Advertising Guide

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Guide to Credit Union Advertising and Trademarks / Servicemarks

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Guide to Resources and Topics

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I. INTRODUCTION.

The Credit Union is engaged in the highly regulated consumer financial services industry. There are rules that specify what information must be disclosed to individuals to whom the Credit Union extends credit, who have opened deposit accounts, or who receive various services from a Credit Union. The Credit Union's marketing department and/or outside advertising agency must be familiar with the rules that affect advertising and other promotional activities.

This guide addresses the various guidelines the Credit Union needs to follow to remain in compliance with the federal regulations that cover advertising. The regulations that cover this topic are complex and specify what the Credit Union can or cannot put in advertisements. In fact, some of these regulations dictate the exact wording to use in certain promotional advertisements.

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NOTE. STATE LAW(S): [Your Credit Union will need to consult with appropriate professionals for each state in which the Credit Union conducts advertising regarding additional requirements of each applicable state].

DRAFTING TIP: State law issues should be incorporated into the Product Checklists.

II. PRIMARY ADVERTISING CONSIDERATIONS.

A. The Regulatory Agencies and the Regulations:

There are three primary federal regulators that govern a Credit Union's advertising: (1) The Federal Reserve Board, (2) the Federal Trade Commission, and (3) The National Credit Union Administration.

1. The Federal Reserve Board // Consumer Financial Protection Bureau ("CFPB"). **Rules in transition from FRB to CFPB by January 2013:**

   The Federal Reserve Board (FRB) governs the Federal Reserve System and grants membership to that system to Credit Unions. By law, National Credit Unions are automatically members of the Federal Reserve System. Other institutions, such as State-Chartered Credit Unions, must apply for membership. The Fed's primary responsibility is to issue regulations that govern all member institutions. Further, the Fed is also the primary regulator for interpreting and issuing regulations regarding the principal Consumer Protection Laws.

   For example, the Fed's consumer protection regulations (e.g., Regulations B, C, E, M, Z, AA, BB, and CC) are binding on all financial institutions, as are its regulations concerning reserve requirements (Regulation D).

2. National Credit Union Administration ("NCUA").

   The NCUA is the primary regulatory for "Federal Credit Unions." The NCUA also provides certain rules and regulations that affect State (federally-insured) Credit Unions. The Credit Union should be aware of all applicable regulations as well as guidelines (Letters and other Guidance from NCUA).

3. Federal Trade Commission ("FTC").

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The FTC is the primary regulator under the Fair Credit Reporting Act, various privacy laws, the Lanham Act, and other law requiring truth in advertising.

4. Federal Communications Commission ("FCC").

The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories.

B. The General Advertising Rule – "Truth in Advertising."

Although Credit Unions are subject to many specific compliance requirements, when advertising products and services, all of these requirements stem from one general principle: Advertisements must be accurate and not deceptive or misleading in any respect, and they may not misrepresent the products and services that Credit Unions actually offer to their members.

1. Unfair and Deceptive and Abusive Act and Practices Act.

UDAAP = Unfair, Deceptive, and Abusive Acts and Practices, is the new CFPB's new de facto mandate to assure that all financial institution actions are "fair" as well as compliant. Credit Union services were never designed to deliver unfailing fairness, especially against subjective standards being applied politicians, media, customers, and regulators. True – Credit Unions have always done better at this than banks (recall the recent Debit Card Fee fiasco). However, we are not immune from criticism; and the new sheriff in town – the CFPB will be the subjective judge of all fairness.

Understanding UDAAP You should also understand UDAAP because it is one of the CFPB's most potent tools. The UDAAP standards — unfairness, deception and abuse — are vague, amorphous, broad and infinitely flexible. Dodd-Frank Act defines two of the terms.

"**Unfairness**" is an act or practice that "(A) causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition."

An "**abusive" act or practice**" (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of—(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer

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financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

In the old days we could take some action because our contract said we could. Now we have to ask: (1) Do we have the right?; (2) Has the matter been clearly stated to the consumer; and (3) Is the action being considered "the right thing to do?"

SAMPLE UDAAP ASSESSMENT ISSUE (Using TISA Comparison)

Question: If we charge for paper statements but not e-statements can we still advertise the account as free under Reg DD (TISA)?

Response: I believe it depends on the assessment of the following two considerations:

TISA: If the specific account in question routinely will not charge customers a fee for statements (because they are electronically delivered), and only charges if the customer opts to receive a paper statement in addition to or in lieu of the e-statement, I don't believe you would violate the Truth in savings rule by advertising as free. I expect you have two different products – or allow exceptions for members over a certain age. All such matter may need to be address in any applicable advertising disclaimers. **The purpose of this email was not to address the charging for statements but to give some illustration of UDDAP's application. The Credit Union in this matter was charging a maintenance fee on accounts, but waiving that fee for members who elected to received e-statements. The example is correct with this clarification regarding how UDAAP may be applied.**

UDAAP and State Laws Issues: Next, we must continue our analysis with whether the intended advertisement may cause concerns under other laws. In light of the CFPB's UDAAP requirements – technical compliance with Reg DD may not be enough. Here you need to complete the UDAAP Assessment and make the subjective call based on your assessment. Further, certain state laws may have something to say about whether you can advertise an account as free with a charge for paper statements. Thus, if you have significant membership outside of XXXX in places such as California – which permits someone to sue over something that is "unfair" even though it might be legal – you have to go further than mere technical compliance. Thus, an ad that complies with a federal regulation can still be considered "unfair" if it is later determined that you didn't adequately disclose all pertinent conditions (Meaning you can likely advertise the account as free, but will need to focus on disclosures / disclaimers that meet UDAAP standards). Thus, it will be important to have a proper UDAAP Assessment; and if your assessment allows you to move forward

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to draft very well done disclaimers in association with any advertising.

2. The Lanham Act.

The Lanham Act is a federal law that prohibits false advertising and gives legal rights to "any person who believes that he or she is or is likely to be damaged by the use of any . . . false description or representation" of any goods or services. For a Credit Union to be liable for a false advertisement under the Lanham Act, a claimant must prove to the satisfaction of a court that the advertisement meets the following criteria:

- It contains a false statement of fact about a product.
- The false statement actually either deceives or has the ability to deceive a substantial segment of the intended audience.
- The false statement is material (i.e., it is likely to influence the audience).
- The false statement either results in or is likely to result in injury to the claimant.

Credit Unions should be aware that the Lanham Act interprets the word "false" broadly. As a result, the act applies not only to statements that are false but also to those that are misleading, confusing, or deceptive.

However, there is a fine line of distinction between a statement that is misleading or deceptive and one that is "puffing." Puffing, which is considered permissible under the Lanham Act, refers to blatant boasting or exaggerating.

It is also important to note that a claim under the Lanham Act exists only if an advertisement has a tendency to deceive a substantial or significant portion of the audience for which the advertisement is intended. Consequently, if an advertisement is aimed at a more sophisticated audience, there is less likelihood that a claimant can prove the audience has been or is likely to be deceived.

A person bringing suit under the Lanham Act may claim damages and ask the court to enjoin the Credit Union from using the advertisement. A court may award a successful claimant up to as much as three times the amount of the proven damages.

3. FTC Rules.

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As noted earlier, the Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices in commerce. It also grants the FTC power to challenge advertising the agency considers unfair or deceptive.

An advertisement is deceptive under the Federal Trade Commission if it meets the following criteria:

- It contains a statement that is likely to mislead consumers.
- Consumers are interpreting the statement reasonably under the circumstances.
- The statement is material (i.e., it is likely to affect a consumer's decision with respect to the product).

III. NAMING PRODUCTS – TRADEMARKS AND SERVICE MARKS

Three Types of Protection:

1. Common law right to exclusivity of a name. The first Credit Union to use a name for a product is granted the legal right to exclusive use of the name, unless the name is generic or its use by another company will not cause confusion.
2. Trademark Act. Credit Unions are permitted to file a registration for rights in a name or phrase used in interstate commerce.
3. State trademark laws. Credit Unions can register names used exclusively within a particular state.

It is important to understand that ownership may attach to names for various products and services, as well as the steps the Credit Union may need to undertake to protect its ownership of a unique name or symbol identifying its products and services. The Credit Union may not use a name, symbol, marking, or work of art or literature that is owned by another without specific permission from its owner. Likewise, the Credit Union may develop its own names, phrases, symbols, etc., which it may wish to protect.

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WHY SHOULD THE CREDIT UNION BE CONCERNED WITH PROTECTING ITS NAME(S), SYMBOLS, ETC.?

- Limit competition from others;
- Avoid confusion by consumers who may believe a product or service is the Credit Unions, or in some way related to the Credit Union; and
- Avoid using someone else registered name, logos, etc.

The following addresses the risks and costs associated with a failure to address these considerations:

Once a Credit Union has developed a product or a concept for a product, marketing personnel will usually try to find the most appropriate name for the product. In general, product names serve three different purposes:

- To identify the product.
- To distinguish the product from similar products offered by the financial institutions
- To distinguish the product from similar products offered by other financial institutions.

What items may you trademark / service mark:

Your Credit Union Name –

Example: "The Southern Federal Credit Union"

Your Logo / Design:

Your Tag Line:

Unique Product Names, Kid's Clubs, Etc.

NOTE: there are federal laws and regulations that limit and to some extent preclude the use of certain names, and Credit Unions must be aware of these rules when selecting a name for a product or service.

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1. Definitions.

Before going any further in this discussion, it is important to define some terms. First, people in the trademark profession refer to the name used for a product or service as a "mark." Therefore, the terms "name" and "mark" will be used interchangeably throughout this explanation.

Second, a name or mark that identifies a service is called a "service mark," whereas a name or mark that identifies a product is called a "trademark." However, there generally is no legal distinction between rights that apply to a service mark and rights that apply to a trademark.

In Credit Unions, marketing personnel generally refer to the items offered by their institution as products, although strictly speaking they are services. For simplicity's sake, the terms "products" and "services" are used interchangeably and the more familiar "trademark" term is used, although "service mark" would be a more accurate description of names used by Credit Unions.

2. Common Law Right to Exclusivity of a Name.

The right to exclusivity of a product name is a legal principle that applies to all business entities, including Credit Unions. Generally, the first business to use a name for a product has the legal right to exclusive use of the name and does not have to file for rights regarding the name.

This common law right, which courts of law recognized before any specific statutes on the topic were enacted, is based on two legal concepts:

- That the use of the same (or substantially similar) name by another business will confuse the public
- That use of the mark by another business may materially affect the goodwill and business value of the company that first used it

Note that the common law right to exclusivity of a mark only arises from its use. A Credit Union cannot reserve a name, never use it, and still retain an exclusive right to use the name. In addition, if a credit union uses a name and then discontinues its use for an extended period of time, the Credit Union loses its ability to claim an exclusive right to the name.

a. *Exceptions.*

There are two basic exceptions to the common law rule of exclusivity in rights to a name:

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- If the use of a name by another business will not cause confusion.
- If the name is generic.

b. *No Confusion.*

Occasionally, two different businesses in separate parts of the country choose an identical or substantially similar name for a product. This scenario occurs frequently in an industry such as banking, because product names are usually descriptive and products and services among financial institutions are similar.

Historically, in cases where two businesses located exclusively in different parts of the country independently adopt an identical name, both businesses may be permitted to use the name, as there is little likelihood of confusion among potential credit union customers as to the identity of the organization offering the product. Of course, as interstate and nationwide banking expands, the problem of product name conflicts among credit unions is likely to worsen.

Occasionally a Credit Union may adopt a name that is already used by a non-banking entity for a totally different kind of service. In such cases, the Credit Union usually can defend its rights to the name on the same "no confusion" principle; because the two products are so different, using the same name is not likely to cause confusion in the minds of the public.

c. *Generic Names.*

A Credit Union or other business also cannot protect rights in a name or term that is in common use. For example, a Credit Union cannot claim rights to standard banking terms like "money market." Similarly, a name that describes a product generally cannot be protected, but a Credit Union can develop rights by continued exclusive use of a descriptive name over a prolonged period of time.

3. Federal Trademark Law.

When looking to protect the names of their products and services, Credit Unions may also refer to the federal Trademark Act, which applies only to marks or names that are used in interstate commerce. However, a Credit Union need not have offices in two or more states to apply for a trademark; the issuance of advertisements or mailings that cross state boundaries provides sufficient interstate contact to permit consideration of the protections provided to names under the Trademark Act. Note: a perfect example of interstate advertising is the Internet.

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The Trademark Act permits businesses to file a registration for rights in a name or phrase. Once a business has registered a name, all other businesses throughout the country are placed on notice that the filing entity has claimed exclusive rights in the name. While trademark registration is not required to protect a Credit Union's rights in a name, the Credit Union is better able to provide those rights by filing for federal registration.

The following paragraphs outline the steps involved in trademark registration under the Trademark Act, including searching for a name, filing for trademark rights, indicating a claim to rights in a name, and continuing the use of a name.

a. *Searching for a Name.*

The process of developing a name for a product can be more costly than a Credit Union expects if it ignores trademark rules. Specifically, a Credit Union's substantial investment in adopting and advertising a product name is jeopardized if another Credit Union or non-bank organization later claims that use of the name infringes on that organization's rights.

To limit this risk, Credit Unions should consider conducting a trademark search before adopting and advertising a product name. The U.S. Patent and Trademark Office maintains a record of all trademark filings, and a Credit Union that is interested in using a particular name can obtain a search of the registration records within several days.

b. *Filing for Trademark Rights.*

Once a Credit Union has chosen a product name and conducted a trademark search, the next step is to file for trademark rights for the name. Until recently, a business seeking to register a name with the U.S. Patent and Trademark Office was required to first use the name in interstate commerce. Now, a Credit Union that decides to use a particular name for a product may file for registration of the name either after the first use of the name or before ever actually using the name. However, a Credit Union cannot indefinitely protect an unused name by filing. If the Credit Union files before first using the name, it must thereafter use the name to "perfect" its rights.

There is a significant time delay between filing for a mark and the official registration of the mark based on the filing and review procedures of the Patent and Trademark Office. If two credit unions file for the same mark, the first to use the mark will be entitled to registration.

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c. *Indicating a Claim to Rights in a Name.*

A Credit Union that seeks to claim an exclusive right to a name should indicate that claim by an appropriate notation with the use of the name. The use of the letters "TM" or "SM" immediately following the name indicates such a claim. The "TM" or "SM" can be used at any time; filing is not a prerequisite to their use.

The use of a circled R (®) indicates that a name has been registered with the U.S. Patent and Trademark Office. Credit Unions may use this mark only after receiving official notice of registration. Any use of this mark in connection with any name that has not been registered with the U.S. Patent and Trademark Office is a violation of federal law.

d. *Use of TM, SM, and ® in Advertisements.*

Once a Credit Union has decided on a product name and decides to use and protect the name, care should be taken to use the appropriate notation (™ or K for unregistered names, ® for those that are registered) whenever the name is used in an advertisement or brochure, in contracts with customers, and elsewhere. However, if a name appears more than once in any advertisement or brochure, a Credit Union usually only needs to use the SM, TM, or ® notation the first time. The notation need not be repeated throughout the document.

e. *Continued Use of Name.*

Once a Credit Union has obtained the right to use a name, that right continues as long as the Credit Union continues to use the name. However, federal registration is for a limited time period. Therefore, if a Credit Union has filed for registration, it must file a statement of continued use of the name. Otherwise, the U.S. Patent and Trademark Office considers the name abandoned and lists it as such on all official records. In such an event, another credit union could then file for registration of the mark.

