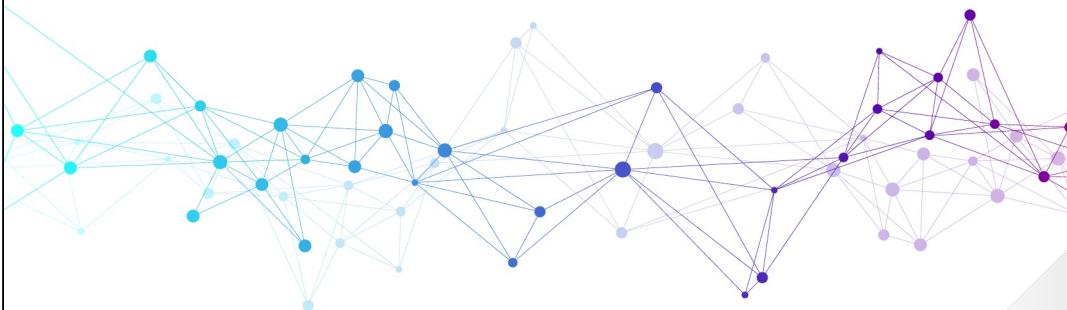


Compliance Advertising



Unfair, Deceptive, or Abusive Acts or Practices



UDAAP



Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace.

UDAAP

- Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services to engage in any unfair, deceptive or abusive act or practice
- The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service

UDAAP

Deceptive Acts or Practices - A representation, omission, act, or practice is deceptive when:

1. The representation, omission, act, or practice misleads or is likely to mislead the consumer
2. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
3. The misleading representation, omission, act, or practice is material.

UDAAP

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1. The representation, omission, act, or practice misleads or is likely to mislead the consumer
2. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
3. The misleading representation, omission, act, or practice is material.

UDAAP

- A representation may be an express or implied claim or promise
- If material information is necessary to prevent a consumer from being misled, it may be deceptive to omit that information.
- Written disclosures may be insufficient to correct a misleading statement or representation, particularly where the consumer is directed away from qualifying limitations in the text or is counseled that reading the disclosures is unnecessary.
- Oral or fine print disclosures or contract disclosures may be insufficient to cure a misleading headline or a prominent written representation.
- A deceptive act or practice may not be cured by subsequent truthful disclosures.

UDAAP

Acts or practices that may be deceptive include:

- Making misleading cost or price claims
- Offering to provide a product or service that is not in fact available
- Using bait-and-switch techniques
- Omitting material limitations or conditions from an offer
- Failing to provide the promised services

UDAAP

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- Omitting material limitations or conditions from an offer
- Failing to provide the promised services

UDAAP

The FTC's "four Ps" test can assist in the evaluation of whether a representation, omission, act, or practice is likely to mislead:

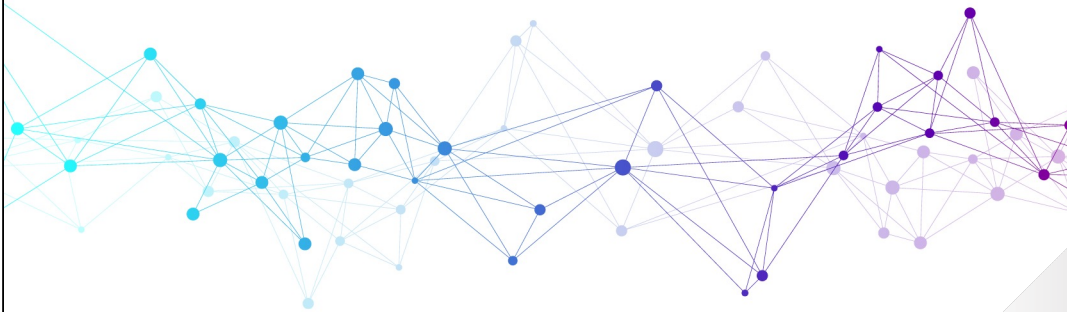
1. Is the statement **prominent** enough for the consumer to notice?
2. Is the information **presented** in an easy-to-understand format that does not contradict other information in the package and at a time when the consumer's attention is not distracted elsewhere
3. Is the **placement** of the information in a location where consumers can be expected to look or hear?
4. Finally, is the information in **close proximity** to the claim it qualifies?

