

Complaint

IN THE MATTER OF

**AMERICAN NATIONWIDE MORTGAGE
COMPANY, INC.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT,
SEC. 144 OF THE TRUTH IN LENDING ACT,
AND SECTION 226.24 OF REGULATION Z

Docket C-4249; File No. 072 3168
Complaint, February 17, 2009 – Decision, February 17, 2009

This consent order addresses alleged misrepresentations made by American Nationwide Mortgage Company, Inc., regarding home loans it advertised and made to consumers. The order prohibits the respondent from advertising a monthly payment amount unless it discloses, clearly and conspicuously, that the amount (1) applies only for a limited period of time, after which it will increase, (2) does not include the amount of interest that the consumer owes each month, and (3) is less than the monthly payment amount (including interest) that the consumer owes, with the difference added to the total loan balance. The order also prohibits the respondent from advertising a rate lower than the rate at which interest is accruing, regardless of what the rate is called. The order prohibits the respondent from misrepresenting the nature and/or extent of the variability of any loan rate or payment amount, including but not limited to (1) an interest rate or annual percentage rate (APR), (2) whether it is fixed rather than adjustable or adjustable rather than fixed, and (3) the anticipated duration of the fixed or variable interest rate or payment amount. In addition, the respondent is prohibited from advertising the amount of any payment, the number of payments or the period of repayment, or the amount of any finance charge, without disclosing, clearly and conspicuously, all of the terms required by the Truth in Lending Act and Regulation Z. The respondent is prohibited from stating a rate of finance charge without stating the rate as an APR. The order prohibits the respondent from failing to comply in any respect with the Truth in Lending Act or Regulation Z. The order requires the respondent to maintain all records that will demonstrate compliance with the order, and to distribute copies of the consent order to various principals, officers, directors, and managers, and all current and future employees, agents and representatives having responsibilities with respect to the subject matter of the order. The respondent is required to notify the Commission of any changes in its corporate structure that might affect compliance with this order and to file with the Commission one or more reports detailing compliance.

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Participants

For the *Commission*: Beverly Childs, James Reilly Dolan, Brian Figueroa, Bevin Murphy, Carole Reynolds, Peggy Twohig, and Evan Zullo.

For the *Respondent*: Not represented by counsel.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Nationwide Mortgage Company, Inc., a corporation (“respondent”) has violated the provisions of the Federal Trade Commission Act and the Truth in Lending Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent, American Nationwide Mortgage Company, Inc., is a Florida corporation with its principal office or place of business at 3820 Northdale Blvd., Suite 111A, Tampa, FL 33624.

2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. In the mortgage lending industry, there are certain terms of art. These terms generally have the following meanings. An “interest rate” is the rate charged the consumer for the loan. It is usually stated as an annual amount, such as “6% interest.” “Interest” is the dollar amount the consumer owes based on the interest rate. A “payment rate” is the rate used to calculate the consumer’s monthly payment amount, and is not necessarily the same as the interest rate. If the payment rate is less than the interest rate, the consumer’s monthly payment amount does not include the full interest owed each month; the difference between the amount the consumer pays, and the amount the consumer owes, is added to the total amount due from the consumer. “Negative amortization” is an increase in the consumer’s total debt due during the term of the loan. It occurs when

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the consumer's monthly payment amount does not contain the amount of interest owed for that month. The difference between the amount the consumer pays, and the amount the consumer owes, is added to the consumer's total debt, causing it to increase.

4. Since at least 2007, respondent has disseminated or has caused to be disseminated advertisements that promote extensions of closed-end credit in consumer credit transactions, as the terms "advertisement" and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2.

5. Respondent originates fixed and adjustable rate, conforming and conforming, FHA and VA purchase money mortgage and mortgage refinancing loans, with terms varying from 10 to 40 years. Nationwide is licensed to operate in 29 states.