4. State Trademark Laws.

Individual states also provide a similar trademark registration process for names within the state. Credit Unions that do not have customers or offices outside the state in which they are located may register a name within the state. This registration helps to prevent another business within the state from developing the same name. A Credit Union can also file for *both* federal and state registration; in the states in which they conduct business and use the mark, and federal if they meet the interstate commerce test described above.

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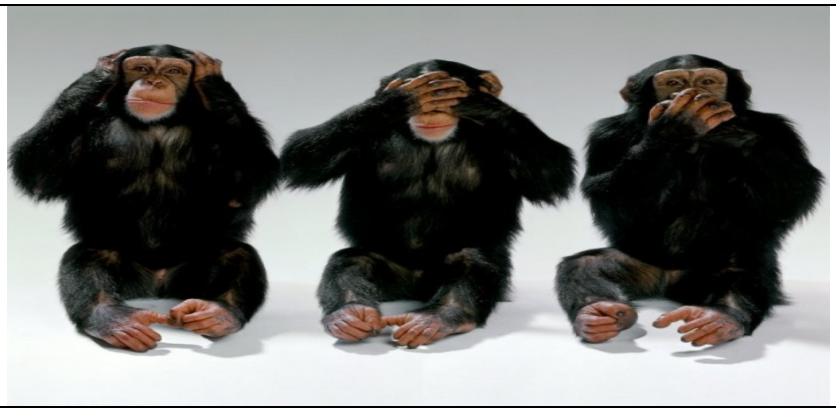
NOTE ON TRADEMARK / SERVICEMARK MAINTENANCE

Maintaining a Registration is NOT Automatic: State registration must generally be renewed, generally every ten years. Federal registrations are renewed every ten years. However a Section 8 Affidavit must be filed for a Federal registration between the fifth and sixth year after issuance in order to maintain the registration. The Section 8 Affidavit is simply a statement that the mark is still in use. Normally a combined Section 8 and Section 15 Affidavit is filed instead of just a Section 8 Affidavit. The Section 15 portion of the affidavit states that the mark has been used continuously for five years. Filing a Section 15 Affidavit makes the registration incontestable.

IV. ADVERTISING – THE PRIMARY REGULATIONS.

The regulations that contain specific advertising guidelines and requirements are as follows:

- National Credit Union Association (NCUA) — regulations governing advertisements relating to deposit accounts/services **[revise if not federally insured – may need to disclose private and/or state insurance]**, primarily 12 CFR §§ 701 and 740.
- Regulation DD — §707 (NCUA).
- Regulation Z — loans.
- Fair housing rules — residential loans [12 CFR §701.31 for federal credit unions].
- Retail sales of non deposit investment products - NCUA Letter No. 10-FCU-03.
- Regulation M — leasing.
- UDAAP.



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V. ADVERTISING MEDIA.

An advertisement is any commercial message that directly or indirectly promotes a product. The obvious media for advertisements include television, radio, newspapers, and billboards. The following also can be media for advertisements (the list is not all-inclusive):

- Internet "home banking" advertising.
- Twitter
- Brochures, pamphlets, and fliers.
- Outdoor displays — posters, banners, and window signs.
- Lobby boards.
- Statement stuffers.
- Statement messages.
- Telephone response machines.
- Rate sheets.
- Direct mail.
- Oral quotes.
- Point-of-sale materials.

This list includes statement messages and stuffers. However, if such statements refer to existing accounts, they are not advertisements. If the Credit Union includes information regarding another type or category of account in the statement messages and stuffers, such information would be considered an advertisement and subject to the credit union's advertising policy.

Rate sheets will not be considered an advertisement if the Credit Union has no control over the publication of the information and does not pay a fee for its publication. Example: A local newspaper published rates offered by area institutions to allow readers to review and compare the information.

The Credit Union's policy will also apply to any agents or representatives it retained to help promote its products. Any person or entity who works on behalf of the Credit Union is subject to the same rules as the credit union itself.

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VI. NCUA OFFICIAL ADVERTISING SIGN/STATEMENT - 12 C.F.R. § 740.

[This section assumes the Credit Union is federally insured. If the Credit Union is privately insured or is federally insured, but carries additional private insurance, the Credit Union will need to revise this section regarding compliance with applicable state law].

The Credit Union will follow the NCUA advertising rules in all its advertisements. All Credit Union advertisements or promotions will include either the NCUA's official advertisement sign or an abbreviated statement.

SIZE AND PRINT: "The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer. * * *"

A. Scope – Where the Credit Union Must Display the NCUA Advertising Sign/Statement (Read Requirements Below on Following Pages)

The Credit Union must display the NCUA Advertising Statement in connection with each of the following:

Place or Item	Where to be Displayed
Official Sign	At all Teller Stations where deposits are normally accepted; or where accounts are opened.
All Other advertisements	See Section B below.
Annual Reports (if required to be published by law)	In a prominent position on the cover page of such documents or on the first page a reader sees if there is no cover page.
Statements of Condition (if required to be published by law)	In a prominent position on the cover page of such documents or on the first page a reader sees if there is no cover page.
Internet Pages where the Credit Union accepts deposits or open accounts. NOTE: You are allowed to vary the size, but must "ensure its legibility."	As written this particular provision is vague. 12 CFR 740.4(a). The safest interpretation is to consider this as applying to your Home Page and any other page that actually facilitates the acceptance of deposits or opening of accounts. **For pages that are merely "advertising" apply the rules in Section B, Below.** We can discuss and risk-assess the application/interpretation as you deem necessary.

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Other Internet Pages where an Advertisement is provided.	See B., below.
NOTE: The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer.	

All deposit advertisements will include either the NCUA official sign or an abbreviated statement. However, if the NCUA official sign in the advertisement is so small that the NCUA's sign and the two lines of small type become indistinct, the credit union will use the NCUA official advertising statement.

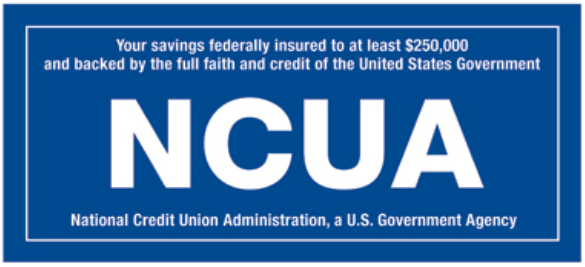
Note: State-chartered, privately-insured Credit Unions should consult with their state's regulations concerning required disclosures; or required additional disclosures if the Credit Union is both federally- and privately-insured and privately insured.

B. NCUA ADVERTISING STATEMENT.

Sample Disclosure Options Under 12 CFR §740: Your Credit Union can choose either of the following options to comply with this Regulation:

1. *Statement:* "**This Credit Union is federally-insured by the National Credit Union Administration;**" **or**
2. *Short Statement (no longer requires accompanying "official sign"):* "**Federally Insured by NCUA**" or "**Insured by NCUA**": **or**
3. The Official Sign Alone – **If completely legible.** Consult with RTS if you wish to discuss this.

This is the Official Sign



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C. Exceptions to Advertising Statement:

The following advertisements need not include the official advertising statement:

1) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and non-insurable certificates;

2) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located;

3) Listings in directories;

4) Advertisements not setting forth the name of the insured credit union;

5) Display advertisements in credit union directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured;

6) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured credit unions are listed and form a part of such advertisement;

7) Advertisements by radio which do not exceed thirty (30) seconds in time;

8) Advertisements by television, other than display advertisements, which do not exceed thirty (30) seconds in time;

9) Advertisements that because of their type or character would be impractical to include the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains;

10) 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 or shareholder;

11) Advertisements that do not relate to member accounts, including but not limited to advertisements relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance.

E. Alternate Language:

The non-English equivalent of the official advertising statement may be used in any advertisement provided that the Regional Director gives prior approval to the translation.

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VII. DISCLAIMERS AND WORDS / PHRASES NOT TO USE

Disclaimers and Caveats:

We hate them, but we have to use them. If a Credit Union fails to use the correct disclaimers in advertising it can face significant and unintended consequences. Here are some examples, but we recommend review by competent legal counsel as needed:

Standard All	"Terms and Conditions Subject to Change Without Notice." Failure to include this condition may prohibit the Credit Union from changing the offered terms.
Standard Credit	"Subject to Credit Approval." Failure to include this condition could mean everyone get the loan.
Standard Risk Based Pricing	"Rate may vary based on individual creditworthiness." Failure to include this condition could require the Credit Union to offer the published rate to all applicants.
If Discount is Offered	"Rates reflect .25% reduction for qualifying checking account." Draft per your particular offer.
Credit Card Offer to Students	In accordance with the Credit Card Act of 2009, borrowers applying for a credit card under the age of 21 must either show proof of "ability to pay" or have a qualified guarantor over 21 years of age. This is per the limitations under the CARD Act restrictions on credit cards to persons under 21.
Time Limits and "Time Bombs:"	Always include some limit on the time the offer advertised will be available. Examples: Offer Available Until February 28, 2017. Offer Ends February 28, 2017. Terms offered through February 28, 2017. Contact the Credit Union thereafter regarding future terms.
Disclaimers Associated with Certain Apps:	Be sure to notify members that there may be charges associated with downloading / using your apps or another app you may be advertising, Example: Based on your wireless plan and mobile carrier's offering,

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	additional message data charges and foreign transaction fees may apply.
Include Limitations / Conditions:	You will need to know the product or service to draft this as applicable. Example: 1 Requires credit evaluation. Teens under the age of 18 are required to have an adult sign as joint owner. Accounts without eStatements will be charged $2 monthly maintenance fee. 2 Only members in good standing with a checking account that meet certain eligibility requirements qualify for this service. Business purpose, club, trust, custodial and other fiduciary accounts are not eligible.
Insurance and Warranty Coverages:	Insurance and warranty products are not products of the Credit Union; and are not obligations of or guaranteed by the Credit Union. Insurance or warranties may be purchased from an agent or an insurance company of the Member's choice; and Credit Union makes no representations as to the services of any provider.
Car Buying Service	Example: The Credit Union has contracted with AAA Carolinas to make this service available as a convenience to our Members. AAA Carolinas Car Buying Service and AAA Carolinas Basic Membership Insurance and any manufacturer's warranties are not services of the Credit Union; and are not obligations of or guaranteed by the Credit Union. Credit Union makes no representations as to the services of any provider or any vehicles purchased. Services are only available in North and South Carolina.
CUSO Disclaimers	ABC Insurance Services is a wholly-owned subsidiary of ABC Credit Union. Insurance products are not deposits of ABC Credit Union and are not protected by the NCUA. They are not an obligation of or guaranteed by ABC Credit Union and may be subject to risk. Any insurance required as a condition of an extension of credit by ABC Credit Union need not be purchased from ABC Credit Union and may be purchased from an agent or an insurance company of the Member's choice. Business conducted with ABC Insurance Services is separate and distinct from any business conducted with ABC Credit Union. License no. 0D91054. (License Number Issued by State).
Time Limits and "Time Bombs:	Always include some limit on the time the offer advertised is available. Examples:

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	Offer Available Until February 28, 2017. Offer Ends February 28, 2017. Terms offered through February 28, 2017. Contact the Credit Union thereafter regarding future terms.

UDAAP Considerations:

Remember, technical compliance with the various applicable laws and regs is not sufficient if the ad is otherwise misleading in any way.

Examples:

"Free Checking" Under TISA there may be certain fees that can be charged without affecting whether the Credit Union can call the account free; however there may be conditions that you need to insure are adequately disclosed.	**If this only applies to member who receive e-statements you need to add the condition:** *Free Checking conditioned on election and continued receipt of receive e-statements
Free – but there may be associated third party fees / charges such as with text banking / text messaging services.	**It is a bit of an uncertain area here, but I feel you are in the generally safe club so long as you add a clear disclaimer to the advertisement such as:** *Charges or Fees: The Credit Union does not charge for use of the Service. However, your wireless carrier may charge you for messages you receive as a result of using the Service. You should contact your carrier for complete pricing details.
"Special Low APR" 2.8% APR Car Loan Rate for up to 60-months.	**If conditions apply to receipt of this low rate:** *Rate offered for 2010 and later models with less than 15,000 miles. Rate and Term are best rates offered. A higher APR or shorter term may apply if applicant does not qualify. Contact the Credit Union to inquire about rates and terms.
"Best Banking Services in Town."	**What is your basis for this statement?** Do you have a basis documented in your UDAAP assessment

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	that allows you to support your claim? For example: "Best Banking Services in Town as determined by the readers of the Atlanta Journal Constitution."

Words to Avoid:

There are certain words to avoid per potential consequences of use:

Partner	Using the word partner or any version of the word can have awful consequences. Under the Uniform Partnership Act and general common law – if you hold yourself out to the world as being another's "partner" the world has a right to believe you. Thus, if there is a claim or liability of the partnership – the claiming person can seek recovery from any partner of the partnership. Thus, if you held yourself our as being partners with a car warranty company; and for whatever reason the member is unable to get that company to pay a warranty claim – they can seek payment from you – the "partner of the warranty company."
Unsecured or Signature	See Page 34.
Guaranty	The law also applies a certain meaning to the word "guaranty." You will want to be sure to stay away from saying things such as "we guaranty the best service in town" versus "best service in town." The one word "guaranty" puts an incredible subjective burden on the Credit Union that it is likely never going to be able to meet in all instances.
Bank	It is illegal to call yourself a "bank." It is a federal crime; and is also a felony in most states. You can call yourself only what you are – a "Credit Union." You do provide "banking" services. Thus, you can say things such as "best banking services in town."

VIII. DEPOSITS – TRUTH IN SAVINGS COMPLIANCE.

Primary considerations for the Credit Union:

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- Not to use any misleading or inaccurate advertisements.
- To include specific rate information whenever rates are included in advertisements.
- To provide additional information in advertisements that contain or advertise information about rates or bonuses.
- Not to state that a deposit with the Credit Union is safer than a deposit with an insured savings and loan association or bank.

"Annual Percentage Yield"

All deposit account advertising that states a rate of return must reflect the rate as an "annual percentage yield," using that term. The Credit Union may also use the abbreviation "APY," as long as the full term "annual percentage yield" appears at least once in the advertisement.

The only other rate that the Credit Union can include in a deposit advertisement is the dividend rate related to the APY. The Credit Union must use the actual term "dividend rate." It must appear with the APY and cannot be shown more conspicuously. Deposit advertising should not include the term "annual percentage rate" in any context.

A. Accuracy of Rate Information.

The APY must be calculated in accordance with the rules and formulas that appear in the Appendixes to the NCUA's Regulation. The APY quoted in the advertisement must be accurate to within plus or minus 0.05 percent of the correct APY. This means that if the Credit Union *inadvertently* misstates an APY in an advertisement by 0.05 percent or less, it would still be in compliance with the regulation.