UDAAP

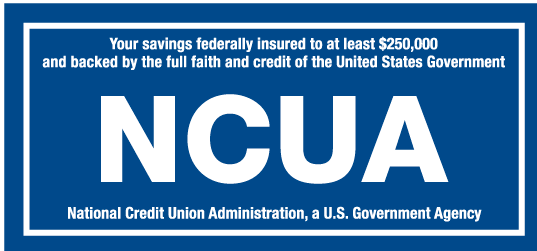
Relationship to Other Laws

- An unfair, deceptive, or abusive act or practice may also violate other federal or state laws.
 - For example, pursuant to the TILA, creditors must “clearly and conspicuously” disclose the costs and terms of credit.
 - An act or practice that does not comply with these provisions of TILA may also be unfair, deceptive, or abusive.
- Conversely, a transaction that is in technical compliance with other federal or state laws may nevertheless violate the prohibition against UDAAPs.
 - For example, an advertisement may comply with TILA’s requirements, but contain additional statements that are untrue or misleading.
 - Compliance with TILA’s disclosure requirements does not insulate the rest of the advertisement from the possibility of being deceptive.

NCUA Insurance



NCUA Insurance



Each insured credit union must include the official advertising statement in all of its advertisements including, but not limited to:

- Annual reports
- Statements of condition required to be published by law
- On its main Internet page

NCUA Insurance

Any of the following official advertising statements may be used:

- “This credit union is federally insured by the National Credit Union Administration.”
- “Federally insured by NCUA”
- A reproduction of the official sign

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.

NCUA Insurance

Exceptions

- Credit union supplies such as stationery, envelopes, checks and signature cards
- Signs or plates in the credit union office or attached to the building or buildings in which the offices are located
- Listings in directories
- 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
- 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

NCUA Insurance

Exceptions

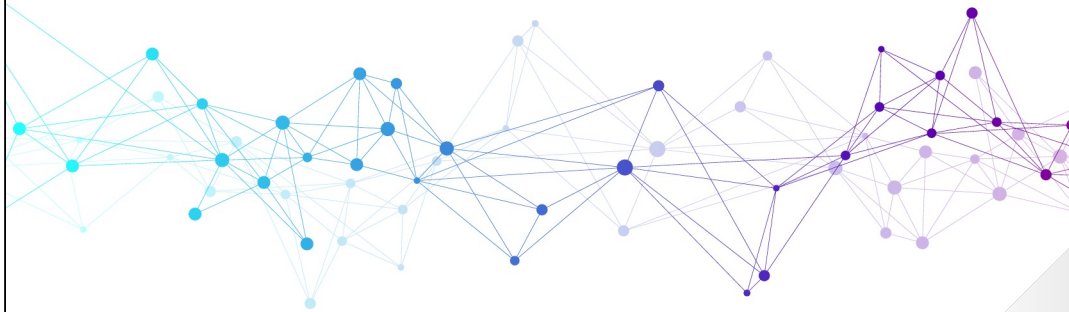
- Advertisements by radio that are less than fifteen (15) seconds in time
- Advertisements by television, other than display advertisements, that are less than fifteen (15) seconds in time
- Advertisements that because of their type or character would be impractical to include the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains
- 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, and credit life or disability insurance.

NCUA Insurance

NCUSIF Official Sign

- The official signs should be posted at each teller station/window at a credit union's principal place of business (and each branch) where deposits are accepted.
- ATMs are exempted from this requirement.

Truth in Savings



Truth in Savings



For the purposes of TISA, an advertisement is a commercial message appearing in any medium that promotes directly or indirectly the availability of, or deposit in, an account.