6. Respondent has disseminated or has caused to be disseminated mortgage loan advertisements, including but not necessarily limited to the attached Exhibit A. Exhibit A is a direct mail advertisement, which contains the following statements:

30-Year Fixed,**1.95%¹**

* *

Example

	Balance	Payment
Your Estimated Current Mortgage	\$650,000	\$3,723
Your Estimated Revolving Debt	\$21,439	506

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Your Estimated Total	\$671,439	\$4,229
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Your New, One, Low Monthly Payment: \$2465[]

* *

. . . Our Reduced Rate Loans[] can provide you with a 30-year fixed rate of 1.95%^[1] . . .

A fine print virtually illegible disclosure, in a footnote at the bottom of the advertisement, states: “ 4.981% Annual Percentage Rate . . . “ A fine print disclosure in small font, on the reverse side of the advertisement, states: “Initial Annual Percentage Rate (APR) for a 30 year mortgage loan with 80% loan to value is 4.981%. Rate is fixed for 12 months and adjusts upwards 7.5% of the payment amount annually for the first ten years of the loan . . .” [Exhibit A]

FEDERAL TRADE COMMISSION ACT VIOLATIONS

COUNT I: Failure to Disclose, or Failure to Disclose Adequately, Material Terms

7. Through the means described in Paragraph 6, respondent has represented, expressly or by implication, that consumers can receive mortgage loans at the terms prominently stated in the advertisements, including but not necessarily limited to a low monthly payment amount and/or a low rate.

8. In its mortgage loan advertisements as described in Paragraph 6, respondent has failed to disclose, or failed to disclose adequately, additional terms pertaining to the mortgage offer, such as:

a. That the advertised low monthly payment amount: (1) applies only for a limited period of time, after which the monthly payment amount will increase; (2) does not include the amount of interest that the consumer owes each month; and (3) is less than the monthly payment amount (including interest) that the consumer owes, with the difference added to the total amount due from the consumer.

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b. That the advertised low rate: (1) applies only for a limited period of time, after which the rate will increase; (2) does not include the amount of interest that the consumer owes each month; and (3) is less than the interest rate that the consumer owes, with the difference added to the total loan balance.

9. The information described in Paragraph 8 would be material to consumers shopping for a mortgage loan. The failure to disclose, or failure to disclose adequately, this information, in light of the representations made in Paragraph 7, was, and is, a deceptive practice.

10. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

**COUNT II: Misrepresentation that Advertised Mortgage
Loan has a Fixed Rate**

11. Through the means described in Paragraph 6, respondent has represented, expressly or by implication, that respondent's advertised rate is a fixed rate for the full term of the loan.

12. In truth and in fact, respondent's advertised rate is not a fixed rate for the full term of the loan. Therefore, respondent's representations made in Paragraph 11 were, and are, false and misleading.

13. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

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**TRUTH IN LENDING ACT AND REGULATION Z
VIOLATIONS**

**COUNT III: Failure to Disclose, or Failure to Disclose
Clearly and Conspicuously, Required Credit Advertisement
Terms**

14. Respondent's mortgage loan advertisements, including but not necessarily limited to Exhibit A, state periodic payment amounts for certain loan principal amounts but fail to disclose, or fail to disclose clearly and conspicuously, certain additional terms required by the Truth in Lending Act and Regulation Z, including one or more of the following terms:

- a. the terms of repayment;
- b. the "annual percentage rate," using that term; and
- c. if the annual percentage rate may be increased after consummation, that fact.

15. Respondent's practices have violated Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664 (as amended) and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

**COUNT IV: Failure to Disclose, or Failure to Disclose Clearly
and Conspicuously, Required Credit Advertisement Rate
Information**

16. Respondent's mortgage loan advertisements, including but not necessarily limited to Exhibit A, state a rate of finance charge for mortgage loan advertisements, but fail to disclose, or fail to disclose clearly and conspicuously, the following information required by Regulation Z:

- a. the rate of finance charge stated as an "annual percentage rate," using that term;

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- b. the annual percentage rate, stated in conjunction with and at least as conspicuously as the stated simple annual rate; and
- c. required payment rate disclosures.

17. Respondent's practices have violated Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664 (as amended), and Section 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b) (including as more fully set out in Section 226.24(b) of the Official Staff Commentary on Regulation Z, 12 C.F.R. § 226.24(b), Supp. 1).

