



Be Prepared!

Quarterly Compliance Update

2018 - 2nd Quarter

Advertising Compliance

Presented by:

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National Compliance Services Director

Speaker Information

Rhonda Coggins, CRCM, is the National Compliance Services Director at Sheshunoff Consulting + Solutions. She provides expert compliance-related advice and guidance to banks and credit unions all over the country.

With over 33 years of experience in various capacities, Ms. Coggins previously served as a Compliance Engagement Manager in SC+S's Risk Management Services Division, and supervised the quality control process for the Southwest Region. She has conducted numerous consumer compliance audits and fair lending assessments. She also delivers training programs and presentations on various risk management and compliance topics.

Ms. Coggins previously served as a Vice President, State of Texas Compliance Officer, for one of the largest commercial banks in the United States. She has also served as a BSA Officer and worked in Commercial and Consumer lending. Ms. Coggins has attended various ABA Compliance Schools and has the ABA designation of Certified Regulatory Compliance Manager. In 2010, Ms. Coggins was a speaker at the ABA Regulatory Compliance Conference in San Diego, California. She currently serves on the Board of Directors of the Dallas Area Compliance Association.

Agenda

- ▶ **Statement of Insured Status**
- ▶ **Deposit & Share Account Advertising**
- ▶ **Credit-Related Advertising**
- ▶ **UDAAP**
- ▶ **Non-Deposit Investment Products**
- ▶ **Prescreened Offers**
- ▶ **Sweepstakes / Lotteries**

BONUS ITEM - ADVERTISING CHECKLISTS

Notice of Insured Status



Insured Status

FDIC Regulation– 12 CFR 328

Background - The “Advertisement of Membership” provisions of the FDIC’s regulation apply to insured depository institutions.

- Advertisement- Defined very broadly - *“a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.”*
- Official Statement- *“Member of the Federal Deposit Insurance Corporation”*

Insured Status

FDIC Regulation– 12 CFR 328, cont.

Optional Short Titles -

- Member of FDIC
- Member FDIC
- Or, a reproduction of the symbol of the Corporation



Formatting -

- Clearly legible
- If the symbol is used and it must be reduced to a point where the two lines of smaller type above and below "FDIC" are not legible, those lines of smaller type may be omitted.

Insured Status

FDIC Regulation– 12 CFR 328, cont.

Required	Not Required	Restricted
<p>In all advertisements that either promote deposit products and services or promote non-specific banking products and services</p>	<ul style="list-style-type: none">• Statements of condition• Supplies, such as stationery• Signs or plates in the offices or attached to the building• Directory listings• Advertisements not reflecting the institution's name• Entries in a depository listing where the page reflects the symbol or an indication that it is a member of the FDIC• Joint ads including insured institutions and noninsured institutions• Radio & TV ads (other than display ads) that do not exceed 30 seconds• Ads which are of the type that it is impractical to include, i.e. key chains• Ads which contain a statement to the effect that the institution is a member of the FDIC.	<ul style="list-style-type: none">• NDIP ads & Hybrid Product ads - the official statement <u>must not be reflected</u>, except as noted below * <p>* In ads reflecting both insured deposit products and NDIP products or hybrid products, an institution shall clearly segregate the advertising statement from that portion of the ad that relates to the NDIP.</p>

Insured Status

NCUA Regulation– 12 CFR 740

Background - The “Accuracy of Advertising and Notice of Insured Status” provisions of the NCUA’s regulation apply to federally insured credit unions.

- Advertisement- Defined very broadly - *“a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.”*
- Official Statement- *“This credit union is federally insured by the National Credit Union Administration.”*

Insured Status

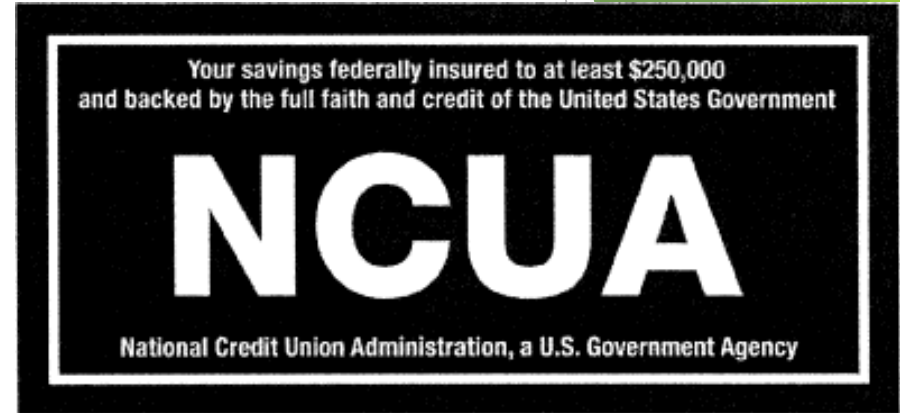
NCUA Regulation– 12 CFR 740, cont.