The Credit Union must not *intentionally* overstate the APY payable on a deposit account, even if the overstated rate is within the 0.05 percent tolerance limit. Overstatement of the APY will be considered a violation of the NCUA's Regulation 707 and could subject the Credit Union to a penalty of up to $500,000.

If a dividend rate is included in an advertisement, it must be correct. There is no tolerance limit for incorrectly disclosing the dividend rate offered for a deposit account.

B. Use of Term "Free" or Phrase "No Cost."

The Credit Union will prohibit the use or inclusion of the word "free," the phrase "no cost," or words or phrases of similar meaning in

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advertisements to describe deposit accounts where it can impose any maintenance or activity charge on the account. Credit Union advertisements must not use such words or phrases with respect to a deposit account where the Credit Union routinely charges such fees. This policy also applies when account terms either: (1) require a member to maintain a minimum balance for any period to avoid such charges for that period; or (2) allow for charges to be imposed when the number of transactions during a period exceeds an established allowable limit.

This policy does not prohibit the Credit Union from offering accounts that are subject to charges under such conditions, nor does it prohibit the advertising of accounts carrying charges, but it should prevent the Credit Union from falsely advertising such accounts as "free" or "no cost."

NOTE: See Discussion of UDAAP on Pages: 5-6. See also guidance on Pages 18-19

1. Maintenance and Activity Charges.

The prohibition against the use of "free" or "no cost" applies only when a member can incur activity or maintenance fees. Other types of fees (e.g., a charge for handling legal process) are not included in the prohibition. The Credit Union can still advertise some deposit accounts as free if it imposes other service fees, provided the charges are not subject to regulatory disclosure rules.

Activity or Maintenance Fees: ("Cannot Advertise as Free")	**Not Activity or Maintenance Fees:**
• Monthly maintenance fee (including one imposed if minimum balance is not met or transaction limit is exceeded). Per-check charge. Charge for deposits. Charge for withdrawals. • Charge for access card (debit card); or Charge for automated clearinghouse (ACH) transaction. Charge for opening or closing an account.	• Insufficient funds charge. • Unavailable funds charge. • Charge for handling legal process (e.g., levy against account by creditor of a member). • Stop payment fee. • Fee for check order. • Fee for wire transfer. • Fee for purchase of travelers' checks. • Charge for reproduction of checks, statements and other records. • Charge for account becoming dormant. • Charge for bill-paying service. • Fee for purchase of bank check. • ATM transaction charge. • Charge for certifying a check. • Balance inquiry fee.

2. Specific Account or Related Service as "Free." The Credit Union may advertise a specific account service and feature as free as long as no fee is imposed for the service or feature.

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EXAMPLE: Credit Unions offering an account that is free of deposit and withdrawal fees may advertise that fact (specifically), as long as the advertisement does not mislead members by implying that the account is free and no other fee(s) (such as a monthly service fee) may be charged.

3. **"Free for a Limited Time."** If an account or a specifically related service, is free only for a limited period of time – for example, for one year following the opening of the account (or service), it may be advertised as free as long as the time period is stated.

4. **Special Conditions.** Credit Unions may advertise accounts as "free" for members that meet conditions not related to share accounts such as the member's age.

EXAMPLE: Credit Unions can advertise a share draft account as "free for persons more than 65 years old," even though a maintenance or activity fee may be assessed on accounts held by members who are 65 or younger.

C. Use of the Term "Profit."

The Credit Union will not use the word "profit" in any advertisements when referring in any way to dividends earned on a deposit account. This prohibition is limited to use of the word "profit" in the context of dividends or earnings on an account. The Credit Union can still use the word in other respects. For example, the sentence, "Members profit when they do business with a Credit Union" will not violate the policy.

D. Advertisements That Promote the Payment of Overdrafts — Additional Disclosures

12 CFR 707.11 requires Credit Unions to disclose, in a clear and conspicuous manner, the following four items of information in any advertisement that promotes the payment of overdrafts:

- The fee(s) 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 consumer must repay or cover any overdraft
- The circumstances under which the institution will not pay an overdraft

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The NCUA commentary to these rules provides illustrations of advertisements that would be considered as promoting overdraft services (thus triggering the disclosure requirement). These examples are as follows:

- If the Credit Union promotes the institution's policy or practice of paying overdrafts, unless the service would be subject to Regulation Z (this includes advertisements using print media, such as newspapers or brochures, telephone solicitations, electronic mail, or messages posted on an Internet site)

- If the Credit Union includes a message on a periodic statement informing the consumer of an overdraft limit or the amount of funds available for overdrafts (e.g., an institution that includes a message on a periodic statement informing the consumer of a $500 overdraft limit or that the consumer has $300 remaining on the overdraft limit, is promoting an overdraft service)

- If the Credit Union discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen, or the institution's Internet site

Exception to Overdraft Advertising Disclosure Requirements

Under the rules, the following types of communications **do not** trigger this disclosure requirement:

- Promoting in an advertisement a service for paying overdrafts under an agreement that will be subject to Regulation Z

- Communicating (whether by telephone, electronically, or otherwise) about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts

Note, however, that providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an automated teller machine (ATM), or the Credit Union's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph (i.e., such action is considered an advertisement triggering the disclosure requirement).

- Advertisements made through broadcast or electronic media, such as television or radio

- Advertisements made on outdoor media, such as billboards

- ATM receipts

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- Engaging in an in-person discussion with a consumer
- Making disclosures that are required by federal or other applicable law
- Providing a notice or including information on a periodic statement informing a consumer about a specific overdrawn item or the amount the account is overdrawn
- Including in a deposit account agreement a discussion of the Credit Union's right to pay overdrafts
- Providing a notice to a consumer (e.g., at an ATM) that completing a requested transaction may trigger a fee for overdrawing an account
- Providing a general notice that items overdrawing an account may trigger a fee
- Providing informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the Credit Union's overdraft service

Exception for ATM Screens and Telephone Response Machines

Advertisements for overdraft services that are made on an ATM screen or using a telephone response machine must include two of the four disclosures:

- The fee(s) for the payment of each overdraft
- The time period by which the consumer must repay or cover any overdraft

But are **not required** to include the other two items:

- The categories of transactions for which a fee for paying an overdraft may be imposed
- The circumstances under which the Credit Union will not pay an overdraft

Exception for Indoor Signs

Indoor signs are exempt from the overdraft services disclosure requirements, provided that the sign contains a clear and conspicuous statement that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. For purposes of this exception, an ATM screen is not considered an indoor sign.

Prohibition on Misleading Advertising Where the Credit Union Offers Overdraft Privilege Services.

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The Commentary to section 707.8 is changed to provide specific examples of advertising that will be considered misleading. The examples involve Overdraft Protection Plan program promotions and focus on consumer complaints.

Advertising May Not Be Misleading: Generally, it will be misleading to:

1. Describe an overdraft plan **NOT** subject to Regulation Z as a line of credit.
2. State that the Credit Union will honor all checks or authorize payment of all transactions that overdraw an account, with or without a specified dollar limit, when the Credit Union retains discretion at any time not to honor checks or authorize transactions.
3. Represent that members with an overdrawn account can maintain a negative balance when the terms of the account's overdraft service require members promptly to return the share account to a positive balance.
4. Describe a Credit Union's overdraft service solely as protection against bounced checks when the Credit Union also permits overdrafts for a fee for overdrawing their accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.
5. Advertise an account-related service for which the Credit Union charges a fee in an advertisement that also uses the word "free" or "no cost" or a similar term to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. The prohibition against using "free" or "no cost" for accounts subject to maintenance or activity charges is unchanged.

Example: Include a caveat such as: "If you use overdraft privilege to cover insufficient funds items, the Credit Union's fee of $_____ will apply to each item."

FOR A DISCUSSION OF OVERDRAFT PRIVILEGE TRIGGERS FOR SPECIAL STATEMENT DISCLOSURES – REFER TO THE TISA / OVERDRAFT PRIVILEGE GUIDE IN CUPP X.

E. Use of Trigger Terms and Required Disclosures.

Any one of several different terms appearing in an advertisement acts as a trigger — meaning that its inclusion in the advertisement requires that the Credit Union provide additional information. Under NCUA's Truth-in-Savings Regulation there are two trigger terms that apply to advertisements for deposit accounts:

- Inclusion of the APY.
- Reference to a bonus.

1. Annual Percentage Yield.

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The Credit Union must disclose the following information whenever its advertisements include the APY. The first five, listed below, can apply to advertisements for deposit accounts (the sixth applies to advertisements for time deposits). **These additional disclosures are required only to the extent that each applies, and they must be stated clearly and conspicuously.**

- A statement that the dividend rate may change after the member opens the account. This requirement applies only to deposit accounts that offer a variable dividend rate.
- The period of time the APY advertised is offered. This refers to the period during which the offer will remain available to a member who opens the advertised account. This provision does not address the frequency with which the Credit Union can change the dividend rate payable on the account.
- The minimum balance required to obtain the APY disclosed in the advertisement. For tiered-rate deposit accounts, the advertisement must state the minimum balance requirement for each tier in close proximity to the APY (or range of yields, for type B tiered-rate accounts). This information must be disclosed with equal prominence.
- The minimum deposit required to open the deposit account. If the account is subject to both a minimum balance and a minimum deposit requirement, the advertisement must disclose both if the initial deposit required is greater than the minimum balance. If the initial deposit is not greater, then this requirement does not apply.
- A statement that fees could reduce the earnings on the account. This statement is required only if the Credit Union imposes any activity or maintenance fees on the deposit account.
- Features of Term (Time) Accounts. The Credit Union must disclose that the account is subject to a penalty for early withdrawal. Club Accounts: If a club account has a maturity date, but the term may vary depending on when the account is opened, the Credit Union may use a phrase such as "the maturity of the club account is November 15; however, its term varies depending on the date the account is opened."

SAMPLE - COMPLIANT AD COPY.

Seniors receive free checking while earning 4.00% APY. *

* Annual Percentage Yield is accurate as of 5/12/06. This is a variable rate account. Rates may change at any time without notice. Fees could reduce earnings on the account. This account is available only to members who are 65 or older.

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2. Bonuses.

A deposit account advertisement that contains an offer of a bonus will trigger a host of disclosures. A premium, gift, award, or similar consideration is a bonus if its value is more than $10 and it is given or offered to the member in exchange for:

- Opening a deposit account.
- Maintaining a deposit account.
- Depositing funds into an existing deposit account.

An item will be considered a bonus only if it is given to a depositor. Any premium that the Credit Union gives to a third party would not be considered a bonus.

When the advertisement includes the offer of a bonus, the advertisement must include:

- The APY.
- The five disclosures listed above, as applicable.
- Any time requirement to receive the bonus (e.g., making a bonus payable only if a member's deposit to the account remains in the account for one full year).
- The minimum balance required for the member to obtain the bonus.
- The minimum balance required to open the deposit account, if it is greater than the minimum necessary to obtain the bonus.
- When the bonus will be paid or given to the member.

The Credit Union can combine the disclosures if the balance requirements for earning the advertised APY are the same as those required to obtain the bonus.

Not every consideration given to a member constitutes a bonus. The Credit Union will make a distinction by excluding from the definition of "bonus" items it gives away during a year that are worth $10 or less, regardless of the dollar amount in the member's account. The Credit Union can also exclude promotional expenses from the definition of bonus. Each promotional expense must be considered separately.

If the Credit Union agrees to absorb, reduce, or waive certain fees or expenses, this also will not be considered a bonus.

NOTE: The Credit Union's Reporting obligations to the IRS for Dividends (Form 1099-INT) may be affected by any bonus paid on a

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member's accounts; or as a result of certain promotions. You will find guidance on this in Item A of this Section (Advertising) of your CUPP Manual.

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EXAMPLES OF BONUSES	EXAMPLES – NOT BONUSES
• $25 for becoming a member by opening an account. • $25 for opening a new account. • A portable radio with a value of $20 for opening a new share draft account.	• Discount coupons to members distributed by the Credit Union. • $20 to a member who refers a new member who opens an account. • Life savings benefits. • Waiver or reduction of a fee. Bonuses do not include value received by members through the waiver or reduction of fees for Credit Union-related services (even if the fees waived exceed $10), such as the following: • Waiving a safe deposit box rental fee for one year for members who open a new account. • Waiving fees for traveler's checks for members, and waiving check and share draft printing fees. • Non-discriminatorily waiving all fees for a particular class of members, such as seniors or minors. •

VALUATION RULES:

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• **De minimis rule**. Items with a de minimis value of $10 or less are not bonuses. Credit Unions may rely on the valuation standard used by the Internal Revenue Service (IRS) to determine if the value of the item is de minimis. Items required to be reported by the Credit Union under IRS rules are bonuses under this regulation. Examples of items of de minimis value are: • Disability insurance premiums on a share account valued at an amount of $10 or less per year. • Coffee mugs, T-shirts or other merchandise with a market value of $10 or less per year.	• **Aggregation.** In determining if an item valued at $10 or less is a bonus, Credit Unions must aggregate per account per calendar year items that may be given to members. In making this determination, Credit Unions aggregate per account only the market value of items that may be given for a specific promotion. To illustrate, assume a Credit Union offers in January to give members an item valued at $7 for each calendar quarter during the year that the average account balance in a share draft account exceeds $10,000. The bonus rules are triggered, since members are eligible under the promotion to receive up to $28 during the year. However, the bonus rules are not triggered if an item valued at $7 is offered to members opening a share draft account during the month of January, even though in November the Credit Union introduces a new promotion that includes, for example, an offer to existing share draft account holders for an item valued at $8 for maintaining an average balance of $5,000 for the month.

F. Partial Exemption for Certain Advertisements.

The following categories of advertisements are exempted from the above policy:

1. ATM Messages. Messages provided on ATM or computer screens are eligible for this exemption.

2. Tiered-Rate Accounts. Solicitations for tiered-rate accounts made through telephone response machines must provide all annual percentage yields and the balance requirements applicable to each tier.

3. Indoor Signs. Indoor signs include advertisements displayed on computer screens, banners, preprinted posters and chalk or pegboards. Any advertisement inside the premises that can be retained by a member (such as a brochure or a printout from a computer) is not an indoor sign.

   Lobby signs are not subject to advertising policies. However, they remain subject to the general rule that prohibits advertising in a manner that is misleading, inaccurate, or misrepresents of the Credit Union's deposit contracts. The limitations (discussed earlier) on use of the word "free" or the phrase "no cost" continue to apply to lobby signs.

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In addition, lobby signs that state a rate of return must comply with the following:

- State the rate as an "annual percentage yield," using that term. The abbreviation "APY" also may be used, without first defining it.
- Not state any other rate, except that the dividend rate can be stated in conjunction with the APY to which it relates.
- Contain a notice that advises members to contact an employee for further information about applicable fees and terms. For example, the statement might say: "Ask us for further information about the fees and other terms that apply to these accounts."

4. Newsletters. The partial exemption applies to all Credit Union newsletters, whether instituted before or after the compliance date of part 707. Nor must a newsletter be of any particular circulation frequency (e.g., weekly, monthly, quarterly, biannually, annually or irregularly) or of any certain format (e.g., magazine, bulletin, broadside, circular, mimeograph, letter or pamphlet) in order to be eligible for the partial advertising exemption.

