

[Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS—CFPB fines Sovereign, Prime Choice over mortgage ad mailings, \(Jul. 27, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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By Jeff Williams

Consent orders cite numerous misrepresentations in direct-mail pieces about rates, terms, and eligibility.

The Consumer Financial Protection Bureau has issued consent orders against [Sovereign Lending Group, Inc.](#), and [Prime Choice Funding, Inc.](#), for mailing consumers advertisements about Department of Veterans Affairs-guaranteed mortgages that contained false, misleading, and inaccurate information, or failed to provide required disclosures. Both [Sovereign](#) and [Prime](#) agreed to the issuance of a consent order, without admitting or denying any of the findings of fact or conclusions of law.

The consent order requires Sovereign to pay a civil penalty of \$460,000 and Prime Choice to pay a civil penalty of \$645,000. The consent orders include injunctions requiring the companies to submit future advertisements to advertising compliance officials who will review them for compliance with mortgage advertising. The injunctions also prohibit the companies from future misrepresentations similar to those covered in the order and direct Sovereign and Prime Choice to abide by "enhanced disclosure requirements."

Sovereign is a California-based company licensed as a mortgage broker or lender in about 44 states and Washington, D.C. Prime Choice, also based in California, is licensed as a mortgage broker or lender in about 34 states and Washington, D.C.

The orders state that the companies' direct-mail campaigns violated the Consumer Financial Protections Act's prohibition against deceptive acts and practices, as well as the Mortgage Acts and Practices—Advertising Rule (MAP Rule), and Regulation Z. The orders follow a "sweep of investigations" into multiple mortgage companies' direct-mail practices in response to concerns raised by the VA about potentially unlawful advertisements, CFPB said.

"Accurate and legally compliant advertising provides consumers with valuable information about the different types of mortgages and terms available so they can effectively shop for products that best meet their needs," CFPB said in a [press release](#). "This ongoing sweep of investigations reflects the Bureau's commitment to enforcing the laws that ensure the financial marketplace is fair and accurate for all consumers, including servicemembers, veterans, and surviving spouses whom VA-guaranteed mortgages are designed to benefit."

CFPB said Sovereign and Prime Choice sent mailings that violated Regulation Z by using the names of the recipients' current lenders in a misleading way by not properly disclosing the companies' own names and that they were not associated with, or acting on behalf of, the current lender. The advertisements also violated provisions of Regulation Z by failing to properly disclose credit terms for the advertised mortgage, including what the repayment obligations would be for consumers over the full terms of the loans and how long certain interest rates would apply, CFPB said.

The Prime Choice order also said the company's advertisements created the false impression they included property assessments or were in response to property assessments, and included misleading comparisons between the terms of the advertised mortgage product and hypothetical credit terms. Both companies sent "millions" of advertisements to consumers that were received by hundreds of thousands of consumers, CFPB said in the orders.

The similarly worded orders detail numerous practices CFPB deemed unlawful, including that the companies misrepresented the actual credit terms applicable to the loans they would arrange or offer. Numerous mailings from each company described mortgages with simple interest rate and APR combinations that were lower than those they were actually prepared to offer, the orders said. Both companies misrepresented the ability of consumers to obtain cash-out amounts against their home equity if they refinanced through Sovereign or Prime Choice, the orders said. The companies also misleadingly advertised variable-rate loans as fixed-rate loans, CFPB said.

The orders detailed advertisements that falsely represented that consumers were prequalified for, or had a high likelihood of obtaining, the advertised loan, when, in fact, they had not been pre-screened for approval. CFPB also found that Sovereign and Prime Choice falsely indicated they were affiliated with government entities, including the Internal Revenue Service.

The companies also violated Regulation Z by, among other things, misstating the terms of repayment for the loans being offered, inadequately disclosing the rates that would apply for the terms of the loans, and misleadingly using the word "fixed" to describe the loan terms, CFPB said.

CFPB also found both companies violated the MAP Rule in various ways, including that they misrepresented the amount of cash consumers could receive from refinancing their loans. Both companies' advertisements "contained misrepresentations about the existence, nature, or amount of cash available to the consumer in connection with the mortgage credit product, including misrepresentations that the consumer would receive a certain amount of cash as part of a mortgage credit transaction," the orders said.

The agency also found the companies violated the CFPA by misleading consumers about the specific terms of the loans Sovereign and Prime Choice would make available. The orders stated that each companies' "misrepresentations about the availability of the advertised credit terms of the advertised mortgage were likely to mislead consumers acting reasonably under the circumstances."

The injunctions against Sovereign and Prime Choice prohibit the companies, their officers, employees, and attorneys from engaging in any violations by, among other things, misrepresenting any fact material to consumers regarding a mortgage credit product and the availability of an advertised or offered mortgage. The injunctions prohibit them from using words, phrases, images, and design elements in advertisements that would falsely state or imply the advertisement is from the government or affiliated with the government.

The companies also cannot represent that a consumer is "prequalified" or "preselected" for any mortgage unless there has been a specific determination that they are. The injunctions say the companies may not misrepresent that cash-out amounts are available, and any advertisements referring to specific interest rates or APRs available must state if they are only available to consumers who meet specific credit qualifications.

Future advertisements also must include specific information about down payments required, the number of payments or period of repayment, the amounts of any payments, and the amount of any finance charges. An advertisement compliance officer also must review advertisement templates from each company before any advertisement using the template is sent to consumers, as well as an example of the finished mailing, including envelopes. The compliance officer will review "all claims made in the advertisement, expressly or by implication, to ensure that they are accurate and substantiated."

The companies have 30 days from the effective dates of the orders to submit "comprehensive" compliance plans "designed to ensure that Respondent's mortgage advertising complies with all applicable Federal consumer financial laws and the terms" of the orders, CFPB said. The companies must submit their monetary penalties within 10 days of the effective dates of the orders.

Companies: Prime Choice Funding, Inc.; Sovereign Lending Group, Inc.,

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