Optional Short Titles -

- Federally insured by NCUA
- A reproduction of the official sign



Or, Insured by NCUA *



Formatting -

- Clearly legible
- If the official sign is used as the official statement, an insured credit union may alter the font size to ensure its legibility.

** Reflects new amendment effective 5/25/18.*

Insured Status

NCUA Regulation– 12 CFR 740, cont.

Required	Not Required
<p>In all advertisements, including on its main internet page</p>	<ul style="list-style-type: none">• Supplies, such as stationery• Signs or plates in the offices or attached to the building• Directory listings• Advertisements not reflecting the credit union's name• Display ads in credit union directories where the page reflects the symbol or an indication that it is a insured• Joint ads including insured credit unions and noninsured credit unions• Radio ads which do not exceed 30 seconds *• TV ads (other than display ads) that do not exceed 30 seconds *• Ads which are of the type that it is impractical to include, i.e. key chains• Ads which contain a statement to the effect that the credit union is insured by the NCUA• Ads that do not relate to member accounts, i.e. loans, safekeeping boxes, traveler's checks on which the credit union is not primarily liable, credit life or disability insurance. <p><i>* Reflects new amendments effective 5/25/18.</i></p>

Deposit & Share Account- Related Advertising Compliance



Truth in Savings

Background

Both the CFPB and the NCUA have implementing regulations for Truth in Savings. While the regulations are largely alike, there are some differences.

- ▶ *CFPB - 12 CFR 1030.8*
- ▶ *NCUA - 12 CFR 707.8*

- *The scope of the CFPB's regulation covers deposit accounts held by or offered to a consumer who holds an account primarily for personal, family, or household purposes. An advertisement is any commercial message, in any medium that promotes directly or indirectly the availability of terms of or a deposit in a new or existing account.*
- *The scope of the NCUA's regulation covers member accounts, which can include share and deposit accounts, held by, or offered to, a natural person member or potential member primarily for personal, family or household purposes.*

Truth in Savings, cont.

Advertising Provisions - General

Advertisements must not be misleading or inaccurate or misrepresent an account agreement.



QUESTION - *When can an account be advertised as “free” or “no cost?”*

ANSWER - *Only when no maintenance or activity fee may be imposed on the account.*

- Maintenance & Activity Fees include: fees imposed if minimum balance requirement is not met, or if consumer/member exceeds a specified number of transactions; transaction and service fees; monthly service fees; and fees imposed to deposit, withdraw or transfer funds.



Caution - institutions should not promote “free” accounts and OD protection programs in the same ad in a manner that suggests the OD program is free of charges.

Truth in Savings, cont.

Advertising Provisions - Rates

Advertisements stating a rate of return shall state the rate as an “Annual Percentage Yield.” “APY” may be used provided the term “annual percentage yield” is stated at least once.

- *Ads must not state any other rate, except that an “interest rate” or as applicable a “dividend rate,” may be stated in conjunction with the APY.*
- *Interest Rates and Dividend Rates must not be stated more conspicuously than the APY.*

Stating an APY in an ad is a “trigger” term, which requires the disclosure of additional statements.

Truth in Savings, cont.

Advertising – Triggered Disclosures

To the extent applicable, clearly & conspicuously:

- For variable-rate accounts - a statement that the rate may change after the account is opened.
- Time the APY is offered.
- Minimum balance to obtain the APY. For tiered-rate accounts - the minimum balance required for each tier.
- Minimum opening deposit - if greater than the minimum balance to obtain the APY.
- Statement that fees could reduce earnings on the account.
- Features of time accounts / term share accounts:
 - Time requirement
 - Early withdrawal penalty statement
 - Required interest / dividend payouts

Truth in Savings, cont.

