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ADVERTISING PROMOTIONS

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ADVERTISING

- The basic rule for all advertising is that the advertising must be accurate and not misleading.
- Primarily, CFPB Regulation Z and NCUA Regulation 707 set forth requirements related to the advertising of credit union products and services.
- CFPB Regulation Z applies to loans, NCUA Regulation 707 applies to share and deposits.
- Certain types of advertising trigger other regulatory compliances obligations.



ADVERTISING – MEMBER SAVINGS

- ◉ Advertising for member savings accounts is governed for credit unions by NCUA's Regulation 707.8.
- ◉ The regulation contains a couple of general requirements; then sets forth a set of disclosures that are triggered when specified items are mentioned in an advertisement.



ADVERTISING – MEMBER SAVINGS

- ◉ An advertisement must not:
 - ◉ (1) Be misleading or inaccurate or misrepresent a credit union's account agreement; or
 - ◉ (2) Use of the words “free” or “no cost” or a similar term cannot be used if any maintenance or activity fee may be imposed on the account.
 - ◉ The word “profit” must not be used in referring to dividends or interest paid on an account.



ADVERTISING – MEMBER SAVINGS

- ◉ If an advertisement states a rate of return, it shall state the rate as an “annual percentage yield,” using that term. (The abbreviation “APY” may be used provided the term “annual percentage yield” is stated at least once in the advertisement.)
- ◉ The advertisement shall not state any other rate, except that the “dividend rate” or “interest rate” as applicable, using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.



ADVERTISING – MEMBER SAVINGS

- ◉ If the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:
 - ◉ *Variable rates.* For variable-rate accounts, a statement that the rate may change after the account is opened. (Not required for some media.)
 - ◉ Almost all share and draft accounts are variable rate.)



ADVERTISING – MEMBER SAVINGS

- ◉ The period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date. (Not required for some media.)
- ◉ The minimum balance required to earn the advertised annual percentage yield.
- ◉ The minimum deposit required to open the account. (Not required for some media.)



ADVERTISING – MEMBER SAVINGS

- ◉ A statement that fees could reduce the earnings on the account. (Not required for some media.)
- ◉ Various additional disclosures are required for term (certificate) accounts.
- ◉ If a bonus is stated in an advertisement, various other items must then be disclosed.



ADVERTISING – MEMBER SAVINGS

- ◉ Additional disclosure requirements for term accounts include the following:
 - ◉ The term of the account.
 - ◉ A statement that a penalty will or may be imposed for early withdrawal. (Not required for some media.)
 - ◉ For noncompounding term share accounts in some situations, a statement that dividends cannot remain on account and that payout of dividends is mandatory.



ADVERTISING – MEMBER SAVINGS

- ◉ If a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:
 - ◉ The “annual percentage yield,” using that term.
 - ◉ The time requirements to obtain the bonus.
 - ◉ The minimum balance required to obtain the bonus.



ADVERTISING – MEMBER SAVINGS

- ◉ The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus. (Not required for some media.)
- ◉ When the bonus will be provided. (Not required for some media.)
- ◉ Where we note “Not required for some media,” the disclosure is not required in (i) Broadcast or electronic media, such as television or radio; (ii) Outdoor media, such as billboards; or (iii) Telephone response machines.



ADVERTISING - LOANS

- ◉ The basic rule for advertising loans (and any other credit union products and services) is that the advertising must be accurate and not misleading.
- ◉ In addition, Regulation Z imposes specific advertising requirements for loans, and these differ for open-end and closed-end lending. Presenting some types of information triggers an obligation to provide other specified information.



ADVERTISING - LOANS

- Only loan terms that will actually be offered may be advertised.
- Regulation Z contains a “clear and conspicuous” requirement for disclosures in many places.
- Generally, any “triggered” required disclosure must be shown at least equally prominent as the item which triggered it.



ADVERTISING – OPEN END CREDIT

- For open-end credit, the listing of terms that can trigger additional disclosures differs based on whether the credit is home-secured or not.
- The listing of triggering terms is quite extensive, some examples are set forth below. If any of them are mentioned, other information must also be included in the advertisement.