Truth in Savings

Exceptions

Rate sheets that are published in newspapers, periodicals, or trade journals are exempt from the advertising rules as long as there is no fee paid by the credit union and no control by the credit union over whether the information will be published.

Truth in Savings

Prohibitions

Advertisements cannot be misleading or inaccurate and cannot misrepresent a credit union's account contract. There are certain specific prohibitions:

- Using the terms "free," "no cost," or other words having similar meaning (for example, fees waived) if any regular maintenance or activity fee may be applied to the account.
- If the account is free for a limited time, the time restriction must be stated.
- Credit unions may advertise accounts as "free" for members who meet conditions not related to share accounts, such as the member's age.

Truth in Savings

Ad Term: Rate

- If any rate or yield is stated in an advertisement, it must be the annual percentage yield using that term.
- If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication.
- An advertisement can state the dividend rate as long as the APY is also disclosed.
- If a dividend rate is stated, the term “dividend rate” must be used, and the rate stated must correspond to the annual percentage yield stated.
- A dividend rate can be stated only if it is provided in conjunction with, but not more conspicuously than, the annual percentage yield it relates to.

Truth in Savings

Ad Term: Tier-rate or step rate accounts

- The APY for each tier must be shown along with the corresponding tier balance requirements.
- An advertisement that states a dividend rate for a stepped-rate account must state all the dividend rates and the time period that each rate is in effect.

Truth in Savings

Ad Term: APY

- The abbreviation “APY” may be used, provided that the term “annual percentage yield” is stated at least once in the advertisement.
- For variable rate accounts, a statement that the rate may change after the account is opened.
- The time the APY is offered
- Minimum balance requirements
- Minimum opening deposit
- A statement that “fees could reduce earnings”
- For term share accounts: A statement that a penalty will or may be imposed for early withdrawal.

Truth in Savings

Bonus Disclosures

Disclose these terms if the ad mentions a bonus:

- The Annual Percentage Yield (using that term) and all corresponding APY disclosures
- The time requirement necessary to obtain the bonus
- Minimum balance required to obtain the bonus
- Minimum balance required to open the account
- When the bonus will be provided to the member

Truth in Savings

Limited Disclosures

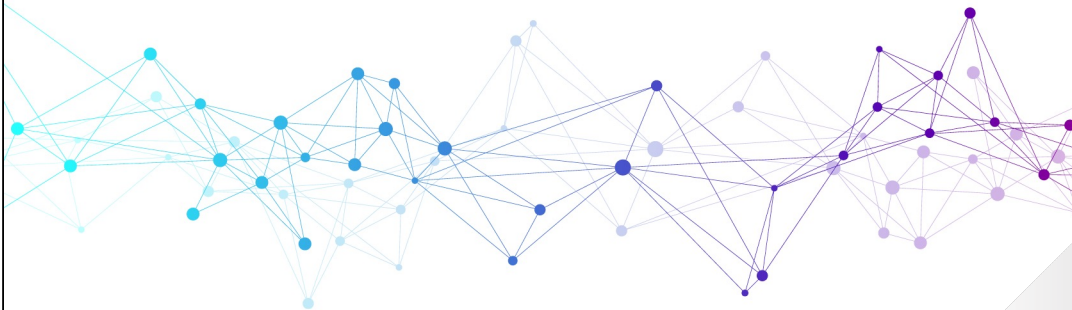
Credit Union Newsletters

- Include the APY if a rate is stated
- If the APY is stated, include a notice advising members to contact the credit union for further information on applicable fees and terms.

Indoor Signs

- Indoor signs include: computer screens, banners, preprinted posters and lobby boards.
- Indoor signs are generally not subject to the advertising requirements.