   - *Permissible Distribution.* In order for newsletters to retain the partial advertising exemption, newsletters can be sent to existing Credit Union members only. Any distribution reasonably calculated to reach only members is also acceptable, such as:

     » Mailing newsletters to existing members.
     » Distributing newsletters at a function reasonably limited to members, such as an annual meeting or member picnic.
     » Displaying or offering newsletters at a Credit Union lobby, branch or office.

   - *Impermissible Distribution.* Distributing a newsletter in a place open to nonmembers, such as a sponsor's lunchroom, is not reasonably calculated to reach only members, and such newsletter would be subject to all applicable advertising rules.

CERTIFICATE OF DEPOSIT??

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Federal Credit Union: 12 CFR §707.8 allows a Federal Credit Union to use "Certificate" "Term Certificate" or "Term Share Certificate." That is all.

State Credit Union: *Check Your State Credit Union Requirements.*

IX. LOANS – GENERAL TRUTH-IN-LENDING COMPLIANCE.

The following requirements apply to advertising pertaining to the Credit Union's extension of open-end and closed-end credit.

A. What is an Advertisement?

An "advertisement" subject to the Truth-in-Lending Act and Regulation Z is *any commercial message* that promotes consumer credit or a consumer lease. "Advertisements" may appear:

(a) in newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;
(b) on radio, television, or a public address system;
(c) on an inside or outside sign or display, or a window display; or
(d) in point-of-sale literature, price tags, signs and billboards.

A "commercial message" is any message that promotes a sale or lease. Thus, materials that are educational and do not solicit business or that are required by law are not "advertisements." For example, a brochure issued by a Credit Union explaining FHA mortgages is not a commercial message, nor is a rate sheet prepared and used solely for internal business purposes. A state-required sign explaining credit terms is also not an "advertisement." On the other hand, a brochure or sign that combines a sales message with educational or state-required information is an "advertisement."

See, www.ftc.gov/bcp/conline/pubs/buspubs/creditad/general.htm

B. Clear and Conspicuous Requirement.

NOTE: Clear and Conspicuous Standard for All Advertisements -- Effective October 1, 2009, a new subsection 226.24(b) has been added to Regulation Z that simply states that the disclosures that are required in connection with advertisements for closed-end credit must be made clearly and conspicuously. This rule applies to all closed-end loan advertisements. This really adds nothing to the standards already known. Please also keep in mind New UDAAP

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standards (See pages 5-6 of this Guide).

The Credit Union's loan advertisements must disclose the terms of the credit clearly and conspicuously. This means that the advertisement must be legible and reasonably understandable.

NOTE: TYPE SIZE AND PRINT FONTS. There are no "required" type or font guidelines under the Act or Regulation Z. However, the Credit Union will apply a "reasonableness" standard to insure that all advertising is legible and can be easily understood by the average member. Also keep in mind the 8-point type limitations at the lower end of the Schumer Box requirements as some guidance.

SEE TABLE ON NEXT PAGE

GENERAL GUIDANCE ON THE CLEAR AND CONSPICUOUS STANDARD:

You are not required to do the following:

- Segregate any required disclosures from other material in the advertisement.
- Place any required disclosures in any particular place on the disclosure.
- State a numerical amount or percentage in any particular type size (except that any required disclosures of the annual percentage rate and/or finance charge must be more conspicuous than any other required disclosures).

You are not prohibited from:

- Setting forth any required terms (e.g., finance charge or APR) in plural form.
- Using commonly accepted or readily understandable abbreviations in making the required disclosures (e.g., you may use "mo." as an abbreviation for "month").
- Using the abbreviation "APR" for "annual percentage rate."
- Using codes or symbols for required disclosure terms (e.g., FC for finance charge) as long as a legend or description of the code or symbol is provided somewhere on the disclosure.
- Adding the required disclosures for any contract terms.
- Adding the required disclosures for any explanation of contract terms.
- Including any disclosures required by a state.
- Including translations of terms with the disclosures.
- Sending promotional materials with the disclosures.

C. Actual Availability of Terms.

The advertisement for a credit product must state the specific terms being offered by the Credit Union to its members. The Credit Union should never advertise credit terms that are not actually available. If the Credit Union imposes a condition on a credit product, this must also be stated in the advertisement. This does not mean the Credit Union cannot offer a special rate that is available for only a limited time period, nor does it prohibit the Credit Union from advertising terms that will become available at a future date.

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ABC FEDERAL CREDIT UNION
FALL CAR LOAN SPECIAL

6.75% APR*

*APR available from May 15 through May 30, 2012 for loan terms not exceeding 42 months.
Estimated monthly payments on 42-month loan at 6.75% APR = $26.80 per $1,000.00 borrowed.

D. Annual Percentage Rate or APR.

If your advertisement shows the finance charge as a rate, that rate must be stated as either an

Annual Percentage Rate OR APR.

NOTE: APR is a "Trigger Term" for open-end credit; and NOT for closed-end credit.

NOTE: Additional rules apply for variable rates, balloons, adjustable rates, etc. These issues are more fully addressed in the following sections on open- and closed-end credit.

E. Trigger Terms.

There are certain credit terms that, if mentioned or described in an advertisement by themselves, might mislead members as to the "deal" being offered by the Credit Union in comparison to similar credit offered by other providers. These are called "trigger terms," and special rules govern their use. Specifically, if an advertisement for a loan product contains any credit term that is required to be disclosed under Regulation Z, this would be considered a trigger term. If a trigger term appears in an advertisement, the Credit Union must include additional disclosures. **See Individual Charts Trigger Terms.**

F. "Unsecured and Signature."

If the Credit Union has a proper cross-collateral clause in its Loan Forms, using the terms "Unsecured" or "Signature" should be avoided in all CU documents, policies, procedures, etc. Why? Because this term is not consistent with the concept of cross-collateralization and such inconsistencies can be used against the Credit Union. As explained herein, the use of any terminology adverse to cross-collateralization may impair this important right (particularly after revision of Article Nine of the UCC.

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This is particularly the case where the Credit Union makes such a severe distinction between secured and unsecured throughout its policies and procedures. Separate cross-collateral and non-cross-collateral classifications are not recommended.

G. Alternative Disclosure Rules for Television or Radio Advertisements – Revised 2010

An advertisement made through television or radio stating any of the terms requiring additional disclosures as discussed in this Guide (above) may alternatively comply with these requirements by stating the following information via a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain the additional cost information:

Information that must be in the ad that refers to a telephone number:

Any periodic rate that may be applied expressed as an annual percentage rate or APR. If the plan provides for a variable periodic rate, that fact shall be disclosed.

Regulatory Guidance on Alternative Disclosures—Television or Radio advertisements.

1. **Multi-purpose telephone number. When an advertised telephone number provides a recording, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.**

2. **Statement accompanying toll free number. Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as "call 1-800-000-0000 for details about credit costs and terms."**

H. Special Disclosure Rule for Advertisements Provided via Electronic Communications (in essence '"websites")

For purposes of meeting the disclosure requirements of Regulation Z for advertisements, TILA/Z treats advertisements that appear on a Web site (or

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other form of electronic communication) the same as catalogs and multi-page advertisements. If an advertisement that appears on a web page provides information in a table or schedule in sufficient detail to permit determination of the disclosures that are required as provided in 226.24(d)(2), the advertisement will be considered a single advertisement if:

- The table or schedule is clearly and conspicuously set forth; and
- Any statement of the credit terms in paragraph (c)(1) of this section that appear anywhere else in the advertisement clearly refers to the page or location where the table or schedule begins.

Also, an electronic advertisement (such as an advertisement appearing on a web site) complies with section 226.24(d)(2) if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced services offered.

X. OPEN-END CREDIT REQUIREMENTS.

Types of Loans	
General Non-Home Secured Lines of Credit	Credit Cards
Overdraft Loans	Home Equity Lines of Credit

A. Disclosure Requirements – Trigger Terms

Generally, an advertisement must state a credit term as a positive number to trigger the additional disclosures. Including certain information in an advertisement may be a trigger even if a trigger term is not explicitly stated, but can be readily determined from the advertisement.

1. Trigger Terms for Open-End Credit:

- The periodic rate used to compute the finance charge or the annual percentage rate.

> **Examples:**
> **"Less than 1½ % per month."**
> **"14% APR."**

- A statement of when the finance charge begins to accrue, including the "free ride period (if any).

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Examples:
"A small monthly service charge on your remaining balance each month."
"We charge interest from the date we receive notice of your purchase."

- The method of determining the balance on which a finance charge may be imposed.

Examples:
"A small monthly service charge on your remaining balance each month."
"Interest will be charged on your average daily balance each month."

- The method of determining the finance charge, including a description of how any finance charge other than the periodic rate will be determined.

Examples:
"You only pay $1.00 each time you write an overdraft check."
"Minimum finance charge: 50 cents per month."

- The amount of any charge other than a finance charge that may be imposed as part of the plan.

Example:
"There is a $25 annual membership fee to get your card."

2. <u>Not Trigger Terms</u>:

- "Charge accounts available."
- "Open a revolving budget account."
- "Just say 'charge it.'"
- "1411 major credit cards honored."
- "Charge some cash."

B. Required Disclosures – Terms "Triggered"

If any triggering term is used in an open-end credit advertisement, then the following three *disclosures* must also appear:

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1. Any minimum, fixed, transaction, activity or similar charge that could be imposed;
2. Any periodic rate that may be applied, expressed as an "annual percentage rate." The term "annual percentage rate" or an abbreviation such as "APR" must be used and, if the plan provides for a variable periodic rate, that fact must be disclosed; and
3. Any membership or participation fee. NOTE: This does not include Credit Union membership. See, FRB Comment 226.6(b)-1(v).

C. Special Compliance Issues for Open-End Credit Rates

1. Variable Rates.

Requirements for advertising open-end, variable-rate credit plans differ in some ways from those for closed-end plans. In an advertisement for an open-end, variable-rate plan that contains a triggering term, there are several ways in which the annual percentage rate may be stated. The advertisement may:

- Use an insert showing the current APR;
- Give the APR as of a specified date; or
- Disclose an estimated APR.

NOTE: If you disclose an estimated rate, the estimate must be based on information reasonably available at the time of the advertisement, and the ad must state explicitly that the rate disclosed is an estimate.

In addition, the advertisement must disclose the variable-rate feature. You can satisfy this requirement with a statement that the "annual percentage rate may vary" or a similar statement. The advertisement need not explain the circumstances under which the rate may increase the limitations on the increase, or the effects of an increase.

2. Discounted Variable Rates.

Discounted variable-rate plans – a plan with an interest rate that is reduced by the Credit Union for a short, introductory period – are also offered in open-end financing. If the advertisement for this plan contains a triggering term, the ad must show, in addition to the other required information, the introductory annual percentage rate and how long that rate is valid. It also must show the APR after the introductory period and indicate that the second rate may vary.

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The rate after the introductory period (called the "indexed rate") must be calculated using the current value of the index as of the time of placement of the ad, or as of a specified recent date, or must be clearly and conspicuously labeled as an estimate.

EXAMPLE:
Suppose you wish to advertise a plan with a 7.5% APR for the first six months, and an indexed rate equal to the prime rate plus a margin of 1.5% after that introductory period. If the prime rate as of the time the ad is run (say, November 1) is 10%, and the APR for the credit would be 10.5%, the plan could be advertised as follows:

> 7.5% APR FOR THE FIRST SIX MONTHS!
> After first six months, APR is 10.5% (as of November 1),
> subject to increase based on market conditions.

Note that the ad need not give details about the adjustments, such as the index used or the method of computing the rate. Nevertheless, you may want to provide that information as a convenience to consumers.

2. "Fixed" and "Promotional" Rates.

The FRB has issued specific rules regarding the use of fixed and other promotional rates in advertisement for consumer credit. Generally, an advertisement may not refer to an annual percentage rate 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, or if no such time period is provided, the rate will not increase while the plan is open.

Promotional rates. The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials or solicitations.

Important Terminology:

Promotional rate means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

Introductory rate means a promotional rate offered in connection with the opening of an account.

Promotional period means the maximum time period for which the

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promotional rate may be applicable.

Stating the term "introductory". If any annual percentage rate that may be applied to the account is an introductory rate, the term introductory or intro must be in immediate proximity to each listing of the introductory rate in a written or electronic advertisement.

Stating the "promotional period" and "promotional rate." If any annual percentage rate that may be applied to the account is a promotional rate the following information must be stated in a clear and conspicuous manner in the advertisement. If the rate is stated in a written or electronic advertisement, the information must also be stated in a prominent location closely proximate to the first listing of the promotional rate:

(i) When the promotional rate will end; and
(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply.

Limited Exceptions: The requirements in above do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

4. "Deferred Interest" or similar offers.

"Deferred interest" means finance charges, accrued on balances or transactions, that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges, is the "deferred interest period."

"Deferred interest" does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

Stating the deferred interest period. If a deferred interest offer is advertised, the deferred interest period must be stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under

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the deferred interest program is stated, the term "if paid in full" must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, the deferred interest period and, if applicable, the term "if paid in full" must also be stated in immediate proximity to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period.

Requirements for Stating the Terms of the Deferred Interest or Similar Offer.

If any deferred interest offer is advertised, the information in FRB Model Form G-24 must be addressed:

G-24—Deferred Interest Offer Clauses

(a) For Credit Card Accounts Under an Open-End (Not Home-Secured) Consumer Credit Plan

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if you make a late payment.]

(b) For Other Open-End Plans

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if your account is otherwise in default.]

If the deferred interest offer is included in a written or electronic advertisement, the information in above must also be stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period.

D. Special Rules for Home Equity Plans.

Promotions for home equity financing are subject to special advertising requirements, as well as to the general open-end requirements discussed in Section C., above. These special requirements apply to advertisements for home equity plans that involve open-end credit and are secured by the consumer's dwelling, including a vacation or second home.

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If an advertisement promoting home equity credit contains any of the following triggering terms, stated either affirmatively or negatively, the specific disclosures discussed below must be included in the ad.

1. <u>Home Equity Trigger Terms</u>:

- The periodic rate used to compute the finance charge or the annual percentage rate.

> **Example:**
> **"In our home equity plan, you pay only ½% per month."**
> **"We offer home equity loans for only 8% APR."**

- A statement of when the finance charge begins to accrue, including the "free ride" period (if any).

> **Example:**
> **"There is no free ride period in this home equity plan."**

- The method of determining the balance on which a finance charge may be imposed.

> **Example:**
> **"In this home equity plan, we charge interest on your previous balance."**

- The method of determining the finance charge, including a description of how any finance charge other than the periodic rate will be determined.

> **Example:**
> **"You pay a charge of only $1.00 when you use your home equity line of credit."**

- The amount of any charge other than a finance charge that may be imposed as part of the plan.

> **Example:**
> **"No annual fees on our super home equity line."**
> **"No Closing Costs"**

- The payment terms of the plan, such as the length of the draw period, the repayment period, and the minimum periodic payments.

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Example:
"Only $100 per month in our home equity plan."
"Up to 10 years to repay."

