

## Avoiding the Pitfalls of Advertising Compliance

# Questions and Answers

by  
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### Lending Advertising Requirements

**Question 1.** Under 226.24(f)(3), if the advertisement for credit secured by a dwelling states the amount of any payment, the ad shall disclose:

1. The *payments* that will apply over the term of the loan;
2. The period of time during each which *payment* will apply; and,
3. The fact the payment does not include amounts for taxes and *insurance*.

I have not found the definition of “payment” or “insurance”. Are we (or should we) consider mortgage insurance into the payment amount and duration for advertising loans with loans requiring MI (i.e., loan over 80% LTV or FHA loans)? Example – If you would have to include mortgage insurance in the payment...then an ad would have to disclose 120 payments with MI and the remaining payment without MI. We are currently taking a conservative approach.

**Answer:** You are correct that the Regulation does not define these terms. I believe that this section gives you the option of including insurance in the payment amount and does not require you to do so. 226.24(f)(3)(i)(c) states *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.* If you choose not to include insurance in the payment amount you just need to be sure you disclose this fact.

**Question 2.** We want to offer a loan promotion to members of a particular union. It would involve no application or annual fee for home equity loans and LOCs, and .50% rate reduction on personal & auto loans & 1% rate reduction on overdraft lines of credit. If worded just this way, are any of these triggering terms requiring further disclosure? It would be given to the union members in the form of a flyer.

**Answer:** If you advertise just as you stated above, there are no triggering terms that would require additional disclosures.

**Question 3.** Do the electronic media exceptions apply to advertising messages on telephone scripts people hear when they are placed on hold?

**Answer:** There are no exemptions for electronic media in Truth in Lending. Thus, any loan advertisements placed on a telephone response system would require full disclosure. On the other hand, the Truth in Savings Act does allow certain disclosures to be omitted for advertisements placed on a telephone response system. Page 26 of the materials outlines the disclosures that may be excluded.

**Question 4.** Do you have an example of an advertisement that shows a teaser rate and APR which meets the new requirements?

**Answer:** I don't have an example of a "correct" teaser rate advertisement. However, if you look at the advertisement on Page 55 of the materials (has a picture of a man with his dog), you would need to disclose the fully indexed rate in close proximity (directly above, below or next to) and with equal prominence (same font, size, etc.) to the 2.99% teaser rate.

**Question 5.** Did you say OCC banks do not have to use "N.A." after the bank name?

**Answer:** No. I said that OCC regulated banks do not have to use the Equal Housing Lender (EHL) or the Equal Housing Opportunity (EHO) logos in advertisements. However, they are still required to display an EHL or EHO poster in the bank.

**Question 6.** If we are offering a home equity line of credit, can our ad quote only a rate of Prime -.75%, or must it also quote an APR? (Current prime is 3.25%, but our loan has a floor of 4%, so do we have to quote a rate, or is prime -.75% sufficient?)

**Answer:** Truth in Lending clearly states *if an advertisement states a rate of finance charge, it shall state the rate as an Annual Percentage Rate.* Regarding the floor rate, you could mention this in the fine print.

**Question 7.** I would like to create a statement stuffer for a closed end home equity loan special. The APR is 5.5% which includes .5% discount for automatic payment from our bank (APR is 6% without automatic payment). There are no loan fees and the borrower pays closing costs. It will be a 180 month amortization with a 5 year call.

**Answer:** If you state any of the closed-end triggering terms:

1. *The amount or percentage of down payment (applies to “credit sales” only);*
2. *The number of payments or period of repayment;*
3. *The amount of any payment; and,*
4. *The amount of any finance charge.*

*You would be required to include the following additional disclosures (as applicable):*

1. *The amount or percentage of the down payment (applies to “credit sales” only);*
2. *The terms of repayment, which reflect the repayment obligations over the full term of the loan,*
3. *including any balloon payment;*
4. *The “annual percentage rate”, or “APR”, using one of these terms; and*
5. *If the rate may be increased after consummation of the loan, that fact.*

Based on the information provided, if you mention the term of the loan (5 years), the additional disclosures would be required. To make the advertisement more clear, I would advertise the APR as 6.00% and in the fine print state that a discount of .50% is available with automatic payments.