Advertising – “Bonuses”

- If an ad promotes a “Bonus” (premium, gift worth more than \$10) in exchange for opening, maintaining or renewing an account or increasing an account balance, additional disclosures must be stated. To the extent applicable, clearly & conspicuously:
 - The “annual percentage yield.”
 - Time requirement to obtain the bonus.
 - Minimum balance to obtain the bonus.
 - Minimum opening deposit (if greater than the minimum balance to obtain the bonus.)
 - When the bonus will be provided.

Truth in Savings, cont.

Advertising – Exemptions

1. Broadcast or electronic media, such as TV or radio; Outdoor media such as billboards; and telephone response machines –
 - ▶ *Need not include: variable rate notice, time APY is offered, minimum opening deposit, effect of fees statement & notice of early withdrawal penalties. TIP! Exemption for broadcast / electronic media does NOT extend to ads posted on the Internet or sent via email.*
2. Indoor signs –
 - ▶ Signs inside the premises are not subject to regulatory sections: (b) permissible rate provisions, (c) additional required disclosures when APY is stated, (d) additional required disclosures when a Bonus is promoted or (e)(1) exemption for certain ads. However if an exempted indoor sign states an APY, it must contain a statement to contact an employee for fees and terms information.
3. NCUA Reg. Only – Newsletters –
 - ▶ Newsletters sent by a credit union to existing members only are not subject to sections (b), (c), (d) or (e)(1). Exempted newsletters that state an APY must advise members to contact an employee for fees and terms information.

Truth in Savings, cont.

Advertising – Overdrafts

- If an ad promotes the payment of overdrafts, additional disclosures must be stated:
 - Regulatory Requirements- The ad must include the disclosures required by 1030.11(b) / 707.11(b) -
 - *fee information,*
 - *categories of transactions for which a fee for paying an OD may be imposed,*
 - *time period to repay an OD, and*
 - *circumstances under which an institution or credit union will not pay an OD.*

Credit-Related Advertising Compliance -Closed End-



Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.24

Background – Reg. Z contains advertising provisions that specifically apply to **closed-end** credit. General provisions include:

- Terms stated must reflect terms that are or will be arranged or offered by the creditor
- Required disclosures are to be made clearly and conspicuously
- If rates are stated, they must be stated as an annual percentage rate. If an APR is stated, you may also state a simple annual rate or periodic rate that is not more conspicuous than the APR.

Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.24

Closed-End Trigger Terms -

Trigger Terms	Examples
1. <i>The amount or % of any downpayment (credit sale transactions)</i>	<i>Only 5% down. As low as \$100 down.</i>
2. <i>The number of payments or period of repayment</i>	<i>48-month payment terms. 30-year mortgage. Repayment in as many as 36 monthly installments.</i>
3. <i>The amount of any payment</i>	<i>\$25 weekly. \$1,200 balance payable in 10 equal installments.</i>
4. <i>The amount of any finance charge</i>	<i>\$500 total cost of credit. \$2 monthly carrying charge. \$50,000 mortgages, 2 points to borrower.</i>



Common Observation -a number of payments or a period of repayment is included, but additional required disclosures are not provided.

Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.24

Additional Terms to be Stated -

If a Trigger Term is included (see previous slide) then additional terms must be disclosed, as applicable:

1. *The amount or % of any downpayment.*
2. *The terms of repayment over the full term of the loan.*
3. *The APR and, if the rate may be increased after consummation, that fact.*
4. *The amount of any finance charge.*



Common Observation & Tip - The terms of repayment are lacking in information. Tip - Ensure the statement related to the rate increasing after consummation is considered in connection with preferred rate credit (i.e. lower rate w/automatic payments) that can change after account opening.

Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.24

Additional provisions apply to ads for credit secured by a dwelling

- ▶ Disclosure of Rates - if a simple annual rate of interest is stated and more than one rate will apply over the term, disclose:
 - ▶ Each simple annual rate of interest that will apply
 - ▶ If variable rate, a rate determined by adding an index and margin (reasonably current)
 - ▶ The period of time each simple annual rate of interest will apply
 - ▶ The APR for the Loan



Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.24

Additional provisions apply to ads for credit secured by a dwelling

- ▶ *Disclosure of Payments* - in addition to requirements already discussed, if the amount of any payment is stated, disclose:
 - ▶ *The amount of each payment that will apply over the term of the loan*
 - ▶ *The period of time during which each payment will apply*
 - ▶ *If the credit will be secured by a first lien, the fact that payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.*



Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.24

Additional provisions apply to ads for credit secured by a dwelling

- ▶ Tax Implications - for credit secured by a consumer's principal dwelling, if the ad states the loan may exceed the fair market value of the dwelling, it must also state that interest on the portion of the loan that is greater than the dwelling's FMV is not tax deductible; and that the consumer should consult a tax advisor.

