



ADVERTISING

Quick Compliance Guide

09.01.2015

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REGULATION	12 CFR 1026.24 Advertising
DEFINITIONS	<p>Closed-end credit: Consumer credit that is not “open-end credit”; generally, consumer may not re-draw principal paid down</p> <p>Clear and conspicuous: Disclosures must be in a reasonably understandable form. For example, disclosures must be presented in a way that does not obscure the relationship of the terms to each other</p> <ul style="list-style-type: none"> ◦ Refer to Rule and Commentary <p>Credit sale: A sale in which the seller is a creditor</p> <p>Down payment: An amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction</p>
ALL CLOSED END CREDIT ADVERTISEMENTS	<ul style="list-style-type: none"> • Must state only those terms that actually are or will be arranged or offered by the creditor • Disclosures must be made clearly and conspicuously • If a rate of finance charge is stated, the rate must be stated as an “annual percentage rate,” using that term or APR • If APR may be increased after consummation, must state that fact • If a rate is stated in an advertisement, it must be stated as the annual percentage rate using either that term or the abbreviation APR <ul style="list-style-type: none"> ◦ If the APR is stated, the simple interest rate may also be stated but not more conspicuously than the annual percentage rate and it must be in close proximity
TRIGGERING TERMS	<p>Any one or more of the following are closed end triggering terms:</p> <ul style="list-style-type: none"> • The number of payments or period of repayment (including general statement such as 5, 10, 20 year terms available where a number is stated but not if just various terms available); • The amount of any payment; • The amount of any finance charge; or • The amount or percentage of any down payment – only in a credit sale (selling something the institution owns, like an OREO) • NOTE: The APR itself is not a triggering term for closed end loans
TRIGGERED TERMS	<p>If a triggering term is present, then, must include all of the closed end triggered terms:</p> <ul style="list-style-type: none"> • The APR; • Terms of repayment (#, amount and frequency – e.g., 36 monthly payments of \$127.50), including any balloon payment; and • The amount of any down payment if this is a credit sale (selling an institution owned asset – e.g., repossessed car or REO/OREO)
ADDITIONAL TRIGGERED TERMS IF CLOSED END LOAN SECURED BY A DWELLING	<ul style="list-style-type: none"> • If a simple interest rate is disclosed and more than one rate will apply to the loan, must state each rate of interest that will apply, the time period that each rate will apply and the composite APR (1026.17(c)) • For loans secured by a first lien on the dwelling, must state the fact that payments do not include taxes and insurance (if applicable) and the actual payment obligation <u>will</u> be greater <ul style="list-style-type: none"> ◦ The triggered statement must be immediately next to, above or below the payment amount with no intervening text or graphics • For any paper or internet ads for a loan that is secured by the borrower’s principal dwelling where the amount of the loan could exceed the value of the dwelling, must disclose that the interest on the portion of the loan that exceeds the value of the dwelling is not tax deductible and the customer should consult a tax advisor <ul style="list-style-type: none"> ◦ If ad states 100% financing, that implies that the loan amount could actually exceed the fair market value of the property. If the loan amount cannot exceed the FMV, then, this statement is misleading and deceptive because 100% financing implies that no money is needed make/close the loan.
REVERSE MORTGAGES	<ul style="list-style-type: none"> • Reverse mortgages do not have payment streams • May have closed end and open end features, or a combination of both • Promotional materials and product descriptions must provide balanced information about reverse mortgages <ul style="list-style-type: none"> ◦ Information is balanced when it fairly presents risks and costs as well as potential benefits. • If reverse mortgage ad touts of benefits of reverse mortgage, ad should include information about the costs, terms, features, and risks of reverse mortgage products. Such information may include: <ul style="list-style-type: none"> ◦ A reverse mortgage is a loan that must be repaid ◦ Circumstances under which payments or access to a line of credit may end or a consumer would be required to repay a reverse mortgage during the consumer’s life (e.g., the borrower sells the home) ◦ Foreclosure may occur if the consumer (1) lives somewhere other than the home longer than allowed by the loan agreement; or (2) does not pay property taxes or insurance premiums ◦ Clear and conspicuous statement that consumers must make payments for taxes and insurance during the term of the reverse mortgage ◦ Reverse mortgage costs may vary and less expensive options may be available ◦ Reverse mortgage may affect eligibility for some government programs. Specifically, SSI and Medicaid may be affected. ◦ In order to retain the home when the reverse mortgage becomes due that (1) the consumer or the consumer’s heirs or estate must pay the entire loan balance and (2) the balance may be greater than the value of the consumer’s home • NOTE: We do not advise on the particulars of any loan program. Client must also consult HUDs reverse mortgage rules if offering reverse mortgages under one of HUDs programs.

