

# Advertising Compliance



# Truth in Savings Act



UTAH'S  
CREDIT  
UNIONS

# General

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.



# General

## 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.

# 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.

# Trigger Terms

Ad Term	Rules
Rate	<ul style="list-style-type: none"><li>• If any rate or yield is stated in an advertisement, it must be the annual percentage yield using that term.</li><li>• If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication.</li><li>• An advertisement can state the dividend rate as long as the APY is also disclosed.</li><li>• 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.</li><li>• 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.</li></ul>
Tier-rate or step rate accounts	<ul style="list-style-type: none"><li>• The APY for each tier must be shown along with the corresponding tier balance requirements.</li><li>• 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.</li></ul>



# Trigger Terms

Ad Term	Rules
APY	<ul style="list-style-type: none"><li>• The abbreviation “APY” may be used, provided that the term “annual percentage yield” is stated at least once in the advertisement.</li><li>• For variable rate accounts, a statement that the rate may change after the account is opened.</li><li>• The time the APY is offered</li><li>• Minimum balance requirements</li><li>• Minimum opening deposit</li><li>• A statement that “fees could reduce earnings”</li><li>• For term share accounts: A statement that a penalty will or may be imposed for early withdrawal.</li></ul>

# Bonuses

## **Bonus Disclosures**

Disclose these terms if the ad mentions a bonus:

- The Annual Percentage Yield 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



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

# Dividend Rate

The dividend rate used for advertising must be rounded to the nearest basis point (.01 percent) and disclosed to two decimal places (for example, 4.55%).



# Permissible Account Terms

Credit unions are permitted to use the following terms to describe accounts:

- “Checking Account” for share draft accounts
- “Money Market Account” for money market share accounts
- “Savings Account” for regular share or share accounts
- “Share Certificate,” “Certificate Account,” or “Certificate” for share certificate accounts or dividend-bearing term share accounts

# Prohibited Account Terms



Federal credit unions are prohibited from describing a Certificate Account with terms such as:

- “Certificate of Deposit,” “CD,” “time account,” and “time deposit.”
- State-chartered credit unions may not use such terms to describe dividend-bearing certificate accounts.

# Overdrafts

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

# Overdrafts

## 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

# Overdrafts

## Exceptions to the Advertisement rule

- Overdraft lines of credit subject to Reg Z
- Member-initiated inquires
- Broadcast or electronic media, such as television or radio
- Outdoor media, such as billboards
- An ATM receipt
- An in-person discussion with a member

# Overdrafts

## Exceptions to the Advertisement rule

- Disclosures required by Federal or other applicable law
- A term in a share account agreement discussing the credit union's right to pay overdrafts
- A notice provided to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;
- Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service
- An opt-out or opt-in notice regarding the credit union's payment of overdrafts or provision of discretionary overdraft services.



# Overdrafts

## 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.

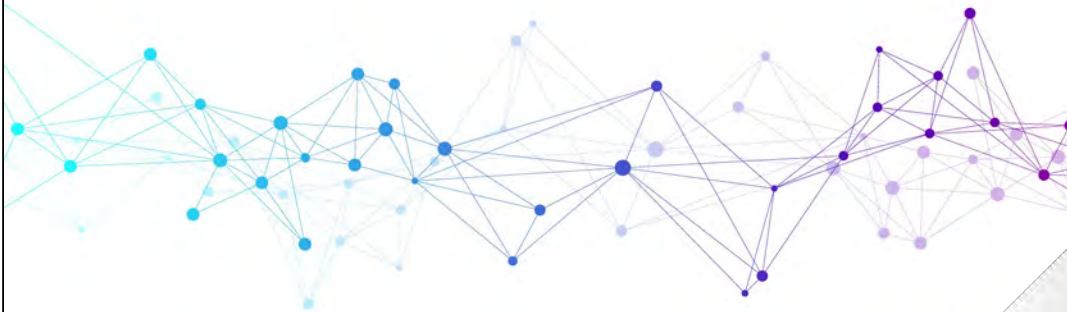
# Overdrafts

## Prohibiting Misleading Advertisements

TISA prohibits advertisements, announcements, or solicitations that are misleading or misrepresent the deposit contract. The following are examples of misleading advertisements:

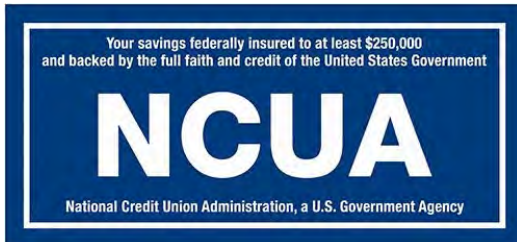
- Representing an overdraft service as a “line of credit.”
- Representing that the credit union will honor all checks or transactions when the credit union has discretion to not honor a transaction.
- Representing that members with an overdrawn account are allowed to maintain a negative balance when the terms of the overdraft service require the member to promptly return the account to a positive balance.
- Describing the overdraft service solely as protection against bounced share drafts when the credit union also permits overdrafts in connection with ATM withdrawals or other electronic fund transfers.
- Describing the account as “free” or “no cost” in an advertisement that also promotes a service in which there is a fee, such as an overdraft service, unless the advertisement for the account clearly indicates that there is a cost for this service.

# Share Insurance



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# General



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 (subject to exceptions)

# General

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.



# Exceptions

The following advertisements need not include the official advertising statement:

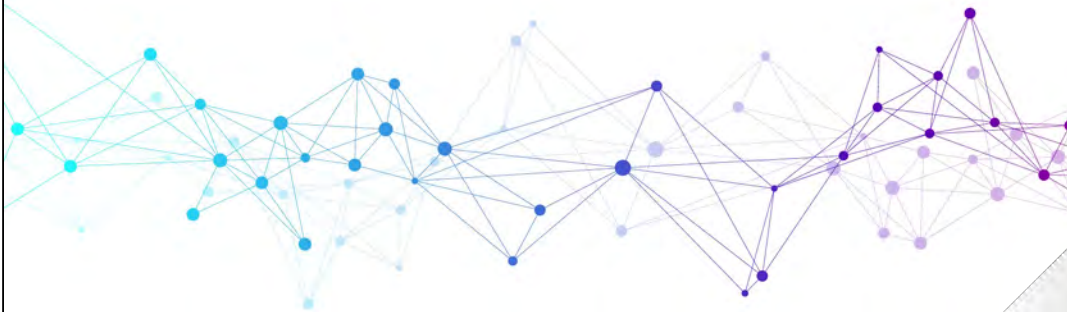
- Credit union supplies such as stationery
- Signs or plates in the credit union office or attached to the building or buildings in which the offices are located
- Listings in directories
- Advertisements not setting forth the name of the insured credit union
- Display advertisements in credit union 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

# Exceptions

The following advertisements need not include the official advertising statement:

- 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, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance.

# Nondeposit Investments



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# General

- Credit unions offering the sale of nondeposit investment products through a third party brokerage arrangement should do so in a manner that does not mislead or confuse members as to the nature or risks of these uninsured products.
- To avoid member confusion, third party brokers should not offer investment products with a product name that is intentionally similar to the credit union's name.

# Shared Employees

- If the third party brokerage arrangement involves the use of shared employees, the dual employee should not use any materials that could potentially confuse a member as to the capacity in which the dual employee is functioning.
- For example, dual employees should use separate business cards for their credit union and investment sales functions.
- Likewise, dual employees should use separate stationery for credit union correspondence and investment activity correspondence.

# Sales Locations

- Credit union policies should specifically address the locations at which sales will take place.
- The credit union's routine deposit-taking activities should be physically separated from nondeposit investment sales functions to emphasize that important differences exist between these activities, such as the degree of risk and insurability.
- If limited office space makes physical separation of these functions impractical, nondeposit investment sales and deposit-taking may be conducted in close proximity to each other if appropriate disclosures, as described above, are made to members.

# Disclosures

When selling, advertising, or otherwise marketing uninsured investment products to members, members must be informed that the products offered:

- Are not federally insured
- Are not obligations of the credit union
- Are not guaranteed by the credit union
- Involve investment risk; and
- If applicable, are being offered by a dual employee who accepts deposits on behalf of the credit union and also sells nondeposit investment products on behalf of a third party broker

These disclosures should be made in writing and in a location and type size that are clear and conspicuous to the member. Oral disclosures should also be made as part of any oral sales presentation.

# Telephone Consumer Protection Act



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# TCPA

- The TCPA generally requires consent before a credit union may make telemarketing calls or send telemarketing text messages using an autodialer, artificial voice or pre-recorded message.
- Exactly what constitutes consent depends on whether a landline or cell phone is involved and the purpose of the call or message.