- ▶ Prohibited Acts or Practices -
 - Misleading use of "fixed" for rates or payments

 - Misleading comparisons, government endorsements, use of Lender's name, debt elimination claims, use of "counselor," and foreign language ads.



Credit-Related Advertising Compliance -Open End-



Open-End Loan Advertising

Regulation Z – 12 CFR 1026.16

Background - Reg. Z contains advertising provisions that specifically apply to **open-end** credit. General provisions include:

- Terms stated must reflect terms that are or will be arranged or offered by the creditor
- Clear and conspicuous standards apply

Open-End Loan Advertising

Regulation Z – 12 CFR 1026.16

Open-End Trigger Terms

Trigger Terms	Examples
<p>1. <u>Not Home-Secured</u>: Any term required to be disclosed under 1026.6(b)(3), i.e. finance charges, non-usage fees, taxes, charges for which payment or nonpayment affect access to the plan, termination fees*</p>	<ul style="list-style-type: none">• No interest• No annual membership fee• Small monthly service charge on the remaining balance• 12% APR• \$15 annual membership fee buys you \$2,000 in credit
<p>2. <u>Home Secured</u>: Any term required to be disclosed under 1026.6(a)(1), i.e. finance charges, how imposed or determined or 1026.6(a)(2), i.e. any charge other than a finance charge*</p>	
<p>* Affirmatively or Negatively stated.</p>	



Common Observation -a negatively-stated trigger term is included, but is not recognized as a trigger term, i.e. there is focus only on affirmatively stated triggers.

Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.16

Additional Terms to be Stated -

If a Trigger Term is included (see previous slide) then additional terms must be disclosed, as applicable:

- 1. Any minimum, fixed, transaction, activity or similar charge*
- 2. The APR and if the plan calls for a variable rate, that fact*
- 3. Any membership / participation fee*

Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.16

Promotional Rates & Fees - Not Home Secured -

If an ad includes a promotional or introductory rate, period or fee, then additional provisions apply:

1. Use of “introductory” or “intro”

2. As applicable:

- *State when the promotional rate/fee will end*
- *The APR that will apply after the end of the promotional period*
- *The fee that will apply after the end of the promotional period*

Open-End Loan Advertising

Regulation Z – 12 CFR 1026.16(d)

Open-End Trigger Terms - Additional Requirements for HELOCs

Trigger Terms	Examples
1. Any term required to be disclosed under 1026.6(a)(1), i.e. finance charges, how imposed or determined*	<ul style="list-style-type: none">• Finance charge, interest, service charge, points, fees• Other charges• “No annual fee”, “No points”• “We’ll waive closing costs”• 10 year draw period• Monthly payments
2. Any term required to be disclosed under 1026.6(a)(2), i.e. any charge other than a finance charge*	
3. The payment terms, i.e. repayment period, draw period, length of plan, how payments are determined, timing of pymts.	
* Affirmatively or Negatively stated.	



Common Observation -a negatively-stated trigger term is included, but is not recognized as a trigger term, i.e. there is focus only on affirmatively stated triggers.

Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.16(d)

Additional Terms to be Stated - HELOCs

If a Trigger Term is included (see previous slide) then additional terms must be disclosed, as applicable:

- 1. Any loan fee that is a % of the credit limit AND an estimate of plan opening fees*
- 2. The APR and a maximum APR for variable rate plans*
- 3. If initial APR is discounted or premium - a) the period of time it will be in effect and b) a reasonably current APR that would have been in effect using the index and margin.*
- 4. If any minimum periodic payment is stated and a balloon payment may result if only the minimum periodic payments are made - a) a statement that a balloon payment may result and b) the amount and timing of the balloon payment*
- 5. If secured by principal dwelling and ad states that interest is or may be tax deductible and the ad states that the credit may exceed fair market value of the dwelling - a) that interest on the portion greater than the FMV is not tax deductible and b) that the consumer should consult a tax advisor*

Closed-End Loan Advertising

Regulation Z – 12 CFR 1026.16(d)

Additional Provisions – HELOCs

Also...