ADVERTISING – OPEN END CREDIT

- ◉ For open-end plans other than home equity lines of credit; triggering terms include the following:
 - ◉ Finance charges
 - ◉ Charges resulting from failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.



ADVERTISING – OPEN END CREDIT

- ◉ Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.
- ◉ Charges for which the payment, or nonpayment, affect access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.
- ◉ Charges imposed for terminating a plan.
- ◉ Charges for voluntary credit insurance, debt cancellation or debt suspension.



ADVERTISING – OPEN END CREDIT

- For home equity lines of credit; triggering terms include the following:
 - Finance charges.
 - The amount of any charge other than a finance charge that may be imposed as part of the plan.



ADVERTISING – OPEN END CREDIT

- Additional disclosures (all open end credit):
 - Any minimum, fixed, transaction, activity or similar charge that is a finance charge that could be imposed.
 - Any periodic rate that may be applied expressed as an annual percentage rate. If the plan provides for a variable periodic rate, that fact shall be disclosed.
 - Any membership or participation fee that could be imposed.



ADVERTISING – OPEN END CREDIT

- ◉ And for home secured lines of credit plans, the following additional disclosures are required as well as those mentioned earlier:
 - ◉ Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.
 - ◉ Any periodic rate used to compute the finance charge, expressed as an annual percentage rate.
 - ◉ The maximum annual percentage rate that may be imposed in a variable-rate plan.



ADVERTISING – OPEN END CREDIT

- ◉ In addition, mention of various other specified items triggers disclosures related to that item.
- ◉ For instance, if an advertisement for a home equity plan states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:
 - ◉ The period of time such initial rate will be in effect; and
 - ◉ A reasonably current annual percentage rate that would have been in effect using the index and margin.



ADVERTISING – OPEN END CREDIT

- ◉ Another example relates to payments:
 - ◉ If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised.
 - ◉ The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.



ADVERTISING – OPEN END CREDIT

- ◉ Discussing all of the possible combinations of triggering and triggered items of information is beyond the scope of this program;
- ◉ Just remember, if you mention rates, fees, or payments in an advertisement, additional information will be required in the ad.



ADVERTISING – CLOSED END CREDIT

- ◉ The general rule for closed end credit is that if any of the following appear in an advertisement additional disclosure will be required:
 - ◉ Any reference to down payments. (credit sales only)
 - ◉ Any reference to repayment.
 - ◉ Any reference to interest rates or finance charges.



ADVERTISING – CLOSED END CREDIT

- ◉ The following must also appear in the advertisement:
 - ◉ The amount or percentage of any downpayment. (credit sales only)
 - ◉ The number of payments or period of repayment and the total of payments.
 - ◉ The amount of any payment.
 - ◉ The amount of any finance charge and if variable, terms related to the variable rate.



ADVERTISING – CLOSED END CREDIT

- ◉ An advertisement made through television or radio stating any of the terms requiring the additional disclosures listed in the previous slide may comply with that requirement either by:
 - ◉ Stating clearly and conspicuously each of the additional required disclosures
 - ◉ (a) Stating clearly and conspicuously the “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact and (b) listing a toll-free telephone number, or any telephone number that allows the caller to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.



ADVERTISING – CLOSED END CREDIT

- ◉ If an advertisement for credit secured by a dwelling states a sample annual rate of interest and more than one annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:
 - ◉ Each annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;
 - ◉ The period of time during which each annual rate of interest will apply; and



ADVERTISING – CLOSED END CREDIT

- ◉ Each annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards which require the use of a rate that is currently available.
- ◉ “Clearly and conspicuously” disclosed means that the required information set forth above shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The Annual Percentage Rate may be disclosed with greater prominence than the other information.



ADVERTISING – CLOSED END CREDIT

- ◉ If an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:
 - ◉ The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;
 - ◉ The period of time during which each payment will apply; and



ADVERTISING – CLOSED END CREDIT

- ◉ In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.
- ◉ A clear and conspicuous disclosure means that the required information in the first two paragraphs immediately above shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in the last paragraph immediately above shall be disclosed with prominence and in close proximity to the advertised payments.