THEREFORE, the Federal Trade Commission this seventeenth day of February, 2009, has issued this complaint against respondent.

By the Commission.

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EXHIBIT A



30-Year Fixed,
1.95%¹

FREE APPRAISAL²

Example

	Balance	Payment
Your Estimated Current Mortgage	\$430,000	\$3,720
Your Estimated Revolving Debt	\$21,439	200
Your Estimated Total	\$451,439	\$3,920

Your New, One, Low Monthly Payment: \$2,463⁴

Dear [REDACTED]

We are making you an incredible offer for the next 7 days. You are pre-qualified to reduce your mortgage payment by hundreds of dollars each month when you refinance with American Nationwide! Our Rate Reduction Loans³ can provide you with a 30-year fixed rate of 1.95%¹ for \$430,000 or more.

Based upon this estimate, you can save \$1,764⁴ every month and \$21,168 over 1 year!

American Nationwide Mortgage Company is a nationally licensed mortgage lender with a great record from the Better Business Bureau. We have many loan programs available for every situation and our closing costs can almost always beat any competitor. My company believes that honesty and superior service is the only way to develop life-long mortgage customers and we hope you give us the opportunity to work with you.

There is no obligation or expense to speak to one of our experienced Loan Originators. So give us a call today.

Sincerely,

Matt Rubin, Branch Manager
American Nationwide Mortgage Company
2620 Northdale Boulevard, Suite 111A
Tampa, FL 33624
Licensed in South Carolina #33-738
Toll Free: 866-558-8724

Call Today!

Call toll free: 866-558-8724
Reservation Code: [REDACTED]

¹ 1.95% Annual Percentage Rate, 30-Year term.
² Based upon all fees of closing. See reverse for terms and conditions of this pre-approved offer.
³ Monthly payments would be \$267 for the next 12 months per \$100,000 borrowed.
⁴ Savings is estimated on our toll free payments less estimated new payment.

Exhibit A

You can choose to stop receiving "prescreened" offers of credit from this and other companies by calling toll-free 888-3-OPT-OUT. See PRESSCREEN & OPT-OUT NOTICE on the reverse side for more information about prescreened offers.

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Terms and Conditions

Our offer is subject to: 1. Continuing to meet the criteria for the program; 2. Your ability to close on a first mortgage loan on your property; 3. Your credit report, credit history, income and employment continue to meet our pre-established underwriting standards; and 4. We receive a satisfactory title and appraisal on your home. Initial Annual Percentage Rate (APR) for a 30 year mortgage loan with 60% loan to value is 4.381%, Rate is fixed for 12 months and adjusts upwards 7.5% of the payment amount annually for the first two years of the loan. Loan assumes 9 points. Monthly payments would be \$367 for the first 12 months per \$100,000 financed. This includes principal and interest only. Other rates and conditions apply for different mortgage amounts and terms. **This offer expires after noon, March 31, 2007.**

PRESCREEN & OPT OUT NOTICE: This "prescreened" offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria (including providing acceptable property as collateral). If you do not want to receive prescreened offers of credit from this and other companies, call 1-822-567-4688 or visit the website at www.optoutprescreen.com; or write TransUnion Opt Out Request PO Box 585, Woodlyn, PA 19094-0585, Experian Information Systems, Inc. PO Box 919, Allen, TX 75013, Equifax Options PO Box 740123, Atlanta, GA 30394-0123.

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DECISION AND ORDER

The Federal Trade Commission having conducted an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act (“FTC Act”), the Truth in Lending Act (“TILA”), and TILA’s implementing Regulation Z; and

The respondent and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than the jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act and the Truth in Lending Act and its implementing Regulation Z, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent American Nationwide Mortgage Company, Inc., is a Florida corporation with its principal office or place of business at 3820 Northdale Blvd., Suite 111A, Tampa, FL 33624.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. “Advertisement” shall mean a commercial message in any medium that promotes, directly or indirectly, a credit transaction. Section 226.2(a)(2) of Regulation Z, 12 C.F.R. § 226.2(a)(2), as amended.
2. “Clearly and conspicuously” shall mean as follows:
 - (A) In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.
 - (B) In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - (C) In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.