- 1. Misleading terms are prohibited - such as referring to the plan as “free money”*
- 2. If a promotional rate or promotional payment is stated, the following must be stated (equally prominent and in close proximity):*
 - Period of time the rate/payment will apply*
 - In the case of a promotional rate, any APR that will apply under the plan*
 - In the case of a promotional payment, the amounts and time periods of any payments that will apply. If variable rate, payments that will be determined based on application of an index and margin must be disclosed based on a reasonably current index and margin.*

Credit-Related Advertising Compliance EHL/EHO



Equal Housing

Non-Discriminatory Advertising

Loans for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or any loan secured by a dwelling. *This is agency-driven.*

- Federal Reserve - logotype with Equal Housing Lender legend
- FDIC - logotype with the Equal Housing Lender legend or logotype with the Equal Housing Opportunity legend
- NCUA / FCUs - logotype with the Equal Housing Lender legend or logotype with the Equal Housing Opportunity legend
- State Chartered CUs - utilize HUD's regulations - logotype with Equal Housing Opportunity legend
- OCC - no technical requirements, but EHL use is encouraged

Equal Housing

Non-Discriminatory Advertising

Is this compliant?



Or, is this compliant?

**EQUAL HOUSING
LENDER**

UDAAP

Advertising.



Reality.



UDAAP

Advertising and Promotional Materials

Materials should be understandable to the target audience.

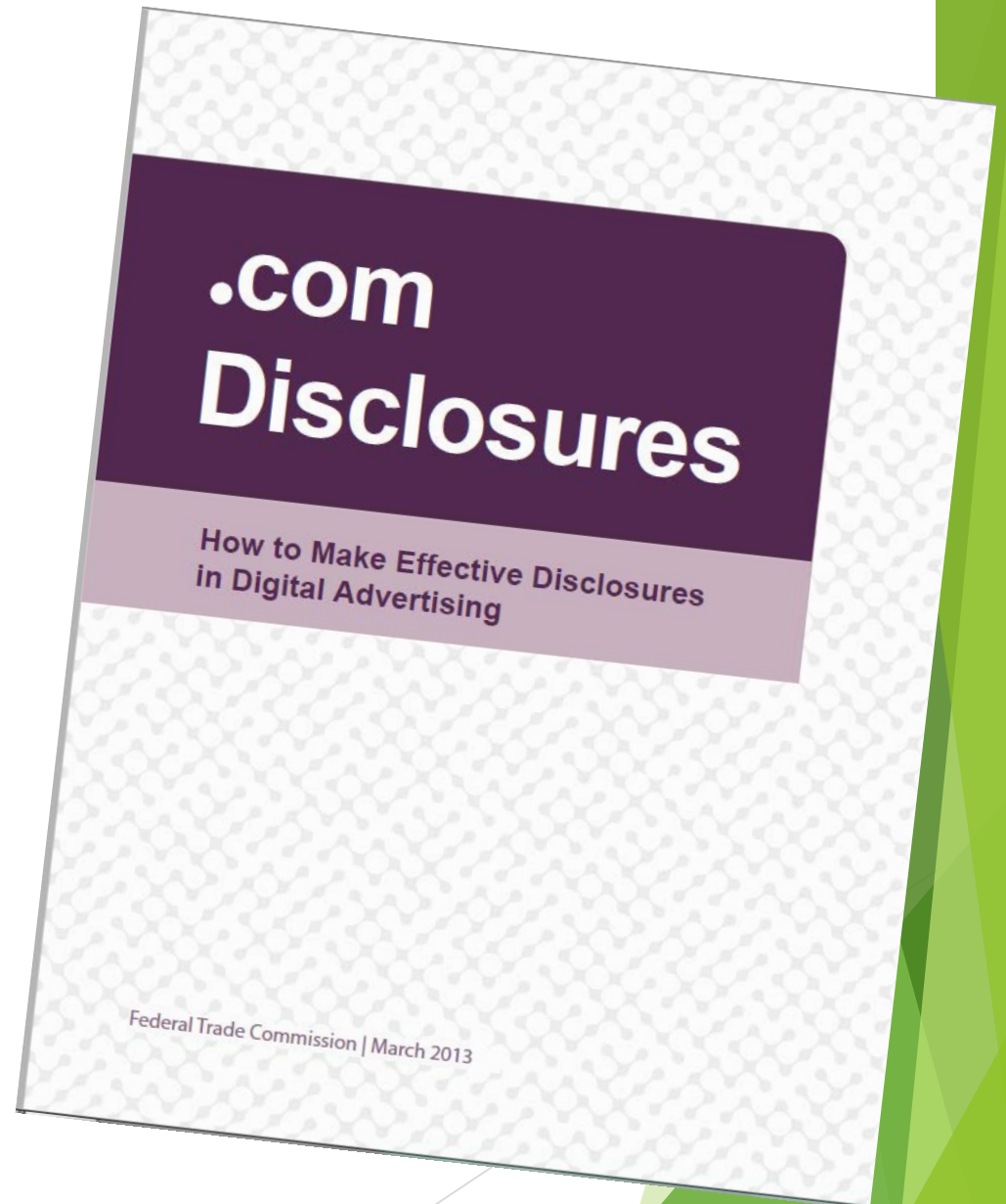
Considerations (The 4 P's):