The following acts or practices are prohibited in advertisements for consumer credit secured by a dwelling:

PROHIBITED ACTS
OR PRACTICES IN
ADS FOR CREDIT
SECURED BY A
DWELLING

- **Misleading advertising of “fixed” rates and payments.** 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 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
 - 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; or
 - In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,
 - 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
 - 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 paragraph (i)(1)(ii) of this section, 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.
- **Misleading comparisons in advertisements.** 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:
 - *In general.* The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under §1026.24(f)(2) and (3) (all rates, APR and all payments); and
 - *Application to variable-rate transactions.* 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 the payment or rate is subject to adjustment and the time period when the first adjustment will occur.
- **Misrepresentations about government endorsement.** 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.
- **Misleading use of the current lender’s name.** 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:
 - Discloses with equal prominence the name of the person or creditor making the advertisement; and
 - 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.
- **Misleading claims of debt elimination.** 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.
- **Misleading use of the term “counselor”.** 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.
- **Misleading foreign-language advertisements.** 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.



**ADVERTISING
ADJUSTABLE RATE MORTGAGE (ARM)
CLOSED END CONSUMER LOANS**

ADJUSTABLE RATE MORTGAGE (ARM) LOANS	
DEFINITIONS	Adjustable Rate Mortgage: Generally, an adjustable rate mortgage (ARM) is a consumer mortgage where the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year
TRIGGERING TERMS	TRIGGERED TERMS
If <u>any</u> one or more triggering term is an advertisement for a consumer closed-end loan ARM loan,	The following triggered terms must be included in the advertisement:
<ul style="list-style-type: none"> <input type="checkbox"/> The amount or percentage of any down payment – only in a credit sale (selling something the institution owns, like an OREO); <input type="checkbox"/> The number of payments; <input type="checkbox"/> The period of repayment; <input type="checkbox"/> The amount of any payment; or <input type="checkbox"/> The amount of any finance charge 	<ul style="list-style-type: none"> <input type="checkbox"/> The APR; <input type="checkbox"/> A statement the loan is variable; <input type="checkbox"/> A statement that the rate may increase after consummation; <input type="checkbox"/> Terms of repayment <ul style="list-style-type: none"> <input type="checkbox"/> The number of payments <input type="checkbox"/> The frequency of payments <input type="checkbox"/> The amount of payments, including any balloon payment, over the term of the loan; and <input type="checkbox"/> The amount of any down payment if this is a credit sale (selling an institution owned asset – e.g., repossessed car or REO/OREO) <input type="checkbox"/> NOTE: For discounted or premium initial rates, payment stream must reflect the number and amount of the payments based on the initial rate and the number and amount of the payments based on the fully-indexed rate <p><i>For first lien principal dwelling:</i></p> <p>If the payment amount does not include taxes and insurance, a statement that the payment amount does not include taxes and insurance and that the actual payment obligation will be greater.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Must be in close proximity to the payment amount, which means next to, above or below, with no intervening text or graphics <input type="checkbox"/> May not be disclosed in a footer to ad text if payment amount located elsewhere
If a simple interest rate is stated and the ARM is either discounted or premium	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Must state periods that rates will apply (thus triggering term of loan triggering term and all corresponding triggered terms) <input checked="" type="checkbox"/> Must include a composite APR (blended APR) in accordance with 12 CFR 1026.17(c) and 1026.22. <ul style="list-style-type: none"> • Index Rates must be current rates: 60 days for mail; 30 for print and electronic media
If the word 'Fixed' is used in ARM ad	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 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 <input checked="" type="checkbox"/> If 'fixed' refers to the variable-rate transactions, it must be 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
If ad states that the loan may exceed the fair market value (FMV) of the dwelling	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> The interest on the portion of the extension that is greater than the FMV is not tax deductible <input checked="" type="checkbox"/> You should consult a tax advisor for more information
<input checked="" type="checkbox"/>	<i>See Regulation/Commentary for website, TV and radio exceptions</i>