2. Triggered Disclosures:

If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open-end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the trigger terms discussed above, it shall also clearly and conspicuously set forth the following information:

SUMMARY OF REQUIRED DISCLOSURES:

If an advertisement for a home equity plan contains one or more trigger terms, then the advertisement also must disclose the following information:

- Any minimum, fixed, transaction, activity, or similar charge that the Credit Union could impose
- Any periodic rate that the Credit Union may apply, expressed as an annual percentage rate, and, if applicable, that the rate is variable
- Any membership or participation fee that the Credit Union could impose
- 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 either 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 charged, if the plan is a variable-rate plan

An advertisement that references a disclosable credit term may be a trigger even if the term is not explicitly stated, if it may be readily determined from the advertisement.

Discussion of Disclosure Requirements:

(1) LOAN FEES AND OPENING COST ESTIMATES. Any loan fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan and stated as a single amount or as a reasonable range.

(2) PERIODIC RATES. In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate.

(3) HIGHEST ANNUAL PERCENTAGE RATE. The highest annual percentage rate which may be imposed under the plan.

(4) TAX DEDUCTIBILITY. If any advertisement contains a statement that any interest expense incurred with respect to the plan is or may be tax

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deductible, the advertisement shall not be misleading with respect to such deductibility (i.e., "consult with your tax adviser regarding the deductibility of interest).

(5) CERTAIN TERMS PROHIBITED. No advertisement described in subsection (a) with respect to any home equity account may refer to such loan as "free money" or use other terms determined by the Board by regulation to be misleading.

(6) DISCOUNTED INITIAL RATE.

IN GENERAL. If any advertisement includes an initial annual percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have been applied using the index or formula if such initial rate had not been offered.

(7) QUOTED RATE MUST BE REASONABLY CURRENT. The annual percentage rate required to be disclosed under the paragraph (1) rate must be current as of a reasonable time given the media involved.

(8) PERIOD DURING WHICH INITIAL RATE IS IN EFFECT. Any advertisement to which paragraph (6) applies shall also state the period of time during which the initial annual percentage rate referred to in such paragraph will be in effect.

(9) BALLOON PAYMENT. If any advertisement described in subsection (a) contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

BALLOON PAYMENT DEFINED. The term "balloon payment" means, with respect to any open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which—

(1) The account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

(2) The aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.

(10) **VARIABLE RATE HELOCS.** In addition the Credit Union must provide the following with regard to variable rate home equity lines of credit:

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In an ad that contains a trigger term, the Credit Union must:

- Use an insert showing the current APR;
- Give the APR as of a specified date; or
- Disclose an estimated APR.

The Federal Reserve Board Staff has provided the following discussion regarding the requirement applicable to this matter. See, 12 CFR 226.16(d)(2).

If a home equity loan advertisement features a variable rate and sets forth an initial rate that is not based on the index and margin used to calculate later adjustments, then the advertisement also must state the time period over which the initial rate will be effective, and with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the margin or index. To clarify this rule, consider the following example:

> **Example:** Credit Union advertises its home equity plan, including a number of disclosures in an ad. The advertisement states: "the finance charge on your outstanding balance will be calculated based on the Credit Union's prime rate." This advertisement is not in compliance with the disclosure requirements in two different respects. First, the ad does not indicate the margin (the amount over prime that is used to calculate the APR; a plan could charge a rate equal to prime, but the word "based" implies that there is some amount of margin). Second, it doesn't provide an illustration of a reasonably current APR that would apply if the regular plan APR were imposed.

NOTE: If you disclose an estimated rate, the estimate must be based on information reasonably available at the time of the advertisement, and the ad must state explicitly that the rate disclosed is an estimate.

> **Example of Simple Variable Rate Disclosure:** Closing costs may range from $600-$800. ABC Federal Credit Union's Equity Line is offered through ABC Federal Credit Union. As of 3/1/01, the variable APR for home equity lines of credit ranges from 8.75% to 12.25%. This interest rate is subject to change, but will not exceed 18.00% APR. Consult your tax advisor regarding the deductibility of interest. Property Insurance is required. Some additional restrictions may apply.

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3. Discounted Rates.

If an advertisement for a home equity plan with a variable rate plan states a discounted rate (an initial annual percentage rate that is not based on the index and margin used for later rate adjustments), the ad must also state additional information. It must state the period of time the initial rate will be in effect. It must also show, with equal prominence to the initial rate, a reasonably current APR that would have been in effect using the index and margin.

4. Balloon Payments.

If a home equity advertisement contains a statement about any minimum periodic payment (only $150 per month), the ad must also disclose, if applicable, that a balloon payment may result.

5. Other Considerations.

Some home equity plans provide for conversion to a repayment phase in which additional advances are not permitted beyond a certain time period. Even if this information is included in the advertisement, the promotion is covered by the general open-end and special home equity rules discussed in this section, not by the closed-end (installment) advertising rules. For example, if the ad states "five-year draw period, with ten additional years to pay off the balance," the ad would comply with the law if it also stated clearly and conspicuously:

> "Only $500 to open this plan; 12% APR, subject to increase, maximum APR 20%."

6. Potentially Misleading Provisions.

The Credit Union must be careful not to include any potentially misleading provisions when designing an advertisement for a home equity loan. It will adhere to the following rules:

Rule 1. Any statement in a home equity loan advertisement that refers to the tax deductibility of interest expense incurred under the loan must not be misleading.

Rule 2. A home equity plan advertisement must not contain the phrase "free money" or any similarly misleading phrase.

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Special Rule for Multi-Page Advertisements.

Specifically, a catalog or other multi-page advertisement will be considered a single advertisement if it provides information in a table or schedule and:

- Clearly and conspicuously sets forth the table or schedule.
- Presents the information in the table or schedule in sufficient detail to permit members to determine the following items:
  - Any minimum, fixed, transaction, activity, or similar charge the Credit Union could impose.
  - Any periodic rate (variable or fixed) the Credit Union may apply, expressed as an annual percentage rate (using that term) or APR, and whether the rate may increase after consummation (if applicable).
  - Any membership or participation fee the Credit Union could impose.
  - Amount or percentage of down payment (if applicable).
  - Terms of repayment.
    - Clearly refers to the page on which the table or schedule begins, if any trigger terms appear elsewhere in the catalog or multi-page advertisement.

E. Special Rules for Credit Cards — Solicitations/Applications.

1. Issuing Unsolicited Credit Cards.

Regulation Z prohibits a Credit Union from issuing credit cards on an unsolicited basis. That is, cards may only be issued in response to a request made by the person to whom the card is issued. Requests may be made orally or in writing. This prohibition is absolute. There is a separate rule about the liability of a cardholder in cases where a credit card has been requested, but is not an "accepted credit card."

Notwithstanding this rule, a Credit Union may issue cards to additional cardholders without receiving a request from the additional person(s), as long as a request has been received from the holder of the credit card account.

2. Debit Card Features.

A credit card may have features of a debit card. For example, the card may be used to access funds in a deposit account. Similarly, a debit card issued in connection with a deposit account may be used to access a credit account.

A Credit Union is not prohibited from issuing an unsolicited debit card as long as the card requires validation (Regulation E). The prohibition against the issuance of an unsolicited credit card applies here even though the card may also be used to access funds in a deposit account.

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3. Trigger Terms.

The standard open-end credit rules apply.

4. Special Rule for Multi-page Advertisements.

Regulation Z rules on multi-page advertisements for credit cards are similar to its rules for multi-page advertisements of closed-end credit, as discussed in the chapter on closed-end credit. Specifically, a catalog or other multi-page advertisement will be considered a single advertisement if it provides information in a table or schedule and:

- Clearly and conspicuously sets forth the table or schedule
- Presents the information in the table or schedule in sufficient detail to permit consumers to determine the following items:

— Any minimum, fixed, transaction, activity, or similar charge that the Credit Union could impose
— Any periodic rate (variable or fixed) that the Credit Union may apply, expressed as an annual percentage rate or APR
— Any membership or participation fee that the Credit Union could impose

- Clearly refers to the page on which the table or schedule begins, if any trigger terms appear elsewhere in the catalog or multi-page advertisement

5. Other Rules for Credit Card Applications.

Regulation Z also requires a host of special disclosures in connection with applications and solicitations for credit card accounts. Credit Unions must provide these disclosures on or with the solicitation or application. For the purposes of Regulation Z, the term "solicitation" means a card issuer's offer to open an account for a consumer without requiring that consumer to fill out an application.

a. Content of Disclosures.

Following is a summary of the items that Credit Unions must disclose on or with solicitations or applications for credit cards:

- The annual percentage rate.
- That the account has a variable rate and how the rate may vary (if applicable).
- Any annual or other periodic fee, expressed as an annual amount.

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- Any minimum or fixed finance charge.
- Any transaction charge imposed on the use of the card for purchases.
- The grace period during which the customer may pay for purchases without incurring a finance charge, if applicable.
- The fact that there is no grace period, if applicable.
- The balance computation method used by the Credit Union to determine the balance for purchases on which it computes the finance charge.
- A statement that charges incurred by use of the card are due on receipt of the account statement.
- Any cash advance fee imposed with respect to such transactions.
- The fee imposed by the Credit Union for late payments.
- Any fee imposed if or when the customer exceeds the credit limit for the account.

b. Form and Location of Disclosures.

The first nine disclosure items listed above must be featured prominently on or with the application or solicitation (or other applicable document). In addition, these disclosures must be provided in table form, with headings, content, and format substantially similar to any of the applicable tables provided by the Federal Reserve Board in its model forms.

The Credit Union may provide the remaining disclosures either as part of the table that reflects the first items or clearly and conspicuously elsewhere on or with the application or solicitation.

c. When These Disclosures Are Required:

Depending on the marketing method (i.e., direct mail, telemarketing, and print media) the Credit Union uses to advertise the credit application or solicitation, additional disclosure rules may be required.

- *Direct mail applications.* All of the disclosures listed above must be contained on or with any direct mail application or solicitation.

- *Telephone applications.* If the Credit Union initiates a telephone application or solicitation, it must provide the first nine disclosures orally to the potential borrower, to the extent possible. However, it does not have to comply with this rule provided it takes the following actions:

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- Does not impose any annual or periodic fee or does not impose such a fee unless the member uses the card.
- Discloses all the information listed above in writing to the member within 30 days of the telephone contact and no later than when the member receives the card.
- Indicates in writing that the member need not accept the card or pay any fee disclosed unless he or she uses the card.

- *Applications available to the public.* Three alternative rules apply to applications or solicitations printed in a catalog, magazine, or other generally available publication:

  - The Credit Union may disclose all of the items listed above, as applicable, the date the information was printed, and a statement that the information was accurate as of that date and is subject to change after that date. There also must be a statement informing the member to contact the Credit Union by phone (include a toll-free telephone number) or by mail (include address) for any changes.
  - The Credit Union may disclose all of the information required in the initial disclosure statement, along with a statement that the member should contact the Credit Union for any changes. Again, the Credit Union must provide a toll-free number or mailing address for that purpose.
  - The Credit Union does not have to disclose any information in the application or solicitation if it prominently states in the documents that there are costs associated with the use of the card and that the borrower may contact the Credit Union to request specific information. In this case, the Credit Union also needs to provide a toll-free number and a mailing address for that purpose.

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XI. CLOSED-END CREDIT REQUIREMENTS.

The main requirements governing advertising of closed-end credit concern "triggering terms" and "finance rates." These requirements may apply to a single ad. This section explains these basic requirements and offers additional guidance for special compliance issues.

A. Triggering Terms:

If you advertise closed-end credit with a "trigger term," you also must disclose other major terms, including the annual percentage rate. This rule is intended to ensure that all important terms of a credit plan, not just the most attractive ones, appear in an ad.

The triggering terms for closed-end credit are:

- The amount of the down payment (expressed as either a percentage or dollar amount), in a "credit sale" transaction.

  Examples:
  "10% down." CREDIT SALES ONLY
  "$1,000 down."
  "90% financing."
  "Trade-ins with $1,000 appraised value required."

- The amount of any payment (expressed as either a percentage or dollar amount).

  Examples:
  "Monthly payments less than $250 on all our loan plans."
  "Pay $23.44 per $1,000 amount borrowed."
  "$210.95 per month."

- The number of payments or the period of repayment.

  Examples:
  "Up to four years to pay."
  "48 months to pay."
  "30-year mortgages available."

- The amount of any finance charge.

  Examples:
  "Financing costs less than $300 per year."
  "Less than $1,200 interest."
  "$2.00 monthly carrying charge."

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B. Not Trigger Terms:

Some statements about credit terms are too general to trigger additional disclosures. Examples of terms that do not trigger the required disclosures are:

- "No down payment."
- "Easy monthly payments."
- "Loans available at 5% below our standard APR."
- "Low down payment accepted."
- "Pay weekly."
- "Terms to fit your budget."
- "Financing available."

General statements, such as "take years to pay" or "no closing costs," do not trigger further disclosures because they do not state or suggest the period of repayment or down payment cost. In contrast, the statement "drive it home for $199," which implies that the required cash down payment is no more than $199, does trigger full disclosure. Similarly, a statement such as "up to 48 months to pay" lists the period of repayment and triggers disclosure. In general, the more specific the statement, the more likely it is to trigger additional disclosures.

See Next Page for a Table of Examples:

Examples of General Phrases that Do Not Trigger Full Disclosures:	**Examples of General Phrases that Do Trigger Full Disclosure:**
"No money down." "100% financing available." "No cash needed." "Defer your first monthly installment until June." "Take years to repay." "Pay monthly." "No closing costs." "Loans at 5% below the standard APR." "15% Annual Percentage Rate Loans." "For a limited time, save between 1% and 2% of the Annual Percentage Rate you'd ordinarily pay." "When your loan is paid, we'll give you a refund equivalent to 10% of the finance charge; this represents a cash refund of as much as %10, $30, $50, or $100 on loans of $1,000 and over." "Between now and January 1, buy a new or used widget with only a small down payment and no installment payments until March 1. In addition, no finance charges imposed until September 1. If you pay for your widget before September 1, you'll never have any finance charges."	"Up to 48 months to pay." "90% financing" (credit sale transactions only). "Minimum $3,000 for 3 years." "As low as $50 a month." "$1,000 or more – 3-year maximum term." "Finance for under $100." "36 equal payments." "180 days same as cash or extended terms available." "$1, 2000 balance payable in 10 equal installments." "$500 total cost of credit." $25 monthly carrying charge." $50,000 mortgages, 2 points to the borrower." "As low as $100 down" (credit sale transactions only). "30-year mortgage." "Payable in installments of $100." "$25 weekly."

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C. Required Disclosures.

If your ad for closed-end credit uses a triggering term, it also must include the following information:

1. The amount or percentage of the down payment;
2. The terms of repayment; and
3. The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact also must be stated.

The "terms of repayment" may be expressed in a variety of ways, as long as they convey the required information. For example, an automobile finance company might use unit cost to disclose repayment terms: "48 monthly payments of $23.44 for each $1,000 borrowed." Similarly, the length of the loan can be expressed as the number of payments or the time period of the loan.

Non-Compliant Advertisement

> ABC Federal Credit Union can put you in the car or boat of your dreams, with affordable rates and flexible terms--up to 72 months to repay! We also make personal loans to purchase RVs and for other purposes. A loan from ABC Federal Credit Union will turn dreams into reality, without exceeding your budget!

Why Is the Advertisement Not Compliant?

Triggering terms are stated (number of payments for closed-end loan and APR for open-end credit), but additional advertising disclosures are not provided. (Reg Z §226.16(b); 226.24(c)).