- Are representations prominent to notice?
- Is information presented in an easy-to-understand format that does not contradict other information?
- Is placement of information in a location where consumers can be expected to look?
- Is information in close proximity to the claim it qualifies?

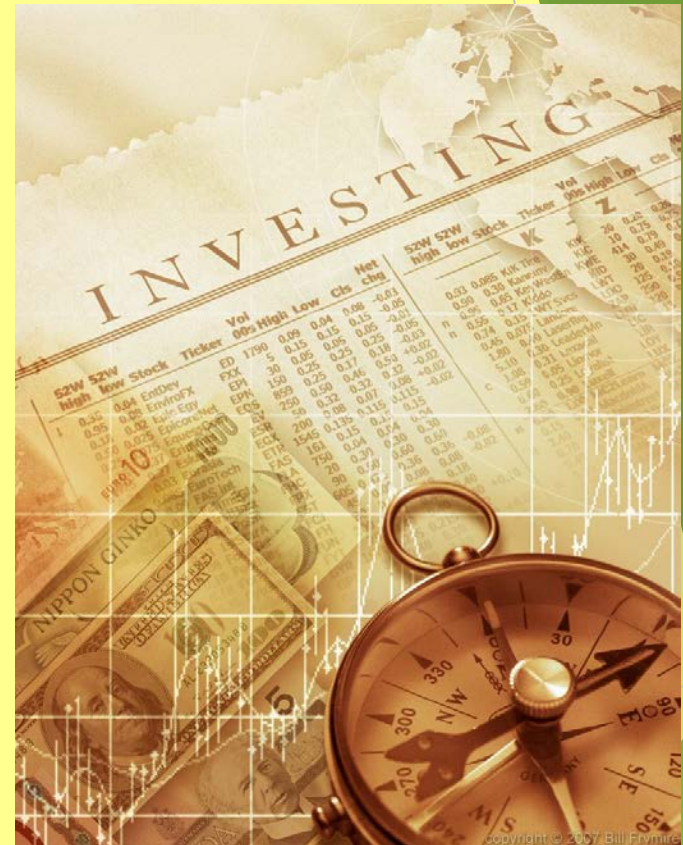
UDAAP

FTC Resource

<https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>



Nondeposit Investment Product Advertising



Nondeposit Investment Products

Interagency Guidance – FRB, FDIC, OCC, OTS

Background -

The 1994 Statement addressed the expansion of depository institutions recommending or selling nondeposit investment products at the retail level.

The Agencies highlighted that NDIP activities should ensure customers are clearly informed of the products' nature and risks.

Nondeposit Investment Products

Interagency Guidance – FRB, FDIC, OCC, OTS cont.

Guidelines – Disclosures and Advertising

- Not insured by the FDIC;
- Not a deposit or other obligation of, or guaranteed by, the depository institution;
- Subject to investment risks, including possible loss of the principal amount invested.

If written material contains information about both FDIC-insured & NDIP, information must be clearly segregated from one another.

Nondeposit Investment Products

Interagency Guidance – FRB, FDIC, OCC, OTS cont.

