§ 320.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 320.7 Enforcement.

Compliance with the requirements of this part shall be enforced under the Federal Trade Commission Act, 15 U.S.C. 41 et seq.

PART 322—MORTGAGE ASSISTANCE RELIEF SERVICES

Sec.
322.1 Scope of regulations in this part.
322.2 Definitions.
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SOURCE: 75 FR 75140, Dec. 1, 2010, unless otherwise noted.

§ 322.1 Scope of regulations in this part.


§ 322.2 Definitions.

For the purposes of this part:
(a) “Clear and prominent” means:
(1) In textual communications, the required disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in the same languages that are substantially used in the commercial communication; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; parallel to the base of the commercial communication, and, except as otherwise provided in this rule, each letter of the disclosure shall be, at a minimum, the larger of 12-point type or one-half the size of the largest letter or numeral used in the name of the advertised website or telephone number to which consumers are referred to receive information relating to any mortgage assistance relief service. Textual communications include any communications in a written or printed form such as print publications or words displayed on the screen of a computer;
(2) In communications disseminated orally or through audible means, such as radio or streaming audio, the required disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;
(3) In communications disseminated through video means, such as television or streaming video, the required...
disclosures shall appear simultaneously in the audio and visual parts of the commercial communication and be delivered in a manner consistent with paragraphs (a)(1) and (2) of this section. The visual disclosure shall be at least four percent of the vertical picture or screen height and appear for the duration of the oral disclosure;

(4) In communications made through interactive media, such as the Internet, online services, and software, the required disclosures shall:

(i) Be consistent with paragraphs (a)(1) through (3) of this section;

(ii) Be made on, or immediately prior to, the page on which the consumer takes any action to incur any financial obligation;

(iii) Be unavoidable, i.e., visible to consumers without requiring them to scroll down a webpage; and

(iv) Appear in type at least the same size as the largest character of the advertisement;

(5) In all instances, the required disclosures shall be presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them; and

(6) For program-length television, radio, or Internet-based multi-media commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.

(b) "Client trust account" means a separate account created by a licensed attorney for the purpose of holding client funds, which is:

(1) Maintained in compliance with all applicable state laws and regulations, including licensing regulations; and

(2) Located in the state where the attorney’s office is located, or elsewhere in the United States with the consent of the consumer on whose behalf the funds are held.

c) "Commercial communication" means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the Internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term "commercial communication."

(1) “General Commercial Communication” means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is not directed at a specific consumer.

(2) “Consumer-Specific Commercial Communication” means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer.

(d) "Consumer" means any natural person who is obligated under any loan secured by a dwelling.

e) "Dwelling" means a residential structure containing four or fewer units, whether or not that structure is attached to real property, that is primarily for personal, family, or household purposes. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

(f) “Dwelling loan” means any loan secured by a dwelling, and any associated deed of trust or mortgage.

g) “Dwelling Loan Holder” means any individual or entity who holds the dwelling loan that is the subject of the offer to provide mortgage assistance relief services.

(h) “Material” means likely to affect a consumer’s choice of, or conduct regarding, any mortgage assistance relief service.
§ 322.3 Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in §322.2(1);

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in §322.2(1);

(3) That a mortgage assistance relief service is affiliated with, endorsed or