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(D) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

(E) In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or promotion.

3. “Closed-end credit” shall mean consumer credit other than open-end credit. “Open-end credit” shall mean consumer credit extended by a creditor under a plan in which: (i) The creditor reasonably contemplates repeated transactions; (ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. Sections 226.2(a)(10) and (20) of Regulation Z, 12 C.F.R. §§ 226.2(a)(10) and (20), as amended.
4. “Consumer” shall mean a natural person to whom consumer credit is offered or extended. Section 226.2(a)(2) of Regulation Z, 12 C.F.R. § 226.2(a)(2), as amended, and Section 103(h) of the TILA, 15 U.S.C. § 1602(h), as amended.
5. “Consumer credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes. Section 226.2(a)(12) of Regulation Z, 12 C.F.R. § 226.2(a)(12), as amended.
6. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

I.

IT IS ORDERED that American Nationwide Mortgage Company, Inc., a corporation (“respondent”), its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of closed-end credit, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the monthly payment amount, unless it discloses, clearly and conspicuously, and in close proximity to such representation, as applicable, that the advertised low monthly payment amount: (1) applies only for a limited period of time, after which the monthly payment amount will increase; (2) does not include the amount of interest that the consumer owes each month; and (3) is less than the monthly payment amount (including interest) that the consumer owes, with the difference added to the total amount due from the consumer.

II.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of closed-end credit, in or affecting commerce, shall not, in any manner, advertise a rate lower than the rate at which interest is accruing, regardless of whether the rate is referred to as an “effective rate,” a “payment rate,” a “qualifying rate,” or any other term, provided that this provision does not prohibit advertisement of the “annual percentage rate” or “APR,” using that term.

III.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other

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device, in connection with any advertisement to promote, directly or indirectly, any extension of closed-end credit, in or affecting commerce, shall not, in any manner, expressly or by implication, misrepresent:

The nature and/or extent of the variability of any loan rate or payment amount, including but not limited to:

- A. an interest rate or annual percentage rate;
- B. whether it is fixed rather than adjustable or adjustable rather than fixed; and
- C. for an interest rate or payment amount, the duration, or reasonably anticipated duration, of the fixed or variable interest rate or payment amount.

IV.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of closed-end credit shall not, in any manner, expressly or by implication, state the amount of any payment, the number of payments or the period of repayment, or the amount of any finance charge, unless it discloses, clearly and conspicuously:

- A. The terms of repayment;
- B. The “annual percentage rate” or “APR,” using that term; and
- C. If the annual percentage rate may be increased after consummation, that fact; as required by Sections 107 and 144(d) of the TILA, 15 U.S.C. §§ 1606 and 1664(d), as amended; and Sections 226.22 and 226.24(c) of Regulation Z, 12 C.F.R. §§ 226.22 and 226.24(c), until October 1, 2009,

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and thereafter codified as Sections 226.22 and 226.24(d), 12 C.F.R. §§ 226.22 and 226.24(d), as amended.

V.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of closed-end credit shall not, in any manner, expressly or by implication, state a rate of finance charge without:

- A. Clearly and conspicuously stating the rate as an “annual percentage rate” or “APR,” using that term; and
- B. If the rate is a simple annual rate, stating it in conjunction with, but not more conspicuously than, the “annual percentage rate;” as required by Sections 107 and 144(c) of the TILA, 15 U.S.C. §§ 1606 and 1664(c), as amended; and Sections 226.22 and 226.24(b) of Regulation Z, 12 C.F.R. §§ 226.22 and 226.24(b), until October 1, 2009, and thereafter codified as Sections 226.22 and 226.24(c), 12 C.F.R. §§ 226.22 and 226.24(c), as amended.

VI.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit shall not, in any manner, fail to comply in any respect with Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended.

