

Advertising Compliance

Presented by

**Andrea Stritzke
Vice President, Regulatory Compliance
PolicyWorks**

The services of PolicyWorks and this presentation, including all materials, should not be construed as legal services, legal advice, or in any way establishing an attorney-client relationship.

Truth in Lending/Reg Z

Reg Z: Definition of Advertising

- A commercial message in any medium (visual, oral or print) that promotes, directly or indirectly, a consumer credit transaction.
- Materials that are only educational in nature or that are required by law are not advertisements.

Open-end Credit

- Credit cards
- Lines of credit
- Home equity lines of credit

Reg Z: Open-End Trigger Terms

If the advertisement for an open-end loan (not a HELOC) sets forth any of the following trigger terms (affirmatively or negatively), additional disclosures are required:

- Finance charges identified under § 226.4(a) and § 226.4(b).
- Charges resulting from the consumer's 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.
- 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 the consumer's 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.

Open-End Advertising Disclosures

- 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 APR (if it is a variable rate, you must state "the annual percentage rate may vary after the account is opened"); and
- Any membership or participation fee that could be imposed.

Reg Z: HELOC Trigger Terms

Additional disclosures are required if an advertisement for a HELOC sets forth (either affirmatively or negatively) any of the following terms:

- When finance charge will be imposed and an explanation of how it will be determined (including stating the APR);
- The amount of any other charge or an explanation of how it will be determined; or
- The payment terms (including draw or repayment period, length of the plan, how the minimum payments are determined, or timing of payments).

The trigger terms include statements such as “no annual fee,” “no points,” or “we waive closing costs.”

HELOC Advertising Disclosures

- 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 dollar amount or range;
- The annual percentage rate; and
- The maximum annual percentage rate that may be imposed in a variable rate plan.

The HELOC disclosures above are in addition to the disclosures for open-end loans which are:

- Any minimum, fixed, transaction, activity or similar charge that could be imposed;
- Any periodic rate that may be applied, expressed as an APR (if it is a variable rate, you must state “the annual percentage rate may vary after the account is opened”); and
- Any membership or participation fee that could be imposed.

Television or Radio Ads for HELOCs

If a television or radio ad for a HELOC sets forth the trigger terms, CU may (1) state the APR; and (2) state a toll-free number along with a reference that consumer can call that number to obtain additional cost information.

Open-End and HELOC– Advertising Miscellaneous

- If ad indicates interest being tax deductible also state, “consult a tax advisor regarding the deductibility of interest” to prevent ad from being misleading.
- HELOC cannot be referred to as “free money” or contain a similarly misleading term.
- An advertisement cannot state “no closing costs” or “we waive closing costs” if consumers pay any closing costs such as recordation fees.
- When advertising specific credit terms, only state terms that actually are offered.
- THE ADVERTISEMENT MUST BE CLEAR AND CONSPICUOUS.

New Rules for HELOCs

- Ads with discounted or promotional rates for HELOCs are required to state the time period for the rate and current APR in effect using index and margin
 - Must be stated with equal prominence and close proximity to the discounted rate
- Equal prominence = same type size
- Close proximity = immediately above, below, or next to
- If an ad for HELOC states a minimum payment for a plan that includes a balloon payment, then balloon payment and timing would need to be stated with equal prominence and in close proximity to minimum payment
- Additional disclosures must be given when an ad states that extensions of credit greater than the FMV are available
- Promotional payment advertisements also require additional disclosures

Use of “Fixed”

- Advertisement may not refer to an APR as “fixed” or use a similar term unless the advertisement also specifies a time period that the rate will be fixed and the rate will not increase during that period
- If no time period is provided, the rate will not increase while the plan is open

Open-end NOT home-secured

- If any APR is an introductory rate, the term “introductory” or “intro” must be in immediate proximity to each listing of the rate in a written or electronic advertisement
- If APR is a promotional rate, advertisement must state when promo rate will end and the APR that will apply after promo period ends
- If written or electronic advertisement, info must be in prominent location and closely proximate to promo rate

Credit Card Application

- The application disclosure must be posted in a prominent location on or with the credit card application.
- For electronic applications, the disclosure must be linked to the disclosure in a manner that prevents the consumer from by-passing the disclosure before submitting the application.
- For an application posted on the website, provide the application disclosure on or with the internet application.

