signals a priority area in which the FTC may consider enforcement
- Under Dodd-Frank, non-depository mortgage lenders and brokers are subject to the enforcement authority of both the FTC and the CFPB
- FTC and CFPB have a memorandum of understanding to coordinate their enforcement efforts:
 - Information sharing
 - Joint investigations
 - Intervention in each other's enforcement actions
 - Consistency of legal interpretation
- What was the CFPB Director's last position?

Takeaways

- **Ad Review:** Review your company's Ads that use endorsements and testimonials to ensure they do not violate FTC's guidance
- **Remove Ads with Outdated Endorsements:** If the endorser no longer subscribes to the views in the endorsement, Ads containing such old endorsement should be taken down
- **Check Ad Disclosures:** Make sure all reviews, endorsements, or testimonials used in mailers, online, or on social media adequately disclose any material connections between your company and the endorser

COVID-19: Foreclosure/Eviction Moratorium

Since March 2020, HUD has invoked two basic tools to address COVID-19's impact on borrowers:

- **Moratorium:** Prohibition of the initiation of foreclosures, the completion of foreclosures in process, and/or post-foreclosure evictions
- **HECM Extension Periods:** Extensions of post-due and payable curtailment milestones

Foreclosure Moratorium effective from March 18, 2020, to July 31, 2021

- **March 18, 2020:** HUD announced 60-day foreclosure and eviction moratorium in Mortgagee Letter 2020-04
- **May 14, 2020:** Mortgagee Letter 2020-13 extended foreclosure and eviction moratorium through June 30, 2020
- **June 17, 2020:** Mortgagee Letter 2020-19 extended foreclosure and eviction moratorium through August 31, 2020
- **August 27, 2020:** Mortgagee Letter 2020-27 extended foreclosure and eviction moratorium through December 31, 2020
- **December 17, 2020:** Mortgagee Letter 2020-43 extended foreclosure and eviction moratorium through February 28, 2021
- **January 21, 2021:** Mortgagee Letter 2021-03 extended foreclosure and eviction moratorium through March 31, 2021
- **February 16, 2021:** Mortgagee Letter 2021-05 extended foreclosure and eviction moratorium through June 30, 2021
- **June 25, 2021:** Mortgagee Letter 2021-15 extended foreclosure and eviction moratorium through July 31, 2021
- **July 31, 2021:** Foreclosure moratorium expires when HUD declines to further extend it

Eviction Moratorium Expired September 30, 2021, pursuant to Mortgagee Letter 2021-19

COVID-19: HECM Extension Periods

- Initially announced on April 1, 2020, in Mortgagee Letter 2020-06, HECM Extension Periods allow a borrower to request the mortgagee delay calling a loan due and payable, or mortgagees to take automatic extensions of deadlines for HECMs that are already due and payable.
- HUD amended the program several times over an eighteen-month span to provide borrowers multiple extension periods.
- Borrowers can currently request a six-month initial HECM Extension Period until the federal government declares the end of the COVID-19 National Emergency.
- Currently, no HECM Extension Period may extend beyond six months after the end of the COVID-19 National Emergency or September 30, 2022, whichever is later.

Initial Extension Start Date	Initial Extension Period	Additional Extension Period	Additional Extensions	Maximum Extension Period
March 1, 2020 – June 30, 2020	Up to 6 months	Up to 6 months	Up to 6 months (in 3-month increments)	Up to 18 months
July 1, 2020 – Sept. 30, 2020	Up to 6 months	Up to 6 months	Up to 3 months	Up to 15 months
Oct. 1, 2020 – June 30, 2021	Up to 6 months	Up to 6 months	0	Up to 12 months
July 1, 2021 – Sept. 30, 2021	Up to 6 months	Up to 6 months	0	Up to 12 months
October 1, 2021 – the end of the COVID-19 National Emergency	Up to 6 months	Up to 6 months (if the initial COVID-19 Extension period will be exhausted and expires during the COVID-19 National Emergency)	0	Up to 12 months (if the Borrower or the HECM is eligible for the additional COVID-19 Extension period)

COVID-19: Loss Mitigation Waivers

On September 2, 2021, HUD announced two temporary waivers to its HECM policies to assist borrowers struggling to make property charge payments due to COVID-19:

– Mortgagee Letter 2015-11:

- Imposed a \$5,000 cap on arrearages that can be repaid through a recalculated Repayment Plan after initial Repayment Plan is broken
- HUD waived the \$5,000 cap, so borrowers that break an initial Repayment Plan and have arrearages in any amount are eligible for a recalculated Repayment Plan
- HUD had previously granted this relief in a partial waiver dated February 2, 2021, that expired on December 31, 2021
- HUD's new waiver will remain in effect through June 30, 2022

– Mortgagee Letter 2016-07:

- Allowed mortgagees to invoke a “mortgagee-funded cure” of missed property charge payments of up to \$2,000, but the HECM would not be eligible for assignment during the three-year period after the mortgagee-funded cure
- HUD waived the three-year ban on assignments following a mortgagee-funded cure
- Newly-granted relief will remain in effect through June 30, 2022

Mortgagee Review Board Activity

Background regarding the Mortgagee Review Board:

- Authorized to take administrative action against HUD/FHA approved lenders that are not in compliance with FHA approval and lending requirements.
- Several administrative remedies at its disposal:
 - Termination/suspension/probation of FHA lending authority;
 - Cease and Desist Letters
 - Letters of Reprimand
 - Civil Money Penalties
 - Settlement Agreements

Uptick in MRB Administrative Actions

- FY2015: 14 administrative actions
- FY2016: 25 administrative actions
- FY2018: 17 administrative actions (*FY2017 not available)
- FY2019: 47 administrative actions
- FY2020: 57 administrative actions

What's driving this?

- Increase focus on Notice of Material Event Reporting for adjusted net worth, liquidity, operating losses, state sanctions and other post-approval changes listed in Handbook 4000.1
- Mortgagees should ensure they have robust controls around NME reporting to avoid MRB scrutiny

What's Next?

Draft HECM Handbook

- Published September 29, 2021
- Consolidates HECM requirements currently scattered across 150 Mortgagee Letters and other policy documents
- Approximately 85 pages, plus exhibits, dedicated to servicing-related issues
- Industry comment period recently extended through December 31, 2021
- NRMLA's Servicing Committee actively reviewing the draft Handbook sections regarding servicing and preparing comments to the same

FHA Defect Taxonomy for Servicing Loan Reviews

- Establishes criteria for assessing violations of HUD's servicing guidance for Single Family mortgages and HECMs
- Six general categories of inquiry:
 - Servicer Operations
 - Account Administration
 - Delinquent and Default Servicing
 - Loss Mitigation Processing
 - Home Retention
 - Home Disposition
- Remedies include provision of mitigating documentation, financial remediation (borrower refund, account adjustment, or remittance to FHA), or life of loan indemnification.

Questions?

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