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VII.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, agents, representatives, and employees, shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation, including but not limited to drafts, storyboards, and transcripts;
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;
- D. Accounting records that reflect the consumer credit or mortgage loans extended or referred to other entities for extension of credit, revenues generated, and the disbursement of such revenues;
- E. Records maintained in the ordinary course of business reflecting during the employment, i.e., the name, physical address, and telephone number of each person employed by respondent, and its successors and assigns, including as an independent contractor, with responsibilities relating to compliance with this Order; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

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- F. Complaints and refund requests relating to any consumer credit or mortgage loans offered or extended (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- G. Copies of all advertisements or other marketing materials promoting, advertising, or referring to any consumer credit products or mortgage loans offered or extended; and
- H. All other records and documents reasonably necessary to demonstrate full compliance with each provision of this Order, including but not limited to, all documents obtained, created, generated or which in any way relate to the requirements, provisions or terms of this Order, and all reports submitted to the FTC pursuant to this Order.

VIII.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall deliver a copy of this Order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the Order, and to the officers, directors, and managers of any third-party vendor who engages in conduct related to the subject matter of the Order, and shall secure from each such person, within thirty (30) days of delivery, a signed and dated statement acknowledging receipt of the Order. Respondent, and its successors and assigns, shall deliver this Order to current personnel within five (5) days after the date of service of this Order, and to future personnel within ten (10) days after their assuming their responsibilities.

IX.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in any corporation(s) that may affect compliance obligations arising under this Order, including, but not

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limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent, and its successors and assigns, learn less than thirty (30) days prior to the date such action is to take place, respondent, and its successors and assigns, shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied and is complying with this Order.

XI.

This Order will terminate on February 17, 2029, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this Order that terminates in less than twenty (20) years;

Analysis to Aid Public Comment

- B. This Order's application to any respondent, or any of its successors or assigns, that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent, or its successors or assigns, did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC”) has accepted, subject to final approval, an agreement containing a consent order from American Nationwide Mortgage Company, Inc. (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Analysis to Aid Public Comment

The complaint alleges that respondent engaged in practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24 of Regulation Z, 12 C.F.R. § 226.24.

Section 5(a) of the FTC Act prohibits unfair or deceptive acts or practices. Respondent violated Section 5(a) of the FTC Act because it disseminated or has caused to be disseminated home loan advertisements which offer a low monthly payment amount and/or low rate, but fail to disclose, or fail to disclose adequately, that this monthly payment amount and/or low rate: (1) apply only for a limited period of time, after which they will increase; (2) do not include the amount of interest that the consumer owes each month; and (3) are less than the monthly payment amount (including interest) and/or the interest rate that the consumer owes, with the difference added to the total amount due from the consumer or total loan balance. This information would be material to consumers shopping for a mortgage loan and the failure to disclose, or failure to disclose adequately, this information is a deceptive practice. Respondent also violated Section 5(a) of the FTC Act because it misrepresented, expressly or by implication, that its advertised rate was a fixed rate for the full term of the loan.

TILA and Regulation Z require that closed-end credit advertisers who state a periodic payment amount must also provide additional information in the advertisement, including the terms of repayment; the annual percentage rate (“APR”); and if the APR may be increased after consummation, that fact. TILA and Regulation Z also require that if an advertisement states a rate of finance charge, it must state the rate as an APR. Currently, Regulation Z also requires that if the advertisement states a payment rate, it must include additional disclosures. Respondent’s advertisements failed to disclose, or failed to disclose clearly and conspicuously, this information required by TILA and Regulation Z. Respondent’s failure to disclose this information undermined consumers’ ability to compare these offers to others in the marketplace. Through its law enforcement actions, the Commission intends to promote

Analysis to Aid Public Comment

compliance with the disclosure requirements of TILA and Regulation Z, and to foster comparison shopping for mortgage loans.

The proposed consent order contains provisions designed to prevent respondent from violating the FTC Act or failing to make clear and conspicuous disclosures required by TILA and Regulation Z, as amended, *see* 73 Fed. Reg. 44,522 (July 30, 2008), and as may be further amended in the future.

