

**Concurring Statement of Commissioner Ramirez,  
in which Chairman Leibowitz and Commissioner Brill Join  
Final Rule: Mortgage Acts and Practices – Advertising**

We support the final rule the Commission issues today concerning the advertising of home mortgages (Mortgage Acts and Practices – Advertising Rule or “MAP Rule”). The MAP Rule is narrow in scope—addressing only the advertising phase of the mortgage lifecycle by those subject to the Federal Trade Commission’s jurisdiction—and does not render unlawful any conduct that is not already banned by the prohibition on deception in Section 5 of the FTC Act.<sup>1</sup> At the same time, the MAP Rule accomplishes several important objectives by: (1) giving the FTC and the states authority to seek civil penalties for deceptive mortgage advertising, broadly defined, by entities subject to the FTC’s jurisdiction; (2) providing guidance and clarity as to what constitutes deceptive mortgage advertising; and (3) imposing record-keeping requirements on mortgage advertisers to facilitate law enforcement. We write separately to underscore the importance of one issue addressed by the MAP Rule: communications about mortgages to consumers whose native language is not English.

The United States population today is highly diverse, representing cultures and languages from all over the world. According to the Census Bureau, of the 281 million people age five and older in the United States in 2007, 55.4 million individuals, or nearly 20 percent, reported speaking a language other than English at home.<sup>2</sup> Marketers are

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<sup>1</sup> 15 U.S.C. § 45(a).

<sup>2</sup> U.S. Census Bureau, *Language Use in the United States: 2007* (Apr. 2010), available at <http://www.census.gov/prod/2010pubs/acs-12.pdf>.

well-aware of this trend, and today they often tout a wide array of products and services, including home loans, in languages other than English.

It is essential that our consumer protection laws keep pace with such marketplace realities, and we are pleased that the MAP Rule broadly bans deception in commercial communications concerning residential mortgages regardless of the language or languages in which they are made. For example, under the MAP Rule it can be unlawful to offer a consumer one set of terms in her native language but then deliver different terms in loan documents written in English.<sup>3</sup> In addition, because the “net impression” of an advertisement is the lynchpin of deception analysis,<sup>4</sup> a fine print disclaimer or qualifying statement may be insufficient to cure an otherwise misleading advertisement.<sup>5</sup> This principle, as applied to advertising that uses multiple languages, means that, in advertising that targets consumers in a language other than English, a disclaimer in English may be insufficient to cure misleading claims in another language.<sup>6</sup>

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<sup>3</sup> In fact, the FTC has challenged such a practice as deceptive under Section 5 of the FTC Act. *See FTC v. Mortgages Para Hispanos.com Corp.*, No. 4:06-cv19 (E.D. Tex. 2006) (alleging mortgage broker engaged in deceptive practices by orally offering Spanish-speaking customers one thing in Spanish and then delivering something else in loan documents written entirely in English).

<sup>4</sup> *See, e.g., FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006); *FTC v. Nat’l Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1189 (N.D. Ga. 2008), *aff’d*, 356 Fed. App’x (11th Cir. 2009).

<sup>5</sup> *See, e.g., Cyberspace.com*, 453 F.3d at 1200.

<sup>6</sup> In 2008, the Board of Governors of the Federal Reserve System amended Regulation Z under the Truth in Lending Act to prohibit advertising certain information only in a foreign language while providing, in the same advertisement, other critical information in English. *See* Final Rule, Truth in Lending, 73 Fed. Reg. 44522, 44601 (Jul. 30, 2008) (codified at 12 C.F.R. § 226.24(i)(7)). This approach is consistent with longstanding FTC requirements that mandatory disclosures be made in the language of the target audience. *See* 16 C.F.R. § 14.9 (under FTC rules, cease-and-desist orders, and guides that require the “clear and conspicuous” disclosure of information, such disclosure must be made in the language of the target audience);

But there are many questions about the communication of mortgage loan terms that go beyond the scope of this rulemaking, among them whether mortgage disclosure documents should be provided to non-English speakers in languages other than English.<sup>7</sup> Congress has charged the Consumer Financial Protection Bureau with the long-overdue task of simplifying and clarifying mortgage disclosure documents,<sup>8</sup> and has granted the new agency broad rulemaking authority with respect to the advertising and communication of mortgage loan terms. We look forward to the results of the CFPB's work in this area, including its consideration of the needs of non-native English speaking consumers when carrying out that important mandate.<sup>9</sup>

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16 C.F.R. § 610.4(a)(3)(ii) (in marketing free credit reports, mandatory disclosures must be made in the same language as that principally used in the advertisement); 16 C.F.R. § 429.1(a) (in door-to-door sales, failure to furnish a completed receipt or contract in the same language as the oral sales presentation is an unfair and deceptive act or practice); 16 C.F.R. § 455.5 (where used car sales pitches are conducted in Spanish, mandatory disclosures must be made in Spanish); 16 C.F.R. § 308.3(a)(1) (mandatory disclosures about pay-per-call services must be made in the same language as that principally used in the advertisement); *see also* FTC Final Rule, Free Annual File Disclosures, 75 Fed. Reg. 9726, 9733 (Mar. 3, 2010) (noting “the Commission’s belief that a disclosure in a language different from that which is principally used in an advertisement would be deceptive”).

<sup>7</sup> The CFPB has begun testing draft prototype mortgage disclosure documents in English and Spanish in advance of a formal rulemaking process. *See* CFPB, *Consumer Financial Protection Bureau Announces Initiative to Combine Mortgage Loan Disclosures* (May 18, 2011), available at <http://www.consumerfinance.gov/pressrelease/consumer-financial-protection-bureau-announces-initiative-to-combine-mortgage-loan-disclosures/>.

<sup>8</sup> *See generally* JAMES M. LACKO & JANIS K. PAPPALARDO, FEDERAL TRADE COMMISSION STAFF REPORT, IMPROVING CONSUMER MORTGAGE DISCLOSURES: AN EMPIRICAL ASSESSMENT OF CURRENT AND PROTOTYPE MORTGAGE DISCLOSURE FORMS (2007), available at <http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf>.

<sup>9</sup> Our colleague, Commissioner Rosch, expresses concern that we may be advancing an argument about mortgage disclosures that is not supported by the record before us. But far from prejudging the outcome of any work to be performed by the CFPB, we are simply highlighting some of the important consumer protection issues that may arise in connection with mortgage advertisements targeting consumers whose primary language is not English. As we noted above, the matters before the Commission in this rulemaking were narrow, and the evidence received on the issue of

More generally, given our country's changing demographics, we believe that government and industry alike will need to pay greater attention to ensuring that consumers, no matter what language they speak, have access to important information regarding their purchases and are protected from unfair and deceptive practices.

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the use of multiple languages in advertising—a mere four comments—does not address the questions to be examined by the CFPB concerning improvements to mortgage disclosure documents. While this limited record does not purport to address such issues, we have no doubt that in considering this and other questions, the CFPB will develop a full and complete record that properly takes into account the impact on all stakeholders of any measure that is designed to ensure that consumers receive clear and accurate information to assist them in making sound decisions about mortgages.