Overdraft Privilege Plans



Overdraft Privilege Plans

What is an “Advertisement”

- Stating the available overdraft limit or the amount of funds available on a periodic statement
- Any promotion of overdrafts on Internet websites, telephone response systems, e-mails or other marketing materials

Overdraft Privilege Plans

Advertising Disclosures

Credit unions that promote the payment of overdrafts are required to include the following disclosures in their advertisements for this service:

- The applicable fee or charge
- The categories of transactions that are covered
- The time period members have to repay or cover the overdraft (immediately, on demand or within x number of days)
- The circumstances when the credit union would not pay an overdraft

Overdraft Privilege Plans

Exceptions to the Advertisement rule

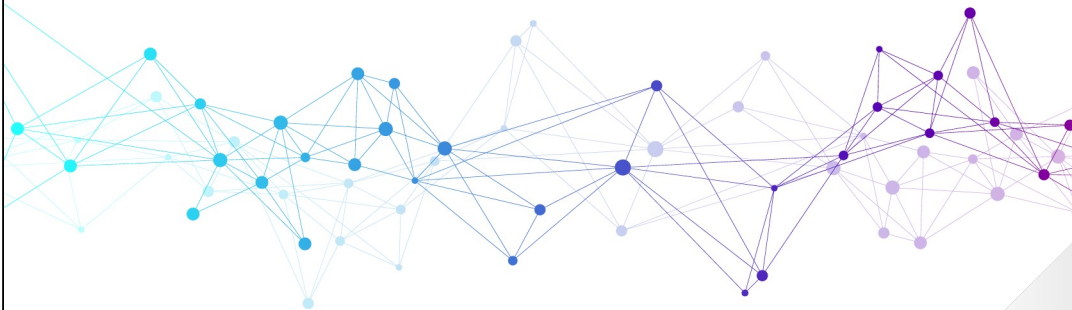
- Providing educational materials
- Responding to member-initiated inquiries about overdrafts or deposit accounts
- Notifying a member about a specific overdraft on their account
- ATM receipts
- Broadcast media (television, radio, billboards)

Overdraft Privilege Plans

Limited Advertising Disclosures

- For advertisements on ATM screens and telephone response machines, disclose only the amount of the fee and the period of repayment.
- For advertisements on indoor signs indicate that fees may apply, and that the member should contact an employee for further information about fees and terms.

Consumer Purpose Loans



Consumer Purpose Loans



Advertisement:

Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are advertisements.

Consumer Purpose Loans

Examples

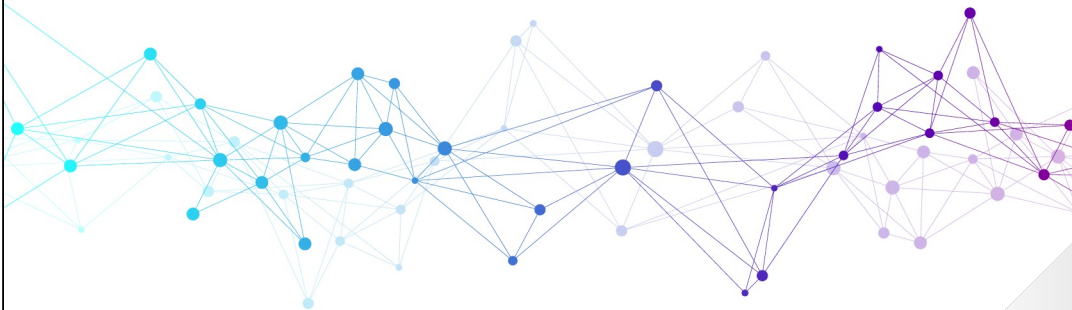
- Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog
- Announcements on radio, television, or public address system
- Electronic advertisements, such as on the Internet
- Direct mail literature or other printed material on any exterior or interior sign
- Point-of-sale displays
- Telephone solicitations
- Letters sent to customers or potential customers as part of an organized solicitation of business.
- Messages on checking account statements offering auto loans
- Communications promoting a new open-end plan or closed-end transaction.

Consumer Purpose Loans

Exclusions

- Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.
- Informational material, for example, interest-rate and loan-term memos, distributed only to business entities.
- Notices required by federal or state law
- News articles the use of which is controlled by the news medium
- Market-research or educational materials that do not solicit business
- Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account.)