ADVERTISING
ADJUSTABLE RATE MORTGAGE (ARM)
CLOSED END CONSUMER LOANS

EXAMPLE ONLY – Includes the table as part of the example

ARM MORTGAGE LOAN
 Rates effective as of _____

Adjustable Rate Mortgage Loans	Term	Annual Percentage Rate (APR)	Initial Interest Rate	Initial Rate Period	(Thereafter variable) First Adjusted Rate
3/1 ARM*	30 Years	X.XX%	2.750%	3 Years	3.25%

Bare Minimum

* ARM loans are variable rate loans; interest rates and payments may increase after consummation. For example - 3/1ARM with a term of 30 years for \$200,000 with an APR of X.XX%, Initial Interest Rate of 2.750%, your monthly payments for years 1 – 3 would be \$0,000.00 and for years 4 -30 monthly payments would be \$0,000.00 (based on the current Index Plus Margin). Monthly payments do not include taxes and insurance and the actual payment obligation will be greater.

[Note to ad creator: if there is a balloon payment, you must include the amount and when it is due, e.g., payments 1-3 years = x, 4-5 = y, with a balloon payment at maturity of \$Z]

More fully disclosed

* **ARM loans are variable rate loans; interest rates and payments may increase after consummation.** After the initial fixed-rate period, your interest rate can increase or decrease annually according to the market index. Any change may significantly impact your monthly payment. Since the index in the future is unknown, the First Adjusted Rates displayed are based on the current index plus the margin (fully indexed rate) at time of <scenario/disclosure>. At adjustment your new mortgage rate will be <the average of the Interbank offered rates for one-year, U.S. dollar-denominated deposits in the London market (LIBOR) as published in the Wall Street Journal, plus a margin of Z.ZZ% subject to annual and lifetime adjustment caps.>

For example - 3/1ARM with a term of 30 years for \$200,000 with an APR of X.XX%, Initial Interest Rate of 2.750%, your monthly payments for years 1 – 3 would be \$0,000.00 and for years 4 -30 monthly payments would be \$0,000.00 (based on the current Index Plus Margin). Monthly payments do not include taxes and insurance and the actual payment obligation will be greater. Your variable interest rate is subject to a floor of your Initial Interest Rate. Your variable interest rate can increase or decrease after the third year by 2 percentage points annually and can increase 6 percentage points over your Initial Interest Rate over the term of your loan. The Index for this loan program is the average of Interbank Offered Rates for One Year Denominated Deposits in the London Market (LIBOR).

[Note to ad creator: if there is a balloon payment, you must include the amount and when it is due, e.g., payments 1-3 years = x, 4-5 = y, with a balloon payment at maturity of \$Z]

[optional terms/material disclosures: Collateral must be a first lien and located in the state of _____. Property insurance, title insurance and flood insurance, if applicable, are required on all collateral. APRs shown are based on 80% Loan to Value (20% down payment), satisfaction of credit qualifications, credit score of ____ and owner occupied property or second home. Offer subject to change without notice. Consumer loans only.]