**Question 8.** If I state a 30 year fixed rate as a product in a newspaper ad do I have to state any disclosures?

**Answer:** Yes. Stating the period of repayment (30 years) is a triggering term that requires additional disclosure. The additional disclosures can be found on Page 6 of the materials.

**Question 9.** Since loans are not deposit products, do we need to add the FDIC disclosure to loan advertisements?

**Answer:** “Member FDIC” is not required to be disclosed in an advertisement for loan products.

**Question 10.** What type of loan incentive is permissible and what should we avoid?

**Answer:** I am not exactly sure what you are asking but I will give it a shot. Regulation E says that a bank cannot require automatic payments on a loan but may provide incentives to do so. I believe this includes anything from rate reductions to fee waivers, etc. Section 205.10(e) states *no financial institution or other person may condition an extension of credit to a consumer on the consumer’s repayment by preauthorized electronic funds transfers, except for a credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer’s account.*

**Question 11.** If we mention a \$600 rebate off closing costs (we do not state the actual amount of closing costs) in a closed-end mortgage loan ad, would this be considered “any amount of a finance charge” and therefore, a triggering term?

**Answer:** I do not believe that stating a rebate of closing costs as you mention would be considered the “amount of any finance charge”. Since you are not stating any amount that would be a finance charge and the reader is unable to determine any finance charge amount, this would not be considered a triggering term.

**Question 12.** If you have a HELOC with a teaser rate and tiers, how would you advertise it?

**Question 13.** If you advertise a HELOC with a teaser rate, you would have to have the teaser rate and the current rate in close proximity. What if the HELOC has tiered rates? Would you have to include each of the tiers and their current rates in the disclosure?

**Answer:** You would disclose the teaser APR as well as the fully indexed APR’s for each tier in close proximity (directly above, below or next to) and with equal prominence (same font, size, etc.) to the teaser APR.

**Question 14.** Can we advertise specific mortgage rates and terms on an electronic outdoor sign and say “details inside” and have a printed handout to give anyone who inquires?

**Answer:** No. There is no exemption for electronic media in Truth in Lending. This means that any loan advertisements stating triggering terms would require full disclosure.

**Question 15.** We publish mortgage rates weekly in the local newspaper. They are compiled into a chart comparing local financial institutions. I submit my rates to them on Thursday by 10 AM, to be included in Sunday's paper. So, the rates may have changed. Is that OK? The rates are for 30 year fixed and 15 year fixed loans.

**Answer:** Truth in Lending states that you must only advertise terms that you are actually prepared to offer. One could argue that advertising a rate on Sunday that you really wouldn't offer might be a problem. Although, not required, if the advertisement had a statement that advertised rates can change at any time, or that they are effective as of the date of publication, I don't feel this would be a huge issue.

### **Deposit Advertising Requirements**

**Question 16.** We say that if you sign up for on-line banking we will email you through our on-line banking system, various kinds of advertising. We are now getting ready to begin sending advertising emails through net-teller. We don't want to say on these emails that you may opt-out or unsubscribe to receiving them, mainly because we don't want to track un-subscribers. We want to be able to hit send to everyone with an on-line banking account. I have brought up CAN-SPAM to management. Management says why not just say at the bottom of the emails “if you want to quit receiving these emails you must cancel your on-line banking access”.

**Answer:** Under the CAN-SPAM Act a commercial electronic mail message, which are those covered under the Act, do not include messages sent on a closed-loop system. I am not familiar with net-teller, but if this system works only through your online banking system and not over the internet where typical email messages are sent, CAN-SPAM will not apply.

You may have state laws that regulate opt-outs of advertising that could apply. Similar to the Do Not Call requirements, if a customer wants out, you must observe that request. You don't really want to send messages that just make a customer mad, unless you tell them in advance that this is a part of the preferred pricing they enjoy with their online banking account. It would seem to be a

deterrent to the cost effectiveness of online banking and e-statement delivery to look for a way to have customers leave this product.

**Question 17.** Are rate sheets considered an advertisement?

**Answer:** Yes. If a rate sheet can leave the bank with a customer, it must contain the same advertising disclosures as a newspaper advertisement.