Open-End Credit



Open-End Credit

Actually Available Terms

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor.

Open-End Credit

Trigger Terms

The following terms, stated either affirmatively or negatively in an advertisement trigger additional disclosures:

- Finance Charges
- A description of the circumstances under which a finance charge will be imposed, or how it is to be determined
- APR
- Periodic rate
- Mention of any grace period

Open-End Credit

Trigger Terms, Continued

The following terms, stated either affirmatively or negatively in an advertisement trigger additional disclosures:

- The amounts of any other charges that might be imposed or an explanation of how they would be determined
- The fact that the creditor will acquire a security interest in the property being purchased or in other property identified by item or type
- A statement outlining the consumer's billing rights and the creditor's responsibilities.
- The payment terms of a home equity plan, such as the length of the draw period, the prepayment period and the minimum periodic payments.

Open-End Credit

Required Disclosures

- Any minimum, fixed, transaction, activity or similar charge that is a finance charge that could be imposed
- Any periodic rate that may be applied expressed as an annual percentage rate
- If the plan provides for a variable periodic rate, that fact shall be disclosed
- Any membership or participation fee that could be imposed

Open-End Credit

Misleading Terms

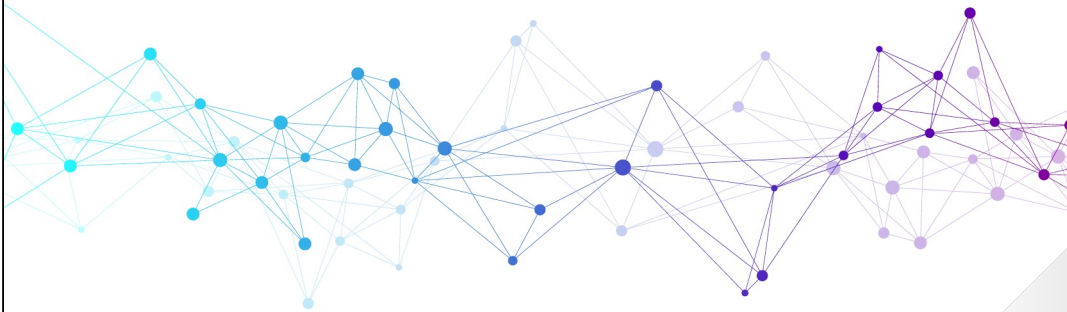
An advertisement for open-end credit may not refer to an APR as “fixed,” or use a similar term, unless the advertisement also states a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

Open-End Credit

Promotional Rates

- Any advertisement for open-end credit (except for HELOCs), including promotional materials provided with applications and solicitations, that states a promotional rate must also state:
 - When the promotional rate will end.
 - The APR that will apply after the end of the promotional period, stated in a prominent location, closely proximate to the first listing of the promotional rate
- These requirements do not apply to:
 - An envelope or other enclosure in which an application or solicitation is mailed.
 - A banner advertisement.
 - A pop-up advertisement linked to an application or solicitation provided electronically.
- If any APR in an advertisement is an introductory rate, the term “introductory” or “intro” must be stated in immediate proximity to each listing of the introductory rate in written or electronic advertisements.

HELOCS



HELOCs

Special Trigger Term Rules for HELOCs

Home Equity plan advertisements are required to provide additional disclosures if:

- Any of the open-end credit trigger terms are stated positively or negatively
- The advertisement sets forth any payment term, positively or negatively. For example:
 - References to the draw period or any repayment period
 - The length of the plan
 - How the minimum payments are determined
 - The timing of payments

HELOCs

Additional HELOC Disclosures

- Any loan fee that is a percentage of the credit limit under the plan (for example, “points”) and an estimate of any other fees the credit union imposes for opening the plan, stated as a single dollar amount or a reasonable range.
- The periodic rate, if any, used to compute the finance charge, expressed as an annual percentage rate.
- The maximum annual percentage rate that may be charged if it is a variable-rate plan.