Closed-end Credit

- Auto loans
- Signature loans
- Mortgages
- Home equity loans

Reg Z: Closed-end Trigger Terms

If the advertisement for a closed-end loan contains any of the following trigger terms, additional disclosures are required:

- The amount or percentage of any downpayment (this includes stating “Only 5% down” or “As low as \$100 down”) (only applies to credit sales);
- The number of payments or the period of repayment (this includes stating “48-month payment terms” or “30-year mortgage”);
- The amount of any payment; and
- The amount of any finance charge

Stating “No downpayment” does NOT trigger additional disclosures.

Closed-end Advertising Disclosures

- The amount or percentage of the downpayment (applies to credit sales only);
- The terms of repayment (example of repayment terms); and
 - For example: “For a \$20,000 new car loan for a term of 60 months with a 6.75% APR, the monthly payment will be \$_____.”
- The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.

Television or Radio

For advertisements made through TV or radio that contain a trigger term, can state the additional disclosures, or can (1) state the APR; and (2) state a toll-free number along with information that the consumer may call the number to obtain additional cost information. For example, “Call 1-800-866-0000 for details about credit costs and terms.”

New Advertising Rules for Closed-end, Home-Secured

Clear and conspicuous standard

- Disclosures must not be obscured
- Shall not state any other rate other than APR, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously, than the APR
- “Terms of repayment” include repayment obligations over the full term of the loan, including any balloon payment.
- Additional disclosures must be given when an ad states that extensions of credit greater than the FMV are available

If the ad states the amount of a payment, must disclose:

- The amount of each payment that will apply over the term of the loan (if variable rate, disclose payments based on application of reasonably current index and margin)
- The period of time during which each payment will apply
- The fact that the payments do not include taxes and insurance premiums, if applicable. (Does not apply to subordinate lien loans.)
- Must be in close proximity and equal prominence to payment

For a discounted variable rate transaction, must disclose the term in which the discounted rate applies and the APR that will apply after this term.

- Disclose in close proximity and with equal prominence to reduced rate.

If the ad includes information showing the effect of the discount on the payment schedule, additional disclosures required.

Prohibition of certain acts or practices

- Advertising fixed-rate or payments when rate or payments are fixed only for limited period of time, rather than full loan term
- Making comparisons between actual and hypothetical rates and payments
- Falsely advertising a loan as government supported or endorsed
- Displaying the name of the consumer’s current lender without disclosing that the ad is not affiliated with the current lender
- Claiming debt elimination when one debt merely replaces another
- Using the term “counselor” by for-profit brokers or lenders
- Advertising certain information in a foreign language but providing required disclosures only in English

Equal Credit Opportunity Act/Reg B

- Cannot discourage someone from a protected class (age, sex, race, color, religion, national origin, marital status, etc.) from applying for a loan.

Marital Status

On loan applications, may only ask about an applicant's spouse when:

- The spouse will be a user of the account or joint obligor;
- The applicant is relying on the spouse's income for repayment;
- The applicant is in a community-property state; or
- The applicant is relying on alimony, child support, or maintenance for repayment.

When asking about an applicant's spouse under the circumstances permitted above, the credit union must use the terms, "married," "unmarried" or "separated."

When a member is applying for individual, unsecured credit, DO NOT ask about an applicant's marital status.

CAN-SPAM Act

- Purpose is to hinder persons who send commercial e-mail messages (i.e. those having the primary purpose of advertising or promoting a product or service)
- Transactional or relationship emails not subject to Act
- Effective July 7, 2008

Requirements

For e-mails that are subject to the CAN-SPAM Act, each e-mail must:

- Use accurate and non-misleading header information.
- Use accurate and non-misleading subject line information.
- Provide a clear and conspicuous opt-out option for future commercial e-mail messages.
- Provide the sender's physical postal address in the body of the message.
- Clearly and conspicuously indicate that your e-mail message is a solicitation or advertisement.