ADVERTISING – CLOSED END CREDIT

- ◉ Regulation Z contains various other requirements for advertisements for credit secured by a dwelling. Discussing all of the possible combinations of triggering and triggered items of information is beyond the scope of this program; the goal here is to alert you any time you mention rate, term, payment or fee items you will likely need additional disclosure.



ADVERTISING – RADIO AND TELEVISION

- ◉ As discussed above, advertising requirements for loans and member savings are slightly less extensive when advertising by radio or television.
- ◉ However, these reduced requirements won't apply to print media and don't apply to advertising through web sites or mobile devices.



ADVERTISING – SOCIAL MEDIA

- ◉ The Federal Financial Institutions Examination Council (FFIEC) has issued guidance with respect to the use of social media. The link to this guidance is https://www.ffeic.gov/press/PDF/2013_Dec%20Final%20SMG%20attached%20to%2011Dec13%20press%20release.pdf.
- ◉ FFIEC includes, along with the federal banking regulations, the NCUA and the CFPB.
- ◉ FFIEC notes that financial institutions may use social media for a number of purposes, including marketing and advertising.



ADVERTISING – SOCIAL MEDIA

- ◉ FFIEC states that text messages and e-mail by themselves are not social media but they may still be subject to many of the laws and regulations contained in the guidance.
- ◉ FFIEC discusses risks associated with use of social media. These risks are not limited to legal and compliance risks; they also include reputational and operational risks.



ADVERTISING – SOCIAL MEDIA

- ◉ If social media may be used by members to actually apply for loans or savings accounts or enter into agreements, credit unions must make the appropriate disclosures and also be able to present their contracts through the media. The material discussed earlier with respect to advertising loans and savings would apply to advertisements through social media.
- ◉ If social media merely sets forth links to the credit union's web site and no triggering terms appear in the social media page, then credit unions may follow their normal procedures for web based services.



ADVERTISING – SOCIAL MEDIA

- ◉ If mortgages are advertised through social media, the Equal Housing Lender graphic must appear.
- ◉ If savings accounts are advertised, the NCUA federally insured account information must appear.
- ◉ If mortgage applications are taken through social media, the timing requirements for disclosures set forth in the Real Estate Settlement Procedures Act (RESPA) will apply when the application is taken through that medium. If all that the social media contains is a link to the regular credit union web site, the application process timing requirements will be triggered only when an application is completed at that link.



ADVERTISING – SOCIAL MEDIA

- ◉ If member information is collected through social media, the credit union's privacy policy must be made available.
- ◉ Per FFIEC, credit unions should evaluate whether sending unsolicited communications to consumers through social media could trigger the CAN SPAM Act or the Telephone Consumer Protection Act compliance requirements.



ADVERTISING – SOCIAL MEDIA

- ◉ The CAN SPAM Act and its implementing regulations establish requirements for sending unsolicited commercial messages (“spam”) electronically either through social media or otherwise. Requirements for such messages include accurate routing information, an accurate subject line, labeling the message as an advertisement, providing an accurate postal address, and a process for recipients to opt-out of receiving such messages in the future.
- ◉ The following FTC link provides some additional information: <http://www.ftc.gov/tips-advice/business-center/can-spam-act-compliance-guide-business>.



ADVERTISING – SOCIAL MEDIA

- ◉ The Telephone Consumer Protection Act and its implementing regulations establish requirements related to sending unsolicited communications by telephone or short message service (SMS) text message. This is the law that established the national “Do not call” registry and requires the credit union to maintain its own internal “Do not call registry.” It also imposes additional requirements applicable to telemarketing calls.
- ◉ Additional Information can be found on the FCC web site at <http://www.fcc.gov/encyclopedia/telemarketing>.



ADVERTISING – SOCIAL MEDIA

- ◉ Information collected from children under the age of 13 through social media will trigger the Children's Online Privacy and Protection Act (COPPA).
- ◉ COPPA sets forth strict requirements that must be met before collecting information on line (through social media or otherwise) from children under the age of 13.
- ◉ The credit union needs to monitor whether it is actually collecting any information from someone under the age of 13.



ADVERTISING – SOCIAL MEDIA

- ◉ Keep in mind that FFIEC guidance goes beyond advertising and marketing; it should be kept in mind for all activity conducted through social media.



QUESTIONS

