

Official Commentary to the "Free" & "Rebate" Rule

Following 1(b):

OFFICIAL COMMENTARY: Offers may be subject to this rule even if they do not specifically use the word "free." Whenever an advertisement or solicitation offers to give anything of value away in conjunction with the sale or lease of real estate, goods or services, the person making the offer should carefully analyze the offer to ensure compliance with this rule.

Following 2(a)(4)(d):

OFFICIAL COMMENTARY: No advertisement or promotion for real estate, goods or services may offer any free item in conjunction with the purchase or lease of real estate, goods or services, the price, size, quantity, or quality of which is normally determined by that seller or offeror by bargaining with potential consumers. This section prohibits the practice of advertising or offering something as "free" when, in fact, the cost of the "free" item can be passed on to the consumer, in whole or in part, by raising the price of the real estate, goods or services that must be purchased in conjunction with the "free" offer or by decreasing the quality or quantity of merchandise that must be purchased in conjunction with the "free" offer. Such "free" offers are illusory. Examples of prohibited free offers include, but are not limited to:

1. A construction company offering "free" installation with the purchase of any home siding project;
2. A construction company offering one "free" window with every other two windows purchased;
3. A manufactured home dealer offering a "free" television or vacation with the purchase of a manufactured home;
4. A motor vehicle dealer offering a "free" car with the purchase of another car; or
5. An offer of a "free" weekend vacation at a resort hotel with the purchase of a vacuum cleaner sold during a home solicitation.

Immediately before subsection 3:

OFFICIAL COMMENTARY: When making a "free" offer permitted by this rule, all terms, conditions, limitations and obligations upon which receipt and retention of the "free" offer are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that a person could

misunderstand the terms of the offer. All terms, conditions, limitations and obligations should appear in close proximity to the “free” offer; disclosure of the terms of the offer in a footnote of an advertisement referenced by an asterisk or other symbol placed next to the offer violates this subsection. The definition of “clear and conspicuous” set forth in OAR 137-020-0020 has been incorporated by this rule and should be reviewed before advertising any “free” offer to ensure compliance.

Following Section 4:

OFFICIAL COMMENTARY: An example of a misleading or deceptive rebate offer includes, but is not limited to:

A motor vehicle dealer or construction company purchases cash vouchers from a third party and advertises that a voucher reduces the cost of real estate, goods or services. Strict criteria of the marketer for filing and later claiming the rebate are so onerous that it is almost impossible for the average consumer to receive anything. In addition, the amount of money retained in trust by the marketer for claims is only a small fraction of the total amount of the vouchers issued.

Advertising these vouchers as rebates is misleading and deceptive because: (1) consumers are led to believe they are actually going to get a rebate on the cost of their purchase; and (2) the promotion is intentionally designed to make consumers fail in either the initial submission of the voucher application or the claim process, which in some cases may not occur for four to five years from the initial transaction. Further, it is very possible that there will be insufficient funds to pay the entire amount of the “rebate” claims years later when the vouchers mature.

In this particular example, the described offer would also be an unlawful “free” offer pursuant to paragraph (2)(a)(1) of this rule because both motor vehicle sales and construction contracts are negotiable price transactions.