D. Variable Rates.

Ads for variable-rate credit must state that the rate may increase or that it is subject to change, but need not explain how changes will be made. The following statement would satisfy this requirements:

8.5% annual percentage rate subject to increase or decrease.

The annual percentage rate in variable-rate financing ads must be accurate. To help calculate the APR, keep two principles in mind. First, remember there is only one APR per loan, regardless of how many interest rates may apply during the term of the loan. Second, assume that any "index" Rates, such as the prime

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rate or the 6-month Treasury bill, used to determine future interest rate changes *will remain constant during the life of the loan.*

For example, suppose the interest rate on a variable rate loan will be adjusted annually by adding 2½ percentage points to the 1-year Treasury-note rate, which is currently 8%. Also suppose there are no other special features in this plan, such as low introductory rates. For purposes of calculating the APR to be advertised for this plan, you should assume that the Treasury-note rate will remain at 8% during the life of the loan. If there were no other credit charges in this plan besides interest, the variable rate could be advertised as follows: "10% APR subject to increase or decrease."

E. Discounted Variable Rates.

Adjustable rate mortgages (ARMs) often have a first-year "discount" or "teaser" feature in which the initial rate is substantially reduced. In these loans, the first year's rate is not computed in the same way as the rate for later years. Often, the "spread" or "margin" that is normally added to an "index" (such as the one-year Treasury-note rate) to determine changes in the interest rate in the future is not included in the first year of a discounted ARM offered by a creditor.

F1. "Closed-end Loans Secured by Dwellings." Special Rules and Disclosure Requirements for Mortgage Advertisements That Include Specific Rate or Payment Information

Beginning October 1, 2009, Reg Z requires certain advertisements of **closed-end loans to be secured by dwellings.** More specifically, section 226.24(f) mandates the inclusion of specific information in all cases where such advertisements include rate or payment information. For these purposes, any promotional materials that accompany an application are deemed to be advertisements. The following Sections describe the requirements of these rules:

Disclosure of Rates

If the advertisement states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the loan, the advertisement must include:

1. Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin must be disclosed, based on a reasonably current index and margin.

2. The period of time during which each simple annual rate of interest will apply.

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3. The annual percentage rate for the loan. If the rate is variable, the annual percentage rate must comply with the accuracy standards set forth in Regulation Z (see section 226.17(c) and section 226.22).

These three items must be disclosed clearly and conspicuously — which, for these purposes, means with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The annual percentage rate (#3 above) may, at the option of the advertiser, be disclosed with greater prominence than the other information.

Disclosure of Payments

If the advertisement states the amount of any payment, the advertisement must include:

1. 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 must be disclosed based on a reasonably current index and margin.

2. The period of time during which each payment will apply.

3. If the advertisement is 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.

These three items must be disclosed clearly and conspicuously — which, for these purposes, means with equal prominence and in close proximity to any advertised payment that triggered the required disclosures (the information in item #3 above must be prominent, but need not be with equal prominence).

SAMPLE REAL ESTATE ADVERTISEMENT:

3.25% APR No Origination or PMI on our 7/1 Adjustable Rate Mortgage	3.00% APR No Origination or PMI on our 3/3 Adjustable Rate Mortgage
The rate is current as of August 25, 2011 and is the Credit Union's best rate. Rates and terms vary depending on loan to value ratio, credit evaluation and underwriting requirements. After the fixed-rate period, your interest rate will adjust up or down according to market rates at the time of reset. PMI=Private Mortgage Insurance. Flood and/or property hazard insurance may be required. All Credit Union loan programs, rates, terms and conditions are subject to credit approval and may change at any time without notice. **7/1/ARM:** The payment on a 30-year $250,000 7-year Adjustable-Rate Loan at 3.25% and 80% loan-to-value (LTV) is $_____. After 7 years, the payment is $_____. **3/3/ARM:** The payment on a 30-year $250,000 3-year Adjustable-Rate Loan at 3.25% and 80% loan-to-value (LTV) is $_____. After 3 years, the payment is $_____. These payments do not include taxes or insurance premiums. The actual payments will be higher; and rates provided are based on current market rates and are informational only. Payments are estimates and include only principal and	

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interest.

Exclusion for Envelopes and Electronic Banners

The above requirements (i.e., for rate and payment disclosures) do not apply to:

- An envelope in which an application or solicitation is mailed
- A banner advertisement linked to an application or solicitation provided electronically
- A pop-up advertisement linked to an application or solicitation provided electronically

F2. Special Disclosure Rule for Advertisements for Mortgage Loans That May Exceed the Dwelling Value

Effective October 1, 2009, if any advertisement (in any format) is for a loan to be secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement must clearly and conspicuously include the following two statements:

1. The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for federal income tax purposes
2. The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges

F3. Prohibited Acts or Practices in Advertisements for Credit Secured by a Dwelling

Effective of October 1, 2009, TILA/Z prohibits the following acts or practices in advertisements for credit secured by a dwelling:

- Using the word "fixed" to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:

  —In the case of an advertisement solely for one or more variable-rate transactions, the advertisement meets both of the following conditions:

  1. The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement before the first use of the word "fixed" and is at least as conspicuous as any use of the word "fixed" in the advertisement, AND

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2. Each use of the word "fixed" to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;

— In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (e.g., a stepped-rate mortgage transaction with an initial lower payment), each use of the word "fixed" to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period;

— In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions, the advertisement meets both of the following conditions:

1. The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement with equal prominence as any use of the term "fixed," "Fixed-Rate Mortgage," or similar terms, AND

2. Each use of the word "fixed" to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with the previous bulleted paragraph, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

· Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless the advertisement meets both of the following conditions:

1. The advertisement includes a clear and conspicuous comparison to the information required to be disclosed as discussed above (under the heading "Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling"), AND

2. If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that (a) the payment or rate is subject to adjustment, and (b) sets forth the time period when the first adjustment will occur.

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· Making any statement in an advertisement that the product offered is a "government loan program," "government-supported loan," or is otherwise endorsed or sponsored by any federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, state, or local government entity.

· Using the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement meets both of the following conditions:

1. It discloses with equal prominence the name of the person or creditor making the advertisement, AND

2. It includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

· Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

· Using the term "counselor" in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

· Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

G. Catalogs and Multi-Page Advertisements.

It will be Credit Union policy to disclose lease terms for all catalog or multi-page advertisements. If this medium is chosen, any and all lease terms must appear with the proper disclosures. Depending on the format, the lease terms can be provided in a table or schedule form. If a table or schedule format is chosen, the lease term disclosures requirement would be satisfied if the advertisement refers the reader to a page or pages where the table or disclosures appear.

H. Nontraditional Mortgage Loan Policy and Procedures

These requirements apply to all residential mortgage loan products that allow borrowers to defer repayment of principal or interest. This includes all interest-only products and negative amortization mortgages, with the exception of home equity lines of credit (HELOCs) and reverse mortgages. This policy also covers all

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higher-risk mortgages as defined by Regulation Z (12 CFR 1026) as amended from time to time.

GENERAL GUIDELINES

When promoting or describing nontraditional mortgage products, the Credit Union is required to provide consumers with information that is designed to help them make informed decisions when selecting and using these products. This mean you are to provide consumers with this information at a time that will help consumers select products and choose among payment options. For example, loans officers should offer clear and balanced product descriptions when a consumer is shopping for a mortgage, such as when the consumer makes an inquiry about a mortgage product and receives information about nontraditional mortgage products. You are also required to ensure that the Credit Union gives adequate information when marketing these products, not just at the time a consumer makes an application for such a loan.

Promotional Materials and Product Description: Promotional materials and other product descriptions will provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including but not limited to information about:

- Payment shock. We will advise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit. For example, our product descriptions may state the maximum monthly payment a consumer would be required to pay under a hypothetical loan example once amortizing payments are required and the interest rate and negative amortization caps have been reached. Such information may also describe when structural payment changes will occur (e.g., when introductory rates expire, or when amortizing payments are required), and what the new payment amount would be or how it would be calculated. Finally, these descriptions could indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.
- Negative amortization. When negative amortization is possible under the terms of a nontraditional mortgage product, we will advise consumers of the potential for increasing principal balances and decreasing home equity, and other potential adverse consequences of negative amortization. For example, product descriptions will disclose the effect of negative amortization on loan balances and home equity, and may describe the potential consequences to the consumer of making only minimum payments that cause the loan to negatively amortize.
- Prepayment penalties. If we impose a penalty in the event that the consumer prepays the mortgage, we will alert consumers to this fact and

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to the need to ask us about the amount of any such penalty. [You should consult your state law concerning prepayment penalties.]

- Cost of reduced documentation loans. We will tell consumers if we offer both reduced and full documentation loan programs, if the reduced documentation program has a higher price. We will make sure that consumers have a clear choice between providing full documentation and paying a higher price, if any, for a reduced documentation loan.

XII. Advertising Loan-Related Insurance

Many Credit Unions offer one or more of the various types of personal and property insurance products available to borrowers. Lawsuits brought against lenders in connection with property insurance offered to borrowers allege that the lenders have advertised unfairly; or that lenders have endorsed the product or service. We recommend that a Credit Union that offers such insurance seek the advice of qualified counsel on this issue to ensure that they are in compliance with all applicable laws in connection with any ad, website reference, or other promotional materials. **See Section VII on Disclaimers.**

XIII. EQUAL CREDIT OPPORTUNITY ACT/FAIR HOUSING ACT/HOUSING AND URBAN DEVELOPMENT RULES AND NCUA REGULATION 701.31.

A. Prohibited Use of Certain Words and Phrases.

An advertisement must not use any words, phrases, symbols, or forms that would convey either overt or tacit discriminatory preferences or limitations (i.e., based on race, color, religion, sex, handicap, familial status, or national origin). This rule is not intended to prohibit or restrict advertising efforts as a part of an affirmative action marketing program.

B. Selective Use of Advertising Media or Content.

The following practices may be considered discriminatory and should be avoided by the Credit Union:

- Limiting advertising to a particular geographic region.

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- Using language selectively (e.g., using only English in an advertisement in an area that is predominantly non-English-speaking).
- Using certain media to the exclusion of other media (e.g., placing an advertisement exclusively in an English-language newspaper circulated in a predominantly non-English-speaking area and where non-English media are available).
- Advertising on billboards that are strategically placed and brochures that are distributed within a limited geographic area.
- Using human models selectively in advertisements. If reviewing a website, review the entire site in order to determine whether imagery would tend to discourage potential credit applicants on a prohibited basis. Refer to: Reg B 12 CFR §1002.5(a).

C. Use of Equal Housing Logo and Slogan.

The Credit Union will include the Fair Housing Act equal housing logo and slogan in all home mortgage advertisements.

If print – use the logo and statements indicated.

If verbal – use the verbal version below (again – depending on whether you are state or federal will dictate the requirements).

EHL, EOL, Which is Right? National banks are not required to use the dog house with the words Equal Housing Lender or Equal Opportunity Lender, but it is a best practice to use one or the other. FRB banks should use the house with EHL. FDIC, OTS and NCUA regulated FIs can use either.

(**NOTE: Be sure to assess the differences in State and Federal Credit Unions as noted herein).**

SIZE Generally: (intended as a rough guide based on general regulatory considerations)

***Size of Advertisement**	**Logo Size**
½ page or larger	2" by 2"
1/8 page to ½ page	1" by 1"
4 column inches to 1/8 page	½" by ½"
Less than 4 column inches	Use the equal housing slogan instead of the logo

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SIZE per NCUA and FDIC: NCUA and FDIC both simply state that the logo and statement must be "prominent." It may be wise to try to keep the HMDA guidelines in mind as any dispute over the issue of "prominence" will likely consider those standards. We generally apply this standard versus the older HUD standards.

If other logos are used in an advertisement, then the equal housing logo should be at least as large as the other logos. If no other logos are used, then the equal housing logo should be clearly visible in a bold display face.

The size requirements listed are pursuant to HUD's Regulations and Guidelines. See, 24 CFR §109.30 and Appendix I.

State-Chartered? Unless your state expressly provides otherwise, you should follow HUD's Guidance in 24 CFR 109.30.

HUD Guidance: Illustrations of Logotype & Slogan.

Equal Housing Opportunity Logotype:

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

D. Credit Union Regulatory Agency Regulations.

Whenever the Credit Union advertises loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling (or loans that are secured by a dwelling), the advertisement must prominently indicate, in a manner appropriate to the advertising medium and format, that the Credit Union makes such loans without regard to race, religion, or other discriminatory factors. To comply with this rule, the Credit Union must:

- Include the equal housing logo and slogan in all written and visual advertisements.
- Include a statement in oral advertisements that the Credit Union is an "equal housing lender."

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- Use either of the two methods described above when an oral advertisement is used in conjunction with a written one.
- Not include in any advertisement words, symbols, models, or other forms of communication that express, imply, or suggest a discriminatory preference or policy of exclusion.

E. Fair Housing Poster.

The Credit Union must display in a conspicuous location the fair housing poster in any public lobby and areas in the Credit Union where such loans are made. Again, the NCUA provides no print requirements; however, other regulations require that the poster must be at least 11 inches by 14 inches in size and contain the following information:

- The exact text set forth in the regulation.
- A general statement regarding the prohibition against discrimination in connection with applications for housing credit.
- The name and address of the institution's federal regulatory agency.

NOTE – WEB SITE COMPLIANCE: The NCUA has suggested that sites that accept loan applications online may be considered a lobby for Fair Housing Compliance purposes. Therefore, the Credit Union's web site should also contain this disclosure. See, NCUA 98-RA-04 Regulatory Alert.

XIV. NON-DEPOSIT INVESTMENT PRODUCTS — DISCLOSURES REQUIRED BY NCUA LETTER NO. 10-FCU-03

There are a number of possible disclosures and posting requirements that are required to appear, when applicable, on all written presentations, advertising and promotional materials, prospectuses and periodic statements and shall when applicable be stated in all oral presentations that include information on Products. See CUPP Section B // Item J-2 for a description and sample disclosures.

NOTE: Watch Your Website!: Any brochures or similar documents that contain information regarding both the Credit Union's NCUA insured products and non-deposit investment products should clearly segregate the non-deposit investment product information from the NCUA-insured product information.

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NOTE: Watch Your Membership Disclosures: If you have registered representatives who are also employees of the Credit Union; and involved in deposit taking activities for the Credit Union, then the following must be provided in the initial disclosure with the member. This can appear in the membership card or otherwise.

XV. ENDORSEMENTS AND TESTIMONIALS.

An endorsement or testimonial is any advertising message that members are likely to believe reflects the opinions, beliefs, findings, or experience of anyone other than the advertiser.

No advertisement should represent that an endorser is an expert unless the person has the qualifications to prove that he or she is an expert. Furthermore, if the expert has any connection with the Credit Union that might materially affect the weight or credibility of the endorsement, the Credit Union must fully disclose the connection.

The fact that the endorser is receiving compensation for the endorsement might by itself, in some cases, constitute grounds for requiring disclosure. The applicability of the disclosure requirement generally rests on whether the public is likely to expect that the individual will receive compensation. For example, the public is likely to expect that an expert or a well-known personality will be compensated. However, an endorsement by a bystander might require disclosure if the circumstances that led to the testimonial influenced the endorser.