Truth in Savings/NCUA Part 707

Part 707 Trigger Terms

APY = Annual Percentage Yield

TISA/Part 707 Disclosures

If the Annual Percentage Yield (APY) is included in an advertisement, then the advertisement must also include the following:

- Whether the APY is a variable rate and a statement that the rate may change after the account is opened;
- Time annual percentage yield is offered;
 - **For interest-bearing accounts and dividend bearing term share accounts, state the period of time the APY will be offered, or state that the APY is accurate as of a specified date. The specified date must be “recent” in relation to the publication or broadcast frequency of the media used.
 - **For dividend bearing accounts other than term share accounts, state that the APY is accurate as of the last dividend declaration date.
- Minimum balance required to earn the advertised APY;
- Minimum opening deposit if it is greater than the minimum balance necessary to earn the advertised APY;
- Effect of fees—i.e., a statement that (maintenance or activity) fees could reduce the earnings on the account; and
- Features of term share accounts, if applicable:
 - Time requirements (for term accounts),
 - Early withdrawal penalties (a statement that a penalty will or may be imposed for early withdrawal), and
 - Required dividend payouts (for noncompounding term share accounts with a stated maturity greater than one year that do not compound dividends on an annual or more frequent basis).

TISA/Part 707 Other Requirements

- The term “annual percentage yield,” must be stated at least once in the advertisement.
- The APY must be rounded to the nearest one-hundredth of 1 percent (.01%) and expressed to two decimal places.
- The advertisement must not refer to or describe the account as “free” or “no cost” or contain a similar term if any maintenance or activity fee may be imposed.
- Maintenance and activity fees include: (1) any fee imposed if a minimum balance requirement is not met, or if the member exceeds a specified number of transactions; (2) transaction and services fees; (3) a flat fee such as a monthly service fee; and (4) fees imposed to deposit, withdraw, or transfer funds.

TISA/Part 707 Exceptions

- If ad is on TV, radio, billboards, or telephone response machines, disclose the minimum balance, the term of the account for a term share account, required dividend payouts if applicable, and information as to bonuses.
- Signs inside the credit union* and newsletters to existing** members that state a rate of return shall state the rate as an annual percentage yield or APY, and contain a statement advising members to contact an employee for further information about applicable fees and terms.
*Advertisements that may be retained by member, are NOT indoor signs and require full disclosures.
**Newsletters posted on websites require full disclosures.
- Advertisements cannot be misleading or inaccurate.

Share Certificates v. CDs

- The term “certificate of deposit” or “CD” may not be used to describe share certificates and other dividend-bearing term share accounts.
- Interest-earning term share accounts are “certificates of deposit” or “CDs”
- Dividend-bearing term share accounts are “Share Certificates,” “Certificate Accounts,” or “Certificates,” NOT “CDs.”

Overdraft Advertisements

An advertisement for overdrafts must contain:

- The fee or fees for the payment of each overdraft;
- The categories of transactions for which a fee for paying an overdraft may be imposed;
- The time period by which the member must repay or cover any overdraft; and
- The circumstances under which the credit union will not pay an overdraft.

The overdraft advertising requirements do NOT apply to:

- Ad promoting an overdraft service where the payment of overdrafts will be agreed upon in writing and subject to Reg Z
- Response to a member inquiry regarding overdraft
- TV, radio, or billboard ad
- ATM receipt
- In-person discussion with a member
- Information on a periodic statement or notice informing a member about a specific overdrawn item or the amount the account is overdrawn
- A share account agreement discussing the credit union’s right to pay overdrafts
- A notice, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account

- Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service
- Indoor signs provided that the sign contains a clear and conspicuous statement that fees may apply and that members should contact an employee for further information about applicable fees and terms.

