§ 322.2 Definitions.

For the purposes of this part:

(a) "Clear and prominent" means:

(1) In all print, 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

(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 321.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to Section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009).

§ 321.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is held to be invalid, it is the Commission’s intention that the remaining provisions shall continue in effect.

PART 322—MORTGAGE ASSISTANCE RELIEF SERVICES

§ 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

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.
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
§ 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

(i) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

(j) “Mortgage Assistance Relief Service Provider” or “Provider” means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service. This term does not include:

(1) The dwelling loan holder, or any agent or contractor of such individual or entity.

(2) The servicer of a dwelling loan, or any agent or contractor of such individual or entity.

(k) “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, except to the extent that any person is specifically excluded from the Federal Trade Commission’s jurisdiction pursuant to 15 U.S.C. 44 and 45(a)(2).

(l) “Servicer” means the individual or entity responsible for:

(1) Receiving any scheduled periodic payments from a consumer pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage assistance relief services, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609); and

(2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

(m) “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of any service, by use of one or more telephones and which involves more than one interstate telephone call.