REGULATION	12 CFR 1026.16 ADVERTISING OPEN END CREDIT
DEFINITIONS	<p>Open-end credit: consumer credit extended by a creditor under a plan in which:</p> <ul style="list-style-type: none"> The creditor reasonably contemplates repeated transactions; The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. <p>Clear and conspicuous:</p> <ul style="list-style-type: none"> Generally, disclosures must be in a reasonably understandable form. For example, disclosures must be presented in a way that does not obscure the relationship of the terms to each other. <ul style="list-style-type: none"> Refer to Rules and Commentary for specific requirements and applicability
ALL OPEN END CREDIT	<ul style="list-style-type: none"> Must state only those terms that actually are or will be arranged or offered by the creditor May not refer to an APR as “fixed,” or use a similar term, unless 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 Triggered terms must be stated clearly and conspicuously
OPEN END <u>NON HOME SECURED</u>	
TRIGGERING TERMS	<p>When advertising open-end non-home secured credit, the following are triggering terms whether stated in the positive or in the negative (e.g., no annual fee; no closing costs):</p> <ul style="list-style-type: none"> Statement of an interest rate or APR; Statement of any charge that may be imposed or how a charge is calculated (1026.6(b)(3)); Statement of when finance charges begin to accrue or any free ride period; Statement of any finance charge or how a finance charge is determined; An explanation of how the balance upon which a finance charge will be imposed is calculated; and A statement of collateral required for the line.
TRIGGERED TERMS	<p>If any triggering term is stated, the following triggered terms are required:</p> <ul style="list-style-type: none"> Any minimum, fixed, transaction or activity charge that is a finance charge that may be imposed under the plan; Any periodic rate that may be applied, expressed as an APR; If the rate is a variable rate, a statement to that effect; Any membership or participation fee that may be imposed; All loan fees and costs required to open the plan stated as a single dollar amount or reasonable range; The statement Property insurance is required, if applicable; and The Maximum APR if the rate is a variable rate plan.
FINANCE PURCHASE OF GOODS OR SERVICES	<p>If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.</p>
PROMOTIONAL RATES OR FEES	<ul style="list-style-type: none"> If a promotional rate or fee is stated, must state in a clear and conspicuous manner: <ul style="list-style-type: none"> When the promotional rate or promotional fee will end; The APR that will apply after the end of the promotional period. 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; and The fee that will apply after the end of the promotional period. <i>If it is a written or electronic ad, disclosures must be in a prominent location closely proximate to the first listing of the promotional rate or promotional fee</i>
DEFERRED INTEREST	<ul style="list-style-type: none"> 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 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. See 12 CFR 1026.16(h)(4) <i>Stating the terms of the deferred interest or similar offer</i> for additional disclosure requirements
EXCEPTIONS RADIO, TV AD	<p>Many of the required disclosures may be substituted for a toll-free number or a 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. 1026.16(e)</p>