Bonus and Word of Mouth

Word of Mouth Advertising (Refer a friend campaigns)

- If the credit union offers members some form of compensation for referrals, it should disclose this fact to the individual being referred to the credit union.
- The disclosure should be made prior to the individual opening the account.
- Can either be in verbal or written form.
- If the disclosure is provided verbally, the credit union's policies and procedures should document how and when the disclosures are being provided to prospective members.

Verbal disclosure at the time of the account opening:

The employee opening the account may ask the individual if she was referred by a credit union member. If the answer is "yes," then the employee can simply disclose, "The member who referred you will receive \$10 in her share account for referring you to our credit union."

Written disclosure on application:

Have the member check off a box on the application that says, "If you were referred by one of our members, check here and fill in the name of the person who referred you. The member who referred you will receive \$10 for recommending that you join our credit union."

Bonus

- If a prize is worth more than \$10 and is tied to a share account, then a credit union must disclose the prize as a bonus under the Truth in Savings Act.
- A bonus is defined as a premium, gift, award, or other consideration worth more than \$10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a member during a year in exchange for opening, maintaining, or renewing an account, or increasing an account balance.
- The term "bonus" does not include dividends, other consideration worth \$10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or extraordinary dividends.

Bonus Disclosure

A bonus disclosure must state, to the extent applicable:

- The amount or type of any bonus;
- When the bonus will be provided;
- Any minimum balance and time requirements to obtain the bonus;
- Any minimum balance to open the account; and
- The APY (which triggers the additional TISA disclosures).

Children's Online Privacy Protection Act

- If a credit union has a children's web page within its website, then the credit union needs to provide:
 - notice on its website of what information the credit union collects from children,
 - how the credit union uses such information, and
 - the credit union's disclosure practices regarding such information.
- The notice must be placed "in a clear and prominent place and manner on the home page of the website."

Non-Deposit Investment Products

- If a credit union advertises non-deposit investment products, the advertisements must make complete and accurate disclosures to avoid member confusion as to whether a credit union-related product is an uninsured investment product or an insured deposit.
- When selling, advertising, or otherwise marketing uninsured investment products to members, the following information should be provided in a clear and conspicuous location and type size on the advertisement:
 - The products offered: (1) are not federally insured; (2) are not obligations of the credit union; (3) are not guaranteed by the credit union or any affiliated entity; (4) involve investment risks, including the possible loss of principal; and (5) if applicable, are being offered by an employee who serves both functions of accepting members' deposits and the selling of non-deposit investment products.
- This requirement is applicable to all advertisements of non-deposit investment products, including products on websites.

Equal Housing Logo

- The Equal Housing Opportunity/Lender logo must be displayed on any advertisement for home mortgages.
- On a webpage, if other logotypes are used, the Equal Housing logo should be of a size at least equal to the largest of the other logotypes.
- If no other logotypes are used, then the type should be bold display face which is clearly visible.

NCUA Official Advertising Statement

- Each insured credit union must include the “official advertising statement” in all of its advertisements, including on its main Internet page.
- For the official advertising statement, may use:
 - “This credit union is federally insured by the National Credit Union Administration”;
 - The official sign; or
 - “Federally insured by NCUA”
- NCUA is allowing flexibility with respect to the issue of replacing signs with \$250,000; make sure advertisements reflect \$250,000
- The official advertising statement must be in a size and print that is clearly legible.
- The non-English equivalent of the official advertising statement may be used in any advertisement provided that the NCUA Regional Director gives prior approval to the translation.

Exclusions from NCUA official advertising rule

The following items do not need to include the official advertising statement:

- Condition and reports of condition required by federal or state law;
- Credit union supplies
- Signs or plates in the CU office or attached to the building
- Listings in directories;
- Advertisements not setting forth the name of the insured credit union;
- Display advertisements in credit union directories if credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured;
- Joint or group advertisements of credit union services with non-insured credit unions
- Radio and television that do not exceed 30 seconds
- Impractical advertising
- Advertisements that contain a statement to the effect that the credit union is insured by the National Credit Union Administration, or that its accounts and shares or members are insured by the Administration to the maximum insurance amount for each member shareholder; and
- Advertisements that do not relate to member accounts