A. "Refer a Member" and Like Promotions: A recent FTC letter, addressed word-of-mouth and similar endorsements. When a Credit Union uses such a plan it may provide disclosures in verbal or written form *to the person referred*.

Options to Document a Verbal Disclosure: Whenever using a verbal form the Credit Union is always subject to being questioned or contradicted. Therefore, if this is a program that the Credit Union runs from time-to-time (and you wish to keep your verbal option) then you should consider:

1. Adding the requirement of disclosure to your Credit Union account opening procedures. If disclosure is provided verbally, a MSR can determine if the applicant was referred by a credit union member. If the answer is yes, then the teller can simply disclose that the referring "Member will receive $XX for referring the Applicant to the Credit Union."

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2. You can also add a check box to the Membership Officer Section of the Membership Card:

   ☑ Member Referral Notice Given

Options to Document a Written Disclosure:

1. Add a form or language to the signature card that solicits whether the applicant was referred by anyone and state: That if the referring person was a Credit Union Member, that person will receive $XX for referring that you join the Credit Union."
2. Alternatively, you may wish to post a statement in each place where accounts are opened that gives the very brief statement (in the same fashion as with other regulatory postings such as Reg CC's Expedited Funds Availability Notice). Likely not as efficient an option as it does not give you the operational information needed per 1.

B. **Private Education Loans**: In general, when marketing private education loans we may not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in a way that implies that the covered educational institution endorses our creditor's loans. We may enter into arrangements with an educational institution where the school agrees to endorse our private education loans, if it is not prohibited by other applicable law or regulation. Under these arrangements we may state that the school endorses our loans, if the marketing material includes a disclosure that is equally prominent and close to the reference to the school that our loans are not offered by the school but rather are private education loans offered by our Credit Union. If we refer to a school in any of our private education loans, we must also state clearly and conspicuously and with equally prominence and close to the name of the school that it does not endorse our loans and that we are not affiliated with the school.

XVI. STATE LAWS AFFECTING CREDIT UNION ADVERTISEMENTS.

[Add appropriate guidelines here to address issues such as prize promotions, insurance product disclosures or other matters under state law. The Credit Union should consult with legal counsel having appropriate experience regarding such matters in each state in which it does business in developing this Section of the Policy].

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XVII. ADVERTISING SAFE DEPOSIT FACILITIES, NIGHT DEPOSITORY FACILITIES, ELECTRONIC SERVICES, AND SECURITIES BROKERAGE ACTIVITIES.

Over the past 20 years, Credit Union customers have become much more sophisticated and vocal about their desire for convenience in "banking" products and services. Not all other Credit Union products and services are high tech. In fact, some, such as safe deposit and night depository facilities, are traditional Credit Union products that have been around for years.

When advertising any product or service that is not a deposit or loan, Credit Unions still must make sure that they comply with a variety of federal laws and regulations. This Section discusses the relevant laws, regulations, and rulings that affect each of these products, and also suggests how to limit potential liability in connection with offering these products.

A. Safe Deposit Facilities.

Many Credit Unions offer safe deposit storage facilities for the convenience of their members. Although this service is fairly straightforward, it is important for Credit Union marketing personnel to understand the legal relationship between the Credit Union and the individual renting a safe deposit box and to take care not to misrepresent that relationship. Most Credit Unions have some kind of printed rules or an agreement that they give to their members so that everybody agrees on the rules.

It should be noted that there are no federal laws or regulations that deal with safe deposit Credit Union-member relationships. In cases where safe deposit vaults are broken into and robbed, resulting in the loss of member property, members generally expect the Credit Union to reimburse them for the loss. However, a Credit Union is a lessor of its safe deposit facilities, leasing space for the use of the member; it is not an insurer of its members' property. Therefore, courts generally have ruled that a Credit Union, as a lessor, is not liable for losses that result from a break-in, unless the Credit Union has been negligent in some manner.

However, improper statements made by a Credit Union in its marketing or advertising material can negate this defense, particularly if the Credit Union represents the relationship with the members as something other

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than that of a lessor and lessee. For example, if a Credit Union advertises the safety of its safe deposit facilities in a way that leads a judge to conclude that a reasonable person could believe that the Credit Union is guaranteeing or insuring the safety of its members' property, a court could decide in favor of the member. Therefore, Credit Unions should carefully word any marketing and advertising materials for safe deposit boxes to avoid misrepresenting the service. For instance, consider the following example.

Example: Noncompliance Credit Union advertises its safe deposit boxes in a local newspaper. The advertisement states: "Insure the safety of your valuable possessions by renting a safe deposit box at Noncompliance." This sentence, particularly the word "insure," implies a greater degree of safety than is offered and a court might interpret it in a way that could make Noncompliance liable for losses of property, regardless of whether Noncompliance was actually negligent.

B. Night Depository Facilities.

Night depository facilities offer members the ability to deliver checks and currency to a Credit Union during hours when the Credit Union is closed. Deposits made at these facilities generally are opened and counted on the next business day. Although electronic deposit-taking facilities, such as ATMs, have decreased the popularity of night depository facilities, this service is still used by a variety of members, many of which are small businesses.

Under Regulation CC, deposits made at a night depository facility are considered as deposited on the day the deposit is removed from the facility and is available for processing (section 229.19(a)(3)). Section 229.16 of that regulation requires a Credit Union to indicate in its availability policy disclosure when deposits made at such facilities are considered received.

To protect themselves from liability, Credit Unions should issue a disclaimer noting that they are not responsible for deposits placed in the facility until the facility is opened, and that deposits are subject to count by the Credit Union. This disclaimer limits a Credit Union's liability for the theft or mysterious disappearance of night depository funds.

In addition, when advertising night depository facilities, Credit Union personnel must be careful not to represent these facilities in a way that would permit a member to claim that the Credit Union had guaranteed or insured the safety of night depository deposits. Credit Unions should have an agreement for their night depository facilities; that document should contain a disclaimer for the Credit Union's liability for missing deposits.

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XVIII. Pre-Screening:

Prescreening is the process by which a consumer reporting agency either compiles or edits a list of consumers who meet specific credit criteria, and then provides that list directly to a creditor or to a third party who sells the list to a creditor. Major commercial lenders such as banks often use prescreened lists in marketing consumer credit products.

As originally enacted, the Fair Credit Reporting Act did not take into account that creditors might obtain prescreened lists of consumers who qualify for credit. In 1996, the Fair Credit Reporting Reform Act was enacted, amending the FCRA to provide specific rules regarding prescreening. Effective September 30, 1997, the act:

- Requires credit unions to provide special notices to consumers who are offered credit based on prescreened lists
- Permits credit unions to limit credit offers to consumers who pass prescreening
- Requires credit unions to maintain records regarding prescreened lists obtained from consumer reporting agencies or third parties based on consumer report information
- Requires consumer reporting agencies to adopt procedures that will permit consumers to avoid being considered in prescreened lists

Notice Accompanying Prescreened Offer of Credit.

If you offer credit to a consumer other than credit that is initiated at the consumer's request, your offer must include statements that:

- Information contained in the consumer's consumer report was used in connection with the offer.
- The consumer received the offer because the consumer satisfied the criteria for creditworthiness under which the consumer was selected for the offer.
- The credit may not be extended to the consumer if, after the consumer responds to the creditor, the creditor determines that the consumer does not meet the criteria under which the consumer was selected (or, as applicable, if the consumer does not furnish any required collateral).
- The consumer has the right to prohibit information contained in the consumer's file with the consumer reporting agency from being used in connection with credit transactions not initiated by the consumer.
- The consumer may exercise the right to prohibit the use of consumer

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report information by notifying a notification system established for such purpose (i.e., the consumer may call the consumer reporting agency at a toll-free telephone number or write to a designated address as established by the consumer reporting agency).

Sample Notice Accompanying Prescreened Offer of Credit.

You were selected for this offer based upon information in your credit report, which satisfied the Credit Union's criteria for creditworthiness. Grant of this offer, after you response to it, is conditioned upon your satisfying the creditworthiness criteria used to select you for the offer and upon your satisfying any applicable criteria bearing on your creditworthiness, including your income, employment and any other information provided on the application provided. You have a right to prohibit information contained in your credit report from being used in connection with any credit or insurance transaction that is not initiated by you. You may exercise this right by contacting the credit reporting agencies notifications systems at: 1-888-567-8688; or write to them individually at: Experian Target Marketing, P.O. Box 919, 701 Experian Pkwy B2, Allen,
TX 75013; Equifax Options, P.O. Box 740123, Atlanta, GA 30374-0123; and Trans Union Corporation, Attn - Marketing Opt Out, P.O. Box 97328, Jackson, MS 39288- 7328.

NOTE: FACT ACT Members have the right to opt-out from an affiliate. On July 15, 2004, the NCUA along with the other banking agencies issued a joint rule to implement the Affiliate Marketing Rule under FACTA (NCUA Part 717, Fair Credit Reporting, Subparts A and C).

General Rule. If a Credit Union shares certain information about a member with an affiliate (e.g., insurance CUSO), the affiliate may not use that information to make or send solicitations to the member about the affiliates products or services, unless the member is given notice and a reasonable opportunity to opt-out of such use of the information and the member does not opt-out. For example, if the Credit Union provides its insurance CUSO with credit report or eligibility information about a member, the CUSO could not send any insurance marketing solicitation unless the member is notified and has a reasonable opportunity to op-out of the CUSO's use of the member's information.

***See*, Your FACT Act Guide for further details in the CUPP Manual.**

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XIX. CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003 (CAN-SPAM ACT)

Under the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), the FTC is charged with issuing regulations for implementing the CAN-SPAM Act. The FTC has issued regulations that provide criteria to determine the primary purpose of electronic mail (e-mail) messages.

The goals of the act are:

- To reduce spam and unsolicited pornography by prohibiting senders of unsolicited commercial e-mail messages from disguising the source and content of their messages
- To give consumers the choice to cease receiving a sender's unsolicited commercial e-mail messages

If the Credit Union sends advertisements to its customers using e-mail, it will comply with the provisions of the CAN-SPAM Act. The board directs management to implement procedures and train employees to ensure full compliance with the law.

Procedures

The law does not apply to transactional or relationship messages. Those are messages that have a primary purpose to:

- Facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender
- Provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient
- Provide notification concerning a change in the terms or features of or a change in the recipient's standing or status with respect to account balance information or other type of account statement
- Provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled
- Deliver goods or services, including product updates or upgrades, which the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender

The Credit Union's e-mail messages will not disguise the Credit Union's name or the purpose of the message, and the Credit Union will always have affirmative or implied consent from the recipient to send the e-mail messages.

The Credit Union's e-mail solicitations will include a clear and conspicuous way for its customers to opt out of receiving further e-mail solicitations using e-mail or by sending

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a written opt-out request to the Credit Union's physical postal address. We can include an accurately registered post office box or private mailbox established under United States Postal Service regulations to satisfy the act's requirement that a commercial e-mail display a "valid physical postal address." **See also – FACT Act Affilitated Marketing Rules Below.**

The Credit Union's members have given implied consent if the Credit Union has had a business transaction with them within the previous three years, and the Credit Union provides a clear and conspicuous notice to opt out of future messages.

If a member sends an opt-out request to the Credit Union, then it is unlawful for the Credit Union to continue to send e-mails, and the Credit Union must not send another message later than 10 days after receiving the opt out via e-mail or by written letter.

We cannot require an e-mail recipient to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page to opt out of receiving future e-mails from our Credit Union.

The Credit Union is required to insure that an opt-out list for electronic solicitations is established, monitored, and maintained for a period of five years after the request is made.

Key Definitions

☐ Affirmative consent (usage: commercial e-mail messages).

- The recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and
- If the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's e-mail address could be transferred to such other party for the purpose of initiating commercial e-mail messages.

☐ Commercial e-mail message (any e-mail message the primary purpose of which is to advertise or promote for a commercial purpose, a commercial product or service, including content on the Internet). An e-mail message would not be considered to be a commercial e-mail message solely because such message includes a reference to a commercial entity that serves to identify the sender or a reference or link to an Internet Web site operated for a commercial purpose.

☐ Dictionary attacks. Obtaining e-mail addresses by using an automated means that generates possible e-mail addresses by combining names, letters, or numbers into numerous permutations.

☐ Harvesting. Obtaining e-mail addresses using an automated means from an Internet Web site or proprietary online service operated by another person,

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where such service/person, at the time the address was obtained, had provided a notice stating that the operator of such Web site or online service would not give, sell, or otherwise transfer electronic addresses.

☐ Header information. The source, destination, and routing information attached to the beginning of an e-mail message, including the originating domain name and originating e-mail address.

☐ Hijacking. The use of automated means to register for multiple e-mail accounts or online user accounts from which to transmit, or enable another person to transmit, a commercial e-mail message that is unlawful.

☐ Initiate. To originate, transmit, or to procure the origination or transmission of such message but shall not include actions that constitute routine conveyance. For purposes of the act, more than one person may be considered to have initiated the same message.

☐ Person. Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

☐ Primary purpose. The FTC's regulations provide further clarification regarding determination of whether an e-mail message has "commercial" promotion as its primary purpose.

- The primary purpose of an e-mail message will be deemed to be commercial if it contains only the commercial advertisement or promotion of a commercial product or service (commercial content).
- The primary purpose of an e-mail message will be deemed to be commercial if it contains both commercial content and "transactional or relationship" content (see below for definition) if either:

  — A recipient reasonably interpreting the subject line of the e-mail message would likely conclude that the message contains commercial content; or
  — The e-mail message's "transactional or relationship" content does not appear in whole or substantial part at the beginning of the body of the message.

- The primary purpose of an e-mail message will be deemed to be commercial if it contains both commercial content as well as content that is not transactional or relationship content, if a recipient can reasonably conclude by interpreting either:

  — The subject line of the e-mail message that the message contains commercial content; or
  — The body of the e-mail message that the primary purpose of the message is commercial.

- The primary purpose of an e-mail message will be deemed to be transactional or relationship (non-commercial) if it contains only "transactional or relationship" content.

☐ Protected computer. A computer —

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- Exclusively for the use of a financial institution or the U.S. Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the U.S. Government and the conduct constituting the offense affects that use by or for the financial institution or the government; or

- Which is used in interstate or foreign commerce or communication.

☐ Recipient. An authorized user of the e-mail address to which the message was sent or delivered.

☐ Sender. A person who initiates an e-mail message and whose product, service, or Internet Web site is advertised or promoted by the message. When more than one person's products, services, or Internet Web site are advertised or promoted in a single electronic mail message, each such person who is within the act's definition will be deemed to be a "sender," except that, only one person will be deemed to be the "sender" of that message if such person is within the act's definition of "sender," and is identified in the "from" line as the sole sender of the message.

☐ Sexually oriented material. Any material that depicts sexually explicit conduct unless the depiction constitutes a small and insignificant part of the whole.

☐ Transactional or relationship e-mail message. An e-mail message with the primary purpose of facilitating, completing, or confirming a commercial transaction that the recipient had previously agreed to enter into; to provide warranty, product recall, or safety or security information; or subscription, membership, account, loan, or other information relating to an ongoing purchase or use.