Part I of the proposed order prohibits respondent, in connection with closed-end credit, from advertising a monthly payment amount unless respondent discloses, clearly and conspicuously and in close proximity to those representations, as applicable, that the advertised monthly payment amount: (1) applies only for a limited period of time, after which it will increase; (2) does not include the amount of interest that the consumer owes each month; and (3) is less than the monthly payment amount (including interest) that the consumer owes, with the difference added to the total amount due from the consumer or total loan balance.

Part II of the proposed order prohibits respondent, in connection with closed-end credit, from advertising a rate lower than the rate at which interest is accruing, regardless of whether the rate is referred to as an “effective rate,” a “payment rate,” a “qualifying rate,” or any other term, provided that this provision does not prohibit advertisement of the “annual percentage rate” or “APR.” In light of respondent’s deceptive use of payment rates in its advertisements, and the Federal Reserve Board’s amendments to Regulation Z banning the use of such rates effective October 1, 2009, the proposed order prohibits respondent from advertising any such rate, to ensure that respondent’s advertisements do not deceive consumers. *See* 73 Fed. Reg. at 44,608.

Part III of the proposed order prohibits respondent, in connection with closed-end credit, from misrepresenting the nature and/or extent of the variability of any loan rate or payment amount, including but not limited to (1) an interest rate or APR; (2) whether it is fixed rather than adjustable or adjustable rather than fixed; and

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(3) for an interest rate or payment amount, the duration, or reasonably anticipated duration, of the fixed or variable interest rate or payment amount.

Part IV of the proposed order prohibits respondent, in connection with closed-end credit, from advertising the amount of any payment, the number of payments or the period of repayment, or the amount of any finance charge, without disclosing, clearly and conspicuously, all of the terms required by TILA and Regulation Z, including the terms of repayment; the APR; and if the APR may be increased after consummation, that fact.

Part V of the proposed order prohibits respondent, in connection with closed-end credit, from stating a rate of finance charge without stating the rate as an APR, as required by TILA and Regulation Z.

Part VI of the proposed order prohibits respondent from failing to comply in any respect with TILA or Regulation Z.

Part VII of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain all records that will demonstrate compliance with the proposed order.

Part VIII of the proposed order requires respondent to distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents and representatives having responsibilities with respect to the subject matter of the order.

Part IX of the proposed order requires respondent to notify the Commission of any changes in its corporate structure that might affect compliance with this order.

Part X of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Analysis to Aid Public Comment

Part XI of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violations of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

**SHIVA VENTURE GROUP, INC.,
D/B/A INNOVA FINANCIAL GROUP**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT, SEC. 144 OF THE
TRUTH IN LENDING ACT, AND SECTION 226.24 OF REGULATION Z

Docket C-4250; File No. 082 3032

Complaint, February 17, 2009 – Decision, February 17, 2009

This consent order addresses mortgage loan advertisements disseminated by Shiva Venture Group, Inc., doing business as Innova Financial Group. The advertisements did not adequately disclose additional terms pertaining to the mortgage loans, which are required by the Truth in Lending Act and Regulation Z. The order prohibits the respondent from advertising a monthly payment amount unless it discloses, clearly and conspicuously, that the advertised monthly payment amount (1) applies only for a limited period of time, after which it will increase, (2) does not include the amount of interest that the consumer owes each month, and (3) is less than the monthly payment amount (including interest) that the consumer owes, with the difference added to the total loan balance. The order also prohibits the respondent from advertising a rate lower than the rate at which interest is accruing, regardless of what the rate is called. The order prohibits the respondent from advertising the amount of any payment, the number of payments or the period of repayment, or the amount of any finance charge, without disclosing, clearly and conspicuously, all of the terms required by the Truth in Lending Act and Regulation Z. The respondent is prohibited from stating a rate of finance charge without stating the rate as an annual percentage rate (APR). The order prohibits the respondent from failing to comply in any respect with the Truth in Lending Act or Regulation Z. The order requires the respondent to maintain all records that will demonstrate compliance with the order, and to distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents and representatives having responsibilities with respect to the subject matter of the order. The respondent is required to notify the Commission of any changes in its corporate structure that might affect compliance with this order and to file with the Commission one or more reports detailing compliance.