Guidelines – Setting and Circumstances

- Selling or recommending NDIP on the premises of a depository institution should be conducted in a physical location distinct from the retail deposit area.
- Tellers and other employees in the routine deposit-taking area must not make general or specific investment recommendations. They may refer customers to designated individuals that handle NDIP.

Nondeposit Investment Products

Joint Release – FRB, FDIC, OCC, OTS

Background -

The 1995 joint release provides clarification on the 1994 statement. Of note:

Disclosures do not need to be provided for:

- radio broadcasts of 30 seconds or less;
- electronic signs; and
- signs that are used only as location indicators.

A shorter, logo format may be used in visual media, for example:

NOT FDIC - INSURED	May lose value No bank guarantee
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Nondeposit Investment Products

NCUA Issuance

December 2010 Letter to Federal Credit Unions excerpt:

When selling, advertising, or otherwise marketing uninsured investment products to members, members must be informed that the products offered:

- are not federally-insured;
- are not obligations of the credit union;
- are not guaranteed by the credit union;
- involve investment risk; and
- if applicable, are being offered by a dual employee who accepts deposits on behalf of the credit union and also sells nondeposit investment products on behalf of a third party broker.

These disclosures should be made in writing and in a location and type size that are clear and conspicuous to the member. Oral disclosures should also be made as part of any oral sales presentation.

Prescreened Offers



Prescreened Offers

FCRA Requirements

Background -

FCRA includes “Duties of Users Regarding Obtaining and Using Consumer Reports”

The FCRA permits institutions to obtain and use consumer reports on any consumer in connection with any credit or insurance transaction that the consumer does not initiate, to make firm offers of credit or insurance.

Written solicitation made to the consumer must include certain disclosures.

Prescreened Offers

FCRA Requirements cont.

Short Notice - Front Side of First Page:

The short notice shall state that the consumer has the right to opt out of receiving prescreened solicitations, and shall provide the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice. The short notice shall not contain any other information.

- In type size larger than principal text, but no smaller than 12 point type; if electronic, ensure type size is larger than principal text.
- Distinct type style (for example, bolded, italicized, underlined, different color)

Prescreened Offers

FCRA Requirements cont.

Long Notice (referred to in front page disclosure), to appear in solicitation:

The long notice shall state the information required by section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)).

"PRESCREEN & OPT-OUT NOTICE: This "prescreened" offer of [credit or insurance] 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 or insurance] from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address]."

- In type size larger than principal text, but no smaller than 8 point type; if electronic, ensure type size is larger than principal text.
- Heading - PRESCREEN & OPT-OUT NOTICE
- Distinct type style (for example, bolded, italicized, underlined, different color)
- To be set apart from other text, such as by including a blank line above and below the statement and by indenting both the left & right margins.

Sweepstakes & Lotteries



Lotteries & Related Activities

FDI Act

Lottery -

Any arrangement whereby 3 or more persons advance money or credit to another in exchange for the possibility or expectation that one or more but not all participants will receive by reason of their advances more than the amounts they have advanced, as determined by any means, including:

- A random selection;
- A game, race or contest; or
- Any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

Prohibited Activities -

- Deal in lottery tickets
- Deal in bets
- Announce, advertise or publicize the existence of any lottery

Use of Banking Premises Prohibited

Lotteries & Related Activities

American Savings Promotion Act

Signed by the President & Enacted 12/18/14

Excerpt from govtrack.us:

12/18/2014--Public Law. American Savings Promotion Act - Amends the Revised Statutes of the United States, the Federal Reserve Act, the Federal Deposit Insurance Act, and the Home Owners' Loan Act to authorize covered financial institutions to conduct a contest, known as a "savings promotion raffle," in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or program, where each ticket or entry has an equal chance of being drawn. Subjects such drawing contest to regulations promulgated by the appropriate prudential regulator.

Excludes such "savings promotion raffle" from the prohibition against a covered financial institution's dealing in "lottery" tickets.

Amends the federal criminal code to exempt: (1) savings promotion raffles conducted by an insured depository institution or an insured credit union from specified prohibitions against interstate and foreign travel or transportation in aid of racketeering enterprises, and (2) any savings promotion raffle from the prohibition against illegal gambling businesses.

If interested in this type of activity, contact your legal counsel for guidance.

Sheshunoff Consulting + Solutions

Advertising Checklists





More Information -



We appreciate you attending.

Website - <http://compliance.smslp>

Email - rcoggins@smslp.com