XX. FCC AND FTC TELEMARKETING RULES

Congress enacted the Telephone Consumer Protection Act in 1991. That act gave the Federal Communications Commission (FCC) the authority to adopt regulations to carry out the purposes of the act. The FCC adopted consumer protection rules some time ago. In recent years, however, telemarketing has increased, to the point that further protection was deemed necessary.

In 2003, based on congressional action and consent, the FCC and the Federal Trade Commission (FTC) jointly established a national do-not-call directory, and adopted rules designed to provide protection to consumers that seek to avoid telemarketing calls. When these two regulations were adopted, they were close to identical. In the years, that followed FTC made numerous revisions to its regulations. Many of these revisions were not adopted by the FCC. In 2010, the FCC proposed a number of amendments to its regulation that would conform to the requirements of the FTC regulation.

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In 2010, the FTC added to its telemarketing sales rule a number of provisions regarding the telemarketing of debt relief services. Also, in 2010, provisions set forth in the Dodd-Frank transferred to the CFPB all responsibilities for both the adoption of and the enforcement of all regulations that provide consumer financial protections. That transfer included the regulations of the FTC regarding telemarketing sales. The transfer became effective as of July 21, 2011.

NOTE ONE: While both of these agencies adopted rules that apply to telemarketing, only the rules of the FCC apply to solicitations conducted by banks and Credit Unions (the FTC rules apply to any telemarketing that is conducted on behalf of a Credit Union by an entity that is subject to the rules of the FTC).

NOTE TWO: The FTC proposed revisions to the telemarketing sales rule in July 2013. The principal amendments would, if adopted as proposed:

- Prohibit telemarketers and sellers in both inbound and outbound telemarketing calls from accepting or requesting remotely created checks, remotely created payment orders, money transfers, and cash reload mechanisms as payment.
- Expand the scope of the advance fee ban on recovery services (now limited to recovery of losses sustained in prior telemarketing transactions) to include recovery of losses in any previous transaction.

Other proposed amendments would clarify provisions of existing requirements to reflect the FTC's enforcement policy. ***Notwithstanding the July 2011 transfer of regulatory authority to the CFPB, the provisions of the FTC regulations remain unchanged and effective unless and until the date that the CFPB takes further action.***

A. Basic Telephone Solicitation Restrictions

The FCC provides the following basic restrictions:

1. You cannot initiate any telephone solicitation to any residential telephone subscriber before the hour of 8:00 a.m. or after 9:00 p.m. (local time at the called party's location).

2. You cannot initiate any telephone solicitation to any residential telephone subscriber unless you have first instituted procedures for maintaining a company-specific do-not-call list; that is, a list of persons who request not to receive telemarketing calls specifically made by or on your behalf. Requests made under this rule must be honored for a period of five years.

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3. You cannot initiate any telephone solicitation to any residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry. Do-not-call registrations must be honored for a period of five years. In 2007, the FTC proposed amending its do-not-call rule so that registrations would be effective indefinitely (obviating the need for consumers to renew their option every five years). No FCC action has been taken on this issue.

The latter restriction does not apply where:

- The Credit Union has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and the Credit Union that states that the consumer agrees to be contacted by the Credit Union, and includes the telephone number to which the calls may be placed. A referral from a third party does not constitute an exception (i.e., you cannot call any referred consumers whose telephone numbers are on the national do-not-call registry).
- The Credit Union has an established business relationship with the consumer. A Credit Union is deemed to have an established business relationship with a consumer if the consumer has an account or insurance policy with the Credit Union, even though no transactions took place in connection with the account or policy within the previous 18 months. However, telephone solicitations by intermediaries such as insurance agents and mortgage brokers are restricted to 18 months after the last transaction between the intermediary and the consumer even if the policy or account remains in force beyond that date.
- The Credit Union has a personal relationship with the recipient of the call.

In response to petitions for changes and clarifications of the do-not-call rule and its application, the FCC clarified what constitutes an established business relationship between a Credit Union and a consumer. The FCC stated that financial agreements such as Credit Union accounts, credit cards, loans, insurance policies and mortgages, constitute ongoing relationships. The existence of any one or more of them is sufficient to permit the Credit Union to contact consumers to, for examples, notify them of changes in terms of a contract or offer new products and services that may benefit them.

The FCC stated that consumers should not be surprised to receive a call from a Credit Union at which they have an account, even if they have not transacted any business on that account for over 18 months.

A Credit Union may determine whether a consumer telephone number appears on the do-not-call list by obtaining the list from the FTC. The list is available free of charge to businesses that require numbers covering five area codes or less. The list is also free to anyone who engages in outbound telephone calls to consumers and who accesses the

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registry without being required under the law (e.g., charitable organizations). An annual charge will apply to anyone who requires a broader list. Effective as of October 1, 2013, the annual fee for access to the registry is $59 for each area code, with a maximum of $16,228.1

B. FTC Rules That Apply to the Telemarketing of Debt Relief Services

In 2010, the FTC amended its telemarketing rules to address issues specifically related to the telemarketing of debt relief services. In general, the FTC does not have authority to promulgate regulations that apply to banks and Credit Unions in this area. However, many hire telemarketing organizations through which they offer services, and the FTC does have jurisdiction over such organizations.

The FTC's rules:

- Set forth a prohibition regarding the collection of fees
- Require certain disclosures regarding the services being offered
- Prohibit misrepresentations about material aspects of the services offered

While the telemarketing has, until now, addressed only those telemarketing calls made to consumers, the FTC has expanded the scope of the rule, in the case of the offering of debt relief services, to encompass inbound calls made by consumers in response to general media advertisements.

Prohibition Regarding Collection of Fees

The FTC considers as an abusive telemarketing act or practice any of the following in connection with the offering of debt relief services:

- Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:
    - The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer
    - The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and
    - To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

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        - Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service
        - Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

- The telemarketer may request or require the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

    - The funds are held in an account at an insured financial institution.
    - The customer owns the funds held in the account and is paid accrued interest on the account, if any.
    - The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service.
    - The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service.
    - The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with the provisions set forth above, within seven (7) business days of the customer's request.

Disclosures Required Before Customer Enrollment

The FTC rule states that the telemarketing of debt relief services is a deceptive telemarketing act or practice unless, for one thing, the consumer is given the following disclosures before the consumer enrolls in the offered program:

- The amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;
- To the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of

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each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;
- To the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and
- To the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with sections 310.4(a)(5)(i)(A) through (C).

Misrepresentation Regarding Material Aspects of Service

The telemarketing of debt relief services is a deceptive telemarketing act or practice if the telemarketer has misrepresented, directly or by implication, any material aspect of the service, including but not limited to:

- The amount of money or the percentage of the debt amount that a customer may save by using such service
- The amount of time necessary to achieve the represented results
- The amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt
- The effect of the service on a customer's creditworthiness
- The effect of the service on collection efforts of the customer's creditors or debt collectors
- The percentage or number of customers who attain the represented results
- Whether the service is offered or provided by a non-profit entity

Exception to Liability for Violations

A Credit Union making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating either of the two basic restrictions described in the preceding section, if the Credit Union can demonstrate BOTH that:

1. The violation was the result of error, and

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2. As part of the Credit Union's routine business practice, it meets the following standards:

   - Written procedures. It has established and implemented written procedures to comply with the national do-not-call rules.
   - Training of personnel. It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules.
   - Recording. It has maintained and recorded a list of telephone numbers that the seller may not contact.
   - Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than one month prior to the date any call is made, and maintains records documenting this process.
   - Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers.

C. Prerequisite to Making Telemarketing Calls to Residences

You cannot initiate any call for telemarketing purposes to any residential telephone subscriber, unless you have first instituted procedures for maintaining a company-specific do-not-call list; that is, a list of persons who request not to receive telemarketing calls specifically made by or on your behalf. The procedures instituted must meet the following minimum standards:

1. Written policy. You must have a written policy, available upon demand, for maintaining a do-not-call list.

2. Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

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3. Recording, disclosure of do-not-call requests. If your Credit Union (or any telemarketer soliciting on your Credit Union's behalf) receives a request from a residential telephone subscriber not to receive calls from the Credit Union, you must record the request and place the subscriber's name (if provided) and telephone number on the do-not-call list at the time the request is made. You must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made, but in any event within thirty days from the date of such request. Even if such requests are recorded or maintained by a telemarketer, your Credit Union will be liable for any failure to honor the do-not-call request. A do-not-call request can be applied to an affiliate, but cannot be shared or forwarded to a third party without the consumer's prior express permission.

4. Identification of sellers and telemarketers. The caller (the Credit Union or any telemarketer acting on your behalf) must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

5. Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included, given the identification of the caller and the product being advertised.

6. Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

D. Limits on Automated Dialing

You cannot initiate any telephone call, using an automatic telephone dialing system or an artificial or prerecorded voice, to:

- A telephone number that is assigned to a cellular telephone service, a paging service, a specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call

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- A telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment
- An emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection, or law enforcement agency

Calls made for emergency purposes, or are made with the prior express consent of the called party, are excepted from this prohibition. Discuss the concept of "consent" with counsel as it may be subject to interpretation; and you may need to address this in Credit Union documentation.

E. Limits on Automated Messages

You cannot initiate a telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party. Excepted from this rule are calls made:

- For emergency purposes
- For a noncommercial purpose
- For a commercial purpose, if the call does not include or introduce an unsolicited advertisement or constitute a telephone solicitation
- To any person with whom the caller has an established business relationship at the time the call is made

You may wish to address this with the consent in D., above.

F1. Limits on Fax-to-Fax Solicitations

Generally, a Credit Union is not allowed to use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine. The original prohibition made an exception only in cases where the recipient granted prior express permission or invitation. Congress expanded this exception by enacting the Junk Fax Prevention Act of 2005. This law expressly permits a fax-to-fax advertisement if it meets three prerequisites:

1. The fax is sent to a recipient with whom the sender has an established business relationship

2. The sender obtained the fax number of the recipient through either

    - The voluntary communication of the number by the recipient to the sender, or

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- A directory, advertisement or Web site containing the number (presuming that the number so appeared with permission of the recipient)

3. The advertisement contains a notice informing the recipient of the ability and means to avoid future unsolicited advertisements (i.e., an opt-out notice)

The opt-out notice referenced in 3 above must:

- Be clear and conspicuous and on the first page of the fax
- State that the recipient may make a request to "opt-out" and that the failure of the sender to comply with the opt-out within 30 days is unlawful
- Include a domestic contact number and a fax number to which the recipient may send the opt-out request. If neither the domestic contact number nor the fax number are toll-free (a local number is sufficient for this purpose), then the sender must provide a separate cost-free mechanism (e.g., a Web site, e-mail address) for the recipient to opt-out. These numbers or addresses must be available 24 hours a day, 7 days a week.

For purposes of this fax-to-fax advertising rule, assess the FCC definitions below:

- "Established business relationship" is defined in the FCC regulation as follows: "A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party."
- "Sender" means the person or entity on whose behalf the advertisement is sent, or whose goods or services are advertised or promoted

NOTE: The FCC defines the term "established business relationship" differently as it applies to other types of telephone communications.

F2. Other Rules for Fax Machine Transmissions

It is unlawful for your Credit Union to use a computer or other electronic device to send any message via a telephone facsimile machine, unless you clearly mark (in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission):

- The date and time the message is sent

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- Identification of the Credit Union and the telephone number of either the sending machine or of the Credit Union. If a facsimile broadcaster demonstrates a high degree of involvement in your Credit Union's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority), must be identified on the facsimile, along with your Credit Union's name.

Telephone facsimile machines must clearly mark such identifying information on each transmitted page.

G. Other Restrictions

You cannot use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

You cannot disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.

You cannot use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

H. Requirement for Transmitting Caller Identification Information

You must transmit caller identification information. With respect to your telemarketing activities, you are prohibited from blocking the transmission of caller identification information. Your caller identification information must include either CPN or ANI, and, when available from your carrier, the Credit Union's name. A telemarketing firm representing your Credit Union may comply with this rule either by transmitting its own information, or by substituting your name and your customer service telephone number. The telephone number provided in the caller ID must be set up so as to permit any individual to make a do-not-call request during regular business hours.

I. Rule Regarding Abandoned Calls

Measured over any 30-day period, you cannot "abandon" more than three percent (3%) of all telemarketing calls that are answered live by a person. A call is "abandoned" if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two (2) seconds after the called person's completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf

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the call was placed, and that the call was for "telemarketing purposes." The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign. The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who either has granted prior express consent for the call to be made or has an established business relationship with the caller shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

You are required to maintain records that establish your compliance with this rule.

J. Requirements for Prerecorded Messages

All artificial or prerecorded telephone messages must meet the following standards:

- At the beginning of the message, the message must state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business (with the State Corporation Commission or comparable regulatory authority) must be stated, and
- During or after the message, the message must state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

XXI. FACT Act Affiliated Marketing Rules

The FCRA gives consumers the right to prevent the Credit Union from using eligibility information obtained from our affiliates to make solicitations to that consumer unless the Credit Union allows the consumer the opportunity to opt out of the marketing-use agreement. Eligibility information is defined as:

- Transaction and experience information

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- Data gathered from credit reports
- Information from consumer applications

This does not apply if the Credit Union is using the eligibility information:

- To make solicitations to a consumer with whom the Credit Union has a pre-existing business relationship
- To perform services for another affiliate subject to certain conditions
- In response to a communication initiated by the consumer
- To make a solicitation that has been authorized or requested by the consumer.
- To facilitate communications to someone for whose benefit the Credit Union provides an employee benefit or other services arising out of a current employment relationship
- If the Credit Unions compliance with this regulation would prevent it from complying with any provision of state insurance laws pertaining to unfair discrimination

In general, a pre-existing relationship exists if a consumer has a deposit or loan account with the Credit Union.

Delivery of Opt-Out Notices

Before the Credit Union can use information it receives from an affiliate to market the Credit Union's products or services to a consumer, the Credit Union must:

- Disclose clearly and conspicuously to the consumer that the Credit Union may use shared eligibility information to market its products and services
- Provide a reasonable opportunity and method to opt out of the marketing use of that eligibility information
- Ensure that the consumer has not opted out before the Credit Union marketsproducts or services to them

The Credit Union must provide the notice in writing or, if the consumer agrees, electronically. We recommend use the model forms in Appendix C of the interagency regulations, which the Credit Union may combine it with its privacy disclosure.

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XXI. PRIVATE EDUCATION LOANS

In general, when marketing private education loans the Credit Union may not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in a way that implies that the covered educational institution endorses our loans. The Credit Union may enter into arrangements with an educational institution where the school agrees to endorse our private education loans, if it is not prohibited by other applicable law or regulation. Under these arrangements the Credit Union may state that the school endorses its loans, if the marketing material includes a disclosure that is equally prominent and close to the reference to the school that Credit Union loans are not offered by the school but rather are private education loans offered by our Credit Union.

If the Credit Union refers to a school in any of its private education loans, it must also state clearly and conspicuously and with equally prominence and close to the name of the school that it does not endorse Credit Union loans and that the Credit Union is not affiliated with the school.

XXII. PROMOTIONS AND AWARDING PRIZES

In general, promotions that award a prize can be considered lotteries unless specific state laws are addressed. Please assess the resources in this CUPP section and address with competent counsel your state requirements in order to avoid participation in an illegal lottery.

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