HELOCs

Other HELOC Advertising Rules

- If an advertisement reflects an initial APR that is not based on an index and margin that will be applied to make later rate adjustments, the advertisement must state:
 - The period of time the advertised rate will be in effect.
 - A reasonably current APR that would be in effect had you used the index and margin (both APRs must be stated with equal prominence).
- If an advertisement states anything about a minimum periodic payment, the advertisement must state with equal prominence and in close proximity to the minimum periodic payment statement:
 - A statement that a balloon payment may result (if applicable).
 - The amount and timing of the balloon payment that will result if the member makes only the minimum payments for the entire time before the balloon payment is required.

HELOCs

Other HELOC Advertising Rules

- If an advertisement indicates that interest expense incurred under a home equity plan is or may be tax deductible, the reference must be made so that it is not misleading in any respect.
- If a HELOC advertisement distributed in paper form or through the Internet states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement must state that:
 - 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
 - The member should consult a tax adviser for further information regarding the deductibility of interest and charges

HELOCs

Other HELOC Advertising Rules

If any APR that is applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than radio or television advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

- The period of time during which the promotional rate or promotional payment will apply
- In the case of a promotional rate, any APR that will apply under the plan
- In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan.

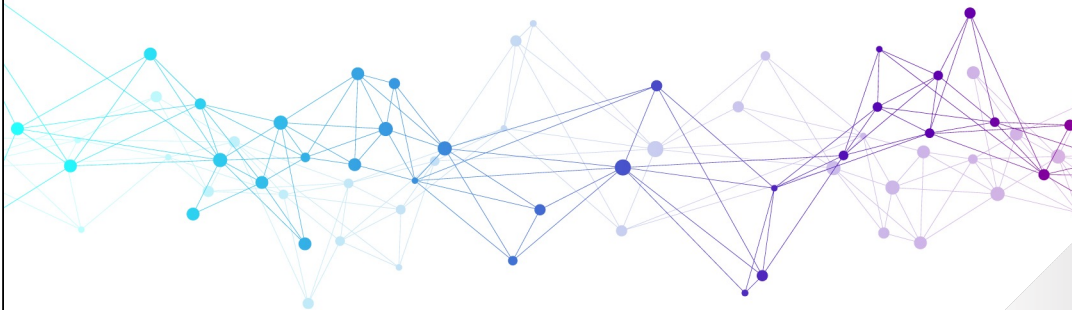
HELOCs

Alternative Disclosures for Television or Radio HELOC Advertisements

A television or radio advertisement for a home equity plan that states any of the open-end credit triggering terms or any of the triggering terms for HELOCs may comply with advertising rules by:

- Stating any periodic rate used to compute the finance charge, expressed as an APR.
- Listing a toll-free telephone number, or any telephone number that allows a member to reverse the phone charges when calling for information along with a reference that the numbers may be used by members to obtain additional cost information.

Closed End Credit



Closed End Credit

All advertisements must:

- State credit terms that are actually available
- State any rate of finance charge as an APR
- State if the APR can be increased after consummation
- State no other rate except:
 - A simple annual rate or a periodic rate for consumer loans not secured by a dwelling
 - A simple annual rate for credit secured by a dwelling
- Show the simple annual rate or the periodic rate simultaneously with the APR for advertisements made through electronic communication (you can't link to the APR)

Closed End Credit

Trigger Terms

If an advertisement for a closed-end loan contains any one of the following terms, you must include additional disclosures:

- The amount or percentage of any down payment
- The number of payments or the period of repayment
- The amount of any payment
- The amount of any finance charge
- The amounts of any other charges you might impose or an explanation of how you would determine them.
- The fact that the creditor will take a security interest in any asset.

Closed End Credit

An advertisement for closed-end credit that contains one or more of the above trigger terms also must disclose the following:

- The amount or percentage of the down payment
- The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment
- The APR
- For an APR that may be increased after consummation, a statement to that effect

Closed End Credit

Terms of Repayment

- The exact payment schedule
- Reflect the consumer's repayment obligations over the full term of the loan, including any balloon payment
- A creditor may use a unit-cost approach in making the required disclosure, such as “48 monthly payments of \$27.83 per \$1,000 borrowed.”