# TCPA

Type of Phone Line	Technology Used for the Call	Purpose of the Call	Type of Consent Required
Landline	Artificial voice or prerecorded message ("robocall")	<b>Marketing</b> Including calls to promote products like credit card add-ons or new accounts to members, following up on direct mail campaigns, etc.	Prior Express Written Consent
Landline	Autodialer, artificial voice or prerecorded message ("robocall")	<b>Informational</b> Includes collection calls, fraud alerts, money transfer notices, etc.	No Consent Required
Cell	Autodialer, artificial voice or prerecorded message ("robocall")	<b>Marketing</b> Including calls to promote products like credit card add-ons or new accounts to members, following up on direct mail campaigns, etc.	Prior Express Written Consent
Cell	Autodialer, artificial voice or prerecorded message ("robocall")	<b>Informational</b> Includes collection calls, fraud alerts, money transfer notices, etc.	Prior Express Consent (written or verbal)

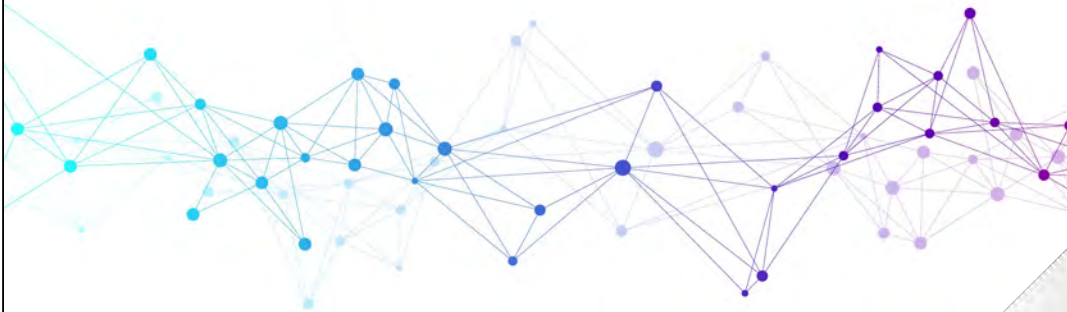


# TCPA

- Under [section 64.1200\(f\)\(8\)](#), prior express written consent requires a written agreement signed by the member who will receive the calls.
- The written agreement must clearly and conspicuously disclose the following:
  1. By signing the agreement, he or she authorizes the credit union to deliver, to a designated phone number, telemarketing calls using an autodialer, artificial voice or pre-recorded message; and
  2. By signing the agreement, or agreeing to enter into it, is not a condition of purchasing any goods or services.
- Credit unions may deliver the disclosure electronically with proper E-SIGN consent. The credit union may also accept an electronic signature.



# Regulation Z: Open-End Credit



# Definition of 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.



# 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

# Examples

- 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 at a stated annual percentage rate.
- Communications promoting a new open-end plan or closed-end transaction.

# 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.

# Exclusions

- 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.)

# 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.

## Trigger Terms - Non HELOCs

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

- Finance charges
- Other charges
- Penalty fees
- Transaction taxes
- Charges imposed for terminating a plan
- Charges for voluntary credit insurance, debt cancellation or debt suspension.



# Trigger Terms - HELOCs

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

- Finance Charge
- **Annual Percentage Rate**
- Balance computation method
- Any other charges

# Triggered Disclosures

- Any minimum, fixed, transaction, activity or similar charge that is a finance charge that could be imposed (foreign transaction fees, cash advance fees)
- 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 (excluding the credit union's par share requirement)

## Additional HELOC Triggered Disclosures

- Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.
- Any periodic rate used to compute the finance charge, expressed as an annual percentage rate
- The maximum annual percentage rate that may be imposed in a variable-rate plan.

## 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.

# Promotional Rates and Fees

Any advertisement for open-end credit (except for HELOCs), including promotional materials provided with applications and solicitations, that states a promotional rate or fee must also state:

- When the promotional rate/fee will end.
- The APR/fee that will apply after the end of the promotional period in **a prominent location closely proximate to the first listing of the promotional rate or promotional fee.**

# Promotional Rates and Fees

- 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.

# Additional HELOC Disclosures



## HELOC Discounted and Premium Rates

- If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state **with equal prominence and in close proximity to the initial rate:**
- The period of time such initial rate will be in effect; and
- A reasonably current annual percentage rate that would have been in effect using the index and margin.



# Balloon Payments

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.

# Tax Implications

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.

# Tax Implications

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

# Misleading Terms

An advertisement may not refer to a home-equity plan as “free money” or contain a similarly misleading term.

