

A COMPLIANCE GUIDE FOR BUSINESS

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Homeowners facing foreclosure are often desperate for a way to hold on to their homes. Some companies claim they can help fight off foreclosure by negotiating new mortgage terms with lenders or servicers. The Federal Trade Commission (FTC), the nation's consumer protection agency, has issued a Rule to curb unfair and deceptive practices associated with mortgage assistance relief services. If you offer mortgage assistance relief services – or work with companies that do – it's wise to know about the provisions of the Mortgage Assistance Relief Services (MARS) Rule.

This guide, which represents the views of FTC staff and is not binding on the Commission, offers tips on complying with the Rule. Here are some compliance highlights:

It's illegal to charge upfront fees. You can't collect money from a customer unless you deliver – and the customer agrees to – a written offer of mortgage relief from the customer's lender or servicer.

You must clearly and prominently disclose certain information before you sign people up for your services. You must tell them upfront key information about your services, including:

- the total cost,

- that they can stop using your services at any time,

- that you're not associated with the government or their lender, and

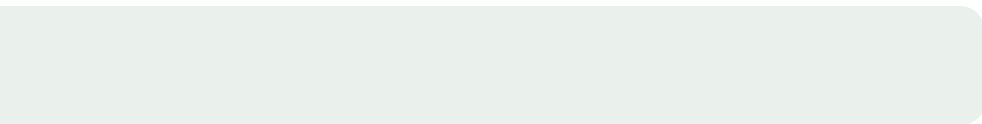
- that their lender may not agree to change the terms of their mortgage.

If you advise someone not to pay his or her mortgage, you must clearly and prominently disclose the negative consequences that could result. You must warn customers that failure to pay could result in the loss of their home or damage to their credit rating.

Don't advise customers to stop communicating with their lender or servicer. Under the Rule, it's illegal to tell people they shouldn't communicate with their lender or servicer.

You must disclose key information to your customer if you forward an offer of mortgage relief from a lender or servicer. You must give your customer a written notice from the lender or servicer describing all material differences between the terms of the offer and the customer's current loan. You also have to tell your customer that if the lender or servicer's offer isn't acceptable to them, they don't have to pay your fee.

Don't misrepresent your services. Under the Rule, it's illegal to make claims that are false, misleading, or unsubstantiated.



attorneys to perform some of your services doesn't exempt you from the Rule. Nor does having an attorney place fees in a client trust account, by itself, allow you to collect fees in advance.

Even if you don't provide mortgage assistance relief services, you still may have obligations under the Rule. It's illegal to provide "substantial assistance" to someone if you know – or consciously avoid knowing – that they're violating the Rule. What amounts to substantial assistance depends on the facts. Activities like procuring leads (the contact information of potential customers) for MARS providers, helping a MARS provider with its back-room operations, reviewing customer files, processing customers' payments, or contacting customers' servicers are just a few examples. If you work with MARS providers, review their policies, procedures, and operations to make sure they're complying with the Rule because willful ignorance on your part simply isn't a defense.



Under the Rule, it's illegal to misrepresent, either expressly or by implication, any "material aspect" of your services. That includes any information that's likely to affect a consumer's decision to use your service or choose one service over another. Here are some examples of claims that would be material:

- the likelihood of negotiating, getting, or arranging a specific form of mortgage relief;
- how long it will take to get the advertised mortgage relief;

an affiliation with the government, public programs, or lenders or servicers;

the terms and conditions of homeowners' mortgages, including how much they currently have to pay;

your refund and cancellation policies;

whether homeowners will be getting legal services;

the benefits and costs of using alternatives to for-profit MARS providers;

the amount homeowners may save if they use your service;

the total cost of your service; and

the terms, conditions, or limitations of a lender or servicer's offer of mortgage relief, including how much time the homeowner has to accept the offer.

In addition, if you make claims about the benefits, performance, or efficacy of your services, your statements must be truthful and you must have competent and reliable evidence to back them up. So, for example, if you make claims about how much your customers will save – like "We can reduce your mortgage payments by 20% to 50%" – your claims must accurately reflect the results you've achieved for previous customers. Similarly, if you claim that your customers have reduced their mortgage debt by "up to 50%," it's likely you're conveying to new customers that they, too, will get savings of around 50%. If you don't have solid proof to back up that claim, your claim is considered deceptive.

Beyond requiring that your claims are truthful, the Rule makes it illegal to tell a customer or potential customer to stop communicating with their lender or servicer.



The Rule spells out several key pieces of information you must disclose clearly and prominently to consumers. (See page 9) for more on how to make disclosures clear and prominent.) Some disclosures must be made in all advertising for general audiences. Other disclosures must be made in one-on-one communications you have with prospective customers, like telephone calls, letters, or email. A third type of disclosure must be made when you give a customer an offer of mortgage relief from his or her lender or servicer. The Rule also requires that if you ever tell a customer that he or she should stop making timely mortgage payments, you must tell them, using these words, **“If you stop paying your mortgage, you could lose your home and damage your credit rating.”**

Disclosures you must make in ads meant for a general audience

The Rule requires certain disclosures in what it calls “general commercial communications” – that is, advertising meant for a general audience, like ads on TV, radio, or the Internet. In those ads, you must clearly and prominently disclose two key facts, in these words:

1. “[Name of your company] is not associated with the government, and our service is not approved by the government or your lender;” and
2. “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

The two disclosures must be presented together. The Rule has specific requirements for presenting them.

Disclosures you must make in communications with prospective customers

The Rule requires additional disclosures in any “consumer-specific commercial communication” – that is, a letter, phone call, email, text, or the like, directed at a specific person you’re soliciting for your service. In every communication you have with prospective customers, the Rule requires that you clearly and prominently disclose three key facts, in these words:

1. **“You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert amount or method for calculating the amount] for our services.”**
2. **“[Name of your company] is not associated with the government, and our service is not approved by the government or your lender;” and**
3. **“Even if you accept this offer and use our service, your lender may not agree to change your loan.”**

The three disclosures must be presented together. The Rule has specific requirements for presenting these disclosures to prospective customers.

Disclosures you must make when you give customers an offer of mortgage relief from their lender or servicer

Under the Rule, when you give a customer an offer of mortgage relief from their lender or servicer, you have additional disclosure requirements:

1. You have to give your customer a separate written page that clearly and prominently says **“This is an offer of mortgage assistance we obtained from your lender**

You also must take reasonable steps to ensure that your employees and independent contractors comply with the Rule. At a minimum, that would include:

- performing random, blind monitoring and recording of sales and customer service calls involving your employees or people who do telemarketing on your behalf;

- establishing a procedure for receiving and responding to consumer complaints and investigating each one promptly and thoroughly;

- determining the number and nature of consumer

Federal Trade Commission