**Question 18.** Did you say that the “Member FDIC” disclosure has to be on a notice of closure for a holiday?

**Answer:** It depends. If the “we will be closed” notice is posted in the bank or on your front door, then no. If you put a “we will be closed” notice in the newspaper you must include “Member FDIC” since you mention the bank’s name.

**Question 19.** If a bank advertises a savings account at a specific rate and does not guarantee the rate for a period of time, would it be considered unfair and deceptive if that rate was only in effect for 1-2 months and then dropped to a lower rate? All the proper disclosures would be given, (i.e., APY effective date, that the rate is variable and can change at any time without notice).

**Answer:** After I read this question closer, I don’t think I addressed the exact question during the webinar. If the savings account is a variable rate account and you included the required disclosure (“rate may change after account is opened”) in the advertisement and the variable rate nature of the account was properly disclosed in the TISA disclosure, there is no problem with the rate changing so soon after the account was opened. Also, in your ad you would want to say the rate is effective as of the publication date (if a newspaper ad). Don’t say the rate is good through a certain date because then you would be bound to that date.

**Question 20.** For a tiered rate account, does the “close proximity and equal prominence rule” apply to just the relationship between the APY and balance tier only, or does it apply to the relationship among the tiers? For example, can we advertise one tier (APY + balance in close proximity and equal prominence) in the body of the ad and have the other tiers in the “fine print” at the bottom?

**Answer:** This is one area that is heavily debated. I believe that it is okay to advertise one tier’s APY and minimum balance within the body of the ad and the rest of the tier’s APYs and minimum balances in the fine print. I have never seen a bank cited for this in my area. However, I know of other compliance professionals who believe the opposite. Either way this would most likely be a very minor issue and very low risk from an examination standpoint.

**Question 21.** On page 23 A 1 d - transfer fees - if a transfer fee is charged to cover an OD in another account, can this account still be “free”?

**Answer:** Yes. As long as the transfer fee is not assessed on the “free” account, this is acceptable.

**Question 22.** How do you disclose rates for business accounts? Do we disclose the rate and APY? I am aware that TISA does not apply to business accounts, but I see rate sheets with and without APYs for business interest bearing products.

**Answer:** Since TISA requirements, and therefore APY disclosure requirements, do not apply to business accounts, I think you could do whatever you want on your rate sheets. It certainly is not a violation to provide an APY on a non-applicable account. I would just ensure that whatever you decide that you do it consistently.

**Question 23.** When mailing certificate upcoming renewal or maturity notices, should the envelope contain the official statement for NCUA?

**Answer:** I am not an expert in NCUA requirements but I would assume that the NCUA official statement requirements are the same as the FDIC requirements. The FDIC requirements provide an exemption for “bank supplies” such as stationery, envelopes, signature cards, etc.

**Question 24.** For the opening of a new branch, we want to offer a high APY on savings accounts opened at that office. This APY will be variable and will likely drop over the coming 12 months. However, the rate is not tied to savings account rates currently offered at other offices. Can we advertise the initial APY without trying to determine what the possible blended APY may be over the 12 month period?

**Answer:** If this account is a variable rate account and that fact is disclosed in the advertisement, there should be no issue with the rate changing after the account is opened. Additionally, a blended APY wouldn't be required unless you have an idea what those rate changes are going to be and when they are going to occur (like a stepped rate account).

**Question 25.** Can a bank charge the customer for a paper statement as a miscellaneous fee and still call the account “free”?

**Answer:** If the terms of your “free” account require the customer to have electronic statements and they instead choose to pay a fee to get paper statements, I believe it is still acceptable to call the account “free”. However, if the account terms specified that all customers would be assessed a monthly fee for statements, then this would be a maintenance or service fee and the account could not be called “free”.

**Question 26.** Are we allowed to offer a bonus of more than \$10 for deposits less than \$5,000, or more than \$20 for deposits greater than \$5,000? We wanted to offer a golf umbrella (\$25) to customers that open a checking account. All our checking accounts require \$25 minimum to open, but it can be withdrawn on the next business day per our Regulation CC Funds Availability Policy. Other than this time requirement, no other durations exist.