Closed End Credit

Multiple-page advertisements; electronic advertisements

If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the required disclosures it shall be considered a single advertisement if:

- The table or schedule is clearly and conspicuously set forth; and
- Any statement of the trigger terms appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

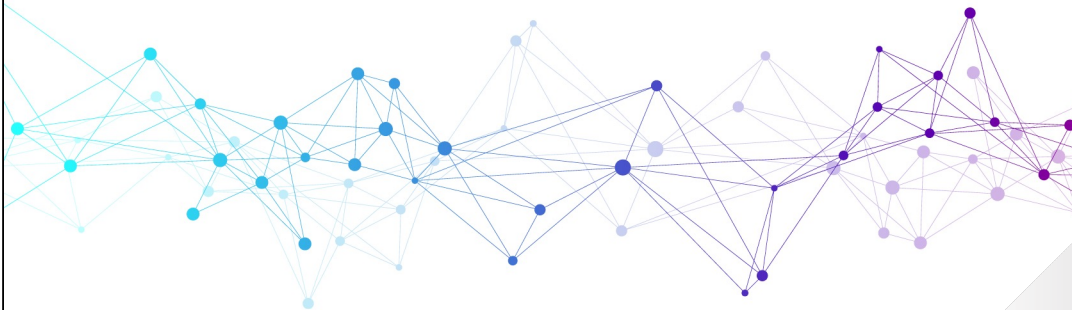
Closed End Credit

Exceptions

A television or radio advertisement that states any of the closed-end triggering terms may comply by:

- Stating the APR
- Listing 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 the number may be used by members to obtain additional cost information.

Mortgage Loans



Mortgage Loans

Rates

If an advertisement for a mortgage loan states a simple annual rate of interest and more than one simple annual rate will apply over the term of the loan, the advertisement must disclose the following in a clear and conspicuous manner:

- Each simple annual rate that will apply
- For variable rate transactions, a rate determined by adding an index and margin must be disclosed based upon a reasonably current index and margin
- The period of time during which each simple annual rate will apply
- The APR for the loan

The above disclosures must be provided with equal prominence and in close proximity to any advertised rate that triggered these disclosures.

Mortgage Loans

Rates

If an advertisement for a mortgage loan states a simple annual rate of interest and more than one simple annual rate will apply over the term of the loan, the advertisement must disclose the following in a clear and conspicuous manner:

- Each simple annual rate that will apply
- For variable rate transactions, a rate determined by adding an index and margin must be disclosed based upon a reasonably current index and margin
- The period of time during which each simple annual rate will apply
- The APR for the loan

The above disclosures must be provided with equal prominence and in close proximity to any advertised rate that triggered these disclosures.

Mortgage Loans

Payments

If an advertisement for a mortgage loan states the amount of any payment, the advertisement must disclose the following in a clear and conspicuous manner:

- The amount of each payment that will apply over the term of the loan, including any balloon payment
- In variable-rate transactions, payments that will be determined based upon the application of the sum of an index and margin must be disclosed based on a reasonably current index and margin
- The period of time during which each payment will apply
- In an advertisement for a loan 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.

Mortgage Loans

Tax implications

In any advertisement for a mortgage loan secured by the member's principal dwelling, that is distributed in paper form or through the Internet, that states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement must state that:

- 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
- The member should consult a tax adviser for further information regarding the deductibility of interest and charges.