## Promotional Rates and Payments

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:**

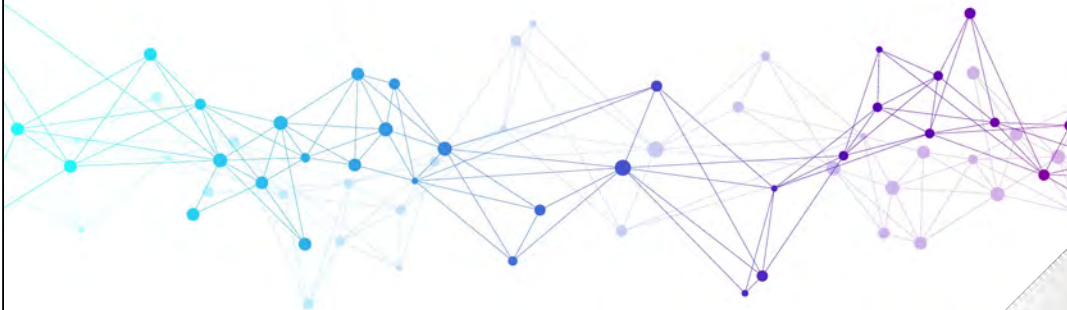
- The period of time during which the promotional rate or promotional payment will apply
- In the case of a promotional rate, any APR that will apply under the plan
- In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan.

## Alternative Disclosures for Television or Radio

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.

# Regulation Z: Closed-End Credit



# General

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)



# Trigger Terms

## 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

# Triggered Disclosures

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

# Terms of Repayment Example

Unit-Cost: “48 monthly payments of \$27.83 per \$1,000 borrowed.”

# 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.

# Additional Mortgage Rules



# Exceptions

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

# 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.

# 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.



# Tax Implications

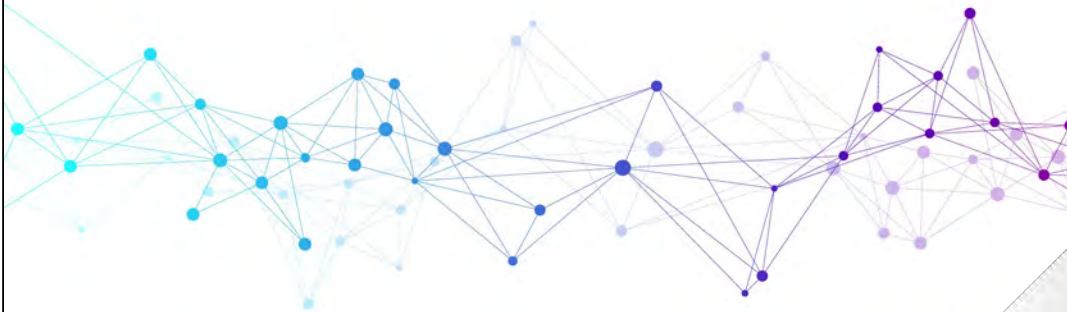
In any advertisement for a mortgage loan secured by the member's principal dwelling, that is distributed in paper form or through the Internet, that states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement must state that:

- 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.

## Prohibited Acts or Practices 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

# Fair Lending



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## Closed-End Credit

- The Equal Credit Opportunity Act (ECOA) and its accompanying Regulation B generally prohibit discriminatory practices in lending. The provisions broadly apply to "any aspect of a credit transaction."
- The Fair Housing Act (FHA) prohibits discrimination "in making available a [residential real estate related transaction]" based on a prohibited factor.
- NCUA's nondiscrimination rule prohibits denial or discouragement of an application for a real estate related transaction based on any prohibited basis.

# FFIEC Fair Lending Exam Procedures

As a useful resource, the [FFIEC's Interagency Fair Lending Examination Procedures](#) explains factors that may be used to analyze the risks associated with a marketing strategy. The guide describes indicators of potential disparate treatment in marketing residential products, including:

- Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.
- Advertising only in media serving non-minority areas of the market.
- Marketing through brokers or other agents that the institution knows (or has reason to know) would serve only one racial or ethnic group in the market.

# 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.

- Ads broadcast on the radio may indicate that the credit union is an “Equal Housing Lender” or an “Equal Opportunity Lender.”
- Television and print ads may include a copy of the Fair Housing logo with the legend “Equal Housing Opportunity” from the fair housing poster (other methods in lieu of logo may also be used)



# Equal Housing Lender Logo



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# SAFE Act



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# NMLS Numbers

- Credit Union?
- MLO?



# Next up

[Thursday December 12, 2022:](#)

- Compliance Resources & Holiday Treats Potluck
- Last Compliance Crüe Meeting

# Questions?

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