**Answer:** If the bonus is provided on an interest bearing account, there is no limitation as to the amount of the bonus. However, if the bonus is provided on a non-interest bearing account, the limitations you mention do come into play IF the account has a minimum balance requirement **AND** any duration requirement to obtain the bonus. Regulation CC does not dictate a “duration” requirement since it deals with “availability of funds” not a “duration to obtain a bonus”. It doesn’t sound to me like you meet the “restricted bonus amount” requirements.

**Question 27.** I have a question pertaining to marketing brochure requirements vs. TISA disclosure requirements. I understand that there are different requirements, but do not know how detailed our product brochures must be in comparison to our TISA disclosures. For example, we include downloadable product brochures on our website (business and personal) but we also include a brief description of each product and their related information (minimum balance, transaction limitations, fees, etc.) on individual landing pages. Must our product brochure match word-for-word the information on our landing pages? If we make reference to the availability of a particular service, for example a Reg Z line of credit for overdrafts, or loan rate reduction for qualified applicants only in our product brochures, must we include that same information in both the brochure and landing page?

**Answer:** There is no requirement to disclose exactly the same information in two different advertising mediums. You just need to ensure that for whatever you are advertising that you comply with the disclosures required by the applicable section of the Regulations. For example if you mention an APY in the ad you follow 230.8 of TISA.

## **Miscellaneous**

**Question 28.** Can you send a statement stuffer promoting an affiliated insurance agency out in your bank statements?

**Answer:** Yes. This would not be violation of FACT Act's Affiliate Marketing requirements as long as no customer information is provided to the affiliated insurance agency. Make sure that the insurance promotion does not state "Member FDIC" and includes the "Not, Not, Not, Not, May" disclosure, as applicable.

**Question 29.** If you hold an informational workshop for clients regarding business planning and you provide an evaluation form on how the session went that includes a section for the customer to include their information for the bank to contact them, should the form be considered an advertisement since it is essentially soliciting business?

**Answer:** Since the evaluation form itself does not contain any direct or indirect promotion of credit or deposit products offered by the bank, it would not meet the definition of "advertisement" under Truth in Lending or Truth in Savings Act. The attendee has complete control as to whether you contact them. However, if the form included a listing of specific products or services this could be considered an advertisement.

**Question 30.** Does this webinar provide any Institute of Certified Bankers (ICB) continuing education credits?

**Answer:** BOL Learning Connect regularly submits their programs to the ICB for certification. To my knowledge no program submitted has been denied credit. The request for this webinar is pending. Periodically BOL Learning Connect will send an email to the registrants for all the programs listing the credits for the various ICB certifications and programs that it has received.

**Question 31.** Can you have a CD/Account rate board in a Loan Production Office?

**Answer:** This really is not an area of my expertise. I would recommend that you contact your State Banking Agency as there may be some State law issues.

**Question 32.** Can you talk about the NY Attorney General/Citi financial settlement re: discontinuance of "free checking" as advertised?

**Answer:** I am not familiar with this settlement nor am I an expert in State law issues.

### **Lotteries/Sweepstakes**

We received the following questions regarding lotteries and sweepstakes; however, these items were not within the scope of this webinar. Andy Zavoina and John Burnett will conduct a webinar on this topic on June 30, 2010 – “Freebies, Bonuses, Contests - Marketing Rules We All Must Follow”

<http://calendar.bollearningconnect.com/main.php?view=event&eventid=1273591611732>

**Question 33.** I just got a marketing piece in the mail that states “For every referral you pass along, you’ll be entered for a chance to win with rewards drawn monthly.” Is that legal? We wanted to do that for every time someone refers a new mortgage customer, they get a chance of winning a prize.

**Question 34.** We are running an internal referral program in our bank. If you make a referral for a credit card, your name is automatically entered into a drawing for a flat screen TV. If you don’t make a referral you are not entered and not eligible for the drawing.

- a. Is this a lottery?
- b. Is the referral considered a “credit” as referred to in 12 USC 339?
- c. Was it really the intent of the law to cover drawings that the public will not enter?