Mortgage Loans

Prohibited Acts or Practices in Advertisements for Mortgage Loans

The following acts or practices are prohibited in advertisements for mortgage loans:

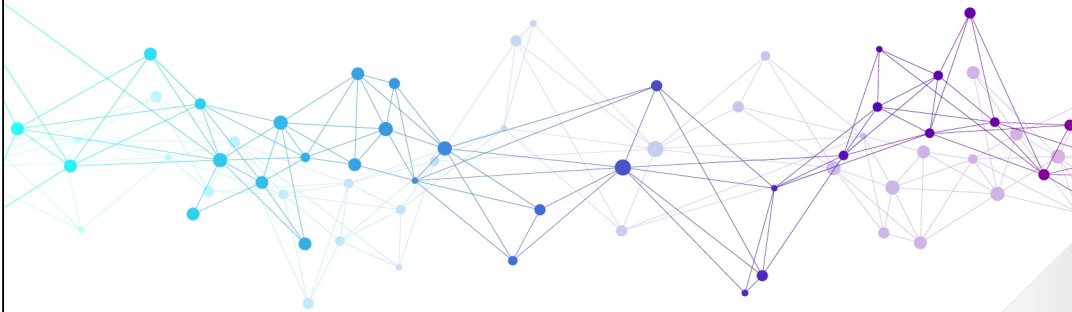
- Misleading advertising of “fixed” rates and payments
- Misleading comparisons in advertisements
- Misrepresentations about government endorsements
- Misleading use of the current lender’s name
- Misleading claims of debt elimination
- Misleading use of the term “counselor”
- Misleading foreign-language advertisements

Mortgage Loans

Exceptions

- The disclosures for rates and payments do not apply to television or radio advertisements.

Other Rules



Other Rules

Reg B

Using racially exclusive images: Using words or pictures in advertising or credit union literature to indicate a preference of one race or class of people over another is prohibited.

Fair Housing

Credit Unions are prohibited from making printing, or publishing any notice, statement, or advertisement about the sale or rental of a dwelling indicating any preference, limitation, or discrimination.

Use of Equal Housing Lender Logo

Advertisements for real estate-related loans must prominently indicate that the credit union makes loans without regard to race, color, religion, national origin, sex, handicap, or familial status.

Other Rules

Telephone Consumer Protection Act

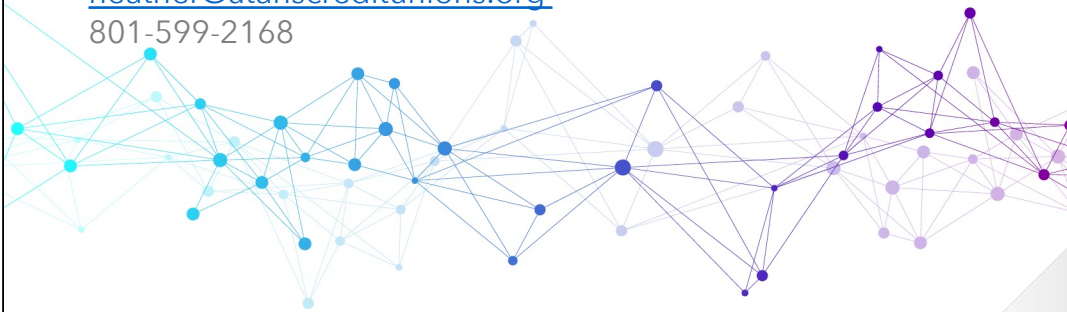
- “Prior express written consent” from the consumer is required for all telemarketing calls/text messages made to cell phones using an autodialer or prerecorded message.
- The TCPA rule defines "prior express written consent" as a signed written agreement that clearly and conspicuously discloses to the consumer that:
 - By signing the agreement, he or she authorizes the seller to deliver, to a designated phone number, telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and
 - The consumer is not required to sign the agreement or agree to enter into it as a condition of purchasing any property, goods, or services.
- The required signature may be obtained in compliance with the E-SIGN Act, including via an e-mail, website form, text message, telephone key press, or voice recording.

Questions?

Heather Line
Compliance Specialist

heather@utahscreditunions.org

801-599-2168



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Coming Soon

2023 Compliance Essentials Session 3 – [Bank Secrecy Act for BSA Staff](#)

- Thursday, March 23
- 10:00 AM – 2:00 PM