HOME EQUITY LINE OF CREDIT (HELOC) ADVERTISING

ALL HELOC CREDIT	<ul style="list-style-type: none"> • Must state only those terms that actually are or will be arranged or offered by the creditor • Triggered terms must be stated clearly and conspicuously • May not refer to a home-equity plan as “free money” or contain a similarly misleading term
TRIGGERING TERMS	<p>When advertising a HELOC, the following are triggering terms whether stated in the positive or in the negative (e.g., no annual fee; no closing costs) or can be readily determined (e.g., Prime + 1% = 4.25%; closing costs = 1% loan amount):</p> <ul style="list-style-type: none"> • Statement of an interest rate or APR; • Statement of any charge that may be imposed or how a charge is calculated (1026.6(a)(1) or (a)(2)); • Statement of when finance charges begin to accrue or any free ride period; • Statement of any finance charge or how a finance charge is determined; • An explanation of how the balance upon which a finance charge will be imposed is calculated; or • A statement of collateral required for the line.
TRIGGERED TERMS	<p>If any triggering term is stated, the following triggered terms are required to be stated clearly and conspicuously:</p> <ul style="list-style-type: none"> • Any minimum, fixed, transaction or activity charge that is a finance charge that may be imposed under the plan; • Any periodic rate that may be applied, expressed as an APR (if interest rate, APR must be in close proximity and of equal prominence); • If the rate is a variable rate, a statement to that effect; • Any membership or participation fee that may be imposed; • All loan fees and costs required to open the plan stated as a single dollar amount or reasonable range; • The statement Property insurance is required, if applicable; and • The Maximum APR if the rate is a variable rate plan.
DISCOUNTED OR PREMIUM RATES	<ul style="list-style-type: none"> • If an advertisement states an initial APR that is <u>not</u> based on the index and margin used to make later rate adjustments in a variable-rate plan, must also state with equal prominence and in close proximity to the initial rate: <ul style="list-style-type: none"> ◦ 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. • Example: Intro 1.99% APR for 6 months, Thereafter, variable rate, currently Prime + 1% or 4.25% APR • If this is an introductory rate, must include the term (how long) it will apply in close proximity and of equal prominence and the ultimate rate (<u>and</u> the max rate) in a clear and conspicuous manner, using that term either ‘intro’ or ‘introductory’ in conjunction with the introductory rate. <ul style="list-style-type: none"> ◦ Includes each use of the intro rate, e.g., if in big print and repeated in footer) • NOTE: Be sure to note any discrepancies in intro period, e.g., 6 months vs. 6 billing cycles
DISCOUNTED OR PREMIUM PAYMENTS	<p>If an advertisement states a promotional payment, must also state with equal prominence and in close proximity to the initial rate:</p> <ul style="list-style-type: none"> • The period of time such promotional payment will be in effect; and • The amounts and time periods of any other payments that will apply for the term, including any balloon payment.
BALLOON PAYMENTS	<ul style="list-style-type: none"> • If ad contains a statement of any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable. • If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement: <ul style="list-style-type: none"> ◦ That a balloon payment will result; and ◦ The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments. • NOTE: A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time.
TAX IMPLICATIONS	<ul style="list-style-type: none"> • An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. • If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a HELOC secured by the consumer's principal dwelling, and the ad states that the advertised extension of credit may exceed the fair market value (FMV) of the dwelling, must clearly and conspicuously state that: <ul style="list-style-type: none"> ◦ The interest on the portion of the credit extension that is greater than the FMV of the dwelling is not tax deductible for Federal income tax purposes; and ◦ The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.
ADDITIONAL BUSINESS TERMS	<p>New HELOCs only; early termination fee; floor rate, discounts for auto debit payment. Must include any of these if they are material disclosures that the customer needs to know, e.g., rate includes a discount for auto debit payment from <institution> checking account.</p>
EXCEPTIONS RADIO, TV AD	<p>Many of the required disclosures may be substituted for a toll-free number or a 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. 1026.16(e)</p>



ADDITIONAL CONSIDERATIONS IN ALL LOAN ADVERTISING

EHL	The Equal Housing Logo (EHL) is required in any form of advertising of any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format utilized, that the bank makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status. It must be clearly legible, including the words under the house.
“CLOSING COSTS”	No regulation defines what closing costs are and different institutions include different things as part of closing costs. Consumers do not know what closing costs are and many think that closing costs means any money they have to pay at the closing. Accordingly, to avoid any confusion and any hint of a UDAAP issue, we recommend that you specify what you mean by closing costs to mitigate any confusion on the part of the borrower.
RESPA SECTION 8	<ul style="list-style-type: none"> • RESPA Section 8 (actually 14 in the Regulation 12 CFR 1024.14) prohibits anyone from giving or accepting a fee, kickback or anything of value in exchange for referrals of settlement service business involving a federally related mortgage loan • Also, prohibits fee splitting and receiving unearned fees for services not actually performed <ul style="list-style-type: none"> ◦ Employee referral fees okay; customer referral fees are not • If references to partnerships, realtors, etc., must ensure that institution is sharing their pro rata cost of advertising as advertising is a tangible benefit subject to RESPA • The process of purchasing leads has not been definitively accepted by HUD or clearly been ruled as not being in violation of RESPA Section 8 (anti-kickback/referral); however, 2015 CFPB consent order may prohibit
FAIR LENDING	<ul style="list-style-type: none"> • If use people in ads, must have diversity across the campaign • Look for potential inadvertent fair lending concerns
AUTO DEBIT	<ul style="list-style-type: none"> ◦ May not may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account <ul style="list-style-type: none"> ○ Violates Regulation E, Section 1005.10(e) <ul style="list-style-type: none"> ◦ May not require repayment of loans by electronic means on a preauthorized, recurring basis • May offer a program with a reduced annual percentage rate or other cost related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved <ul style="list-style-type: none"> ◦ Example: “This rate reflects a discount for auto debit from an active checking account. The rate without auto debit from an account will be higher.”
SKIP A PAYMENT	<ul style="list-style-type: none"> ◦ If tied to real estate secured, flood determination is triggered if term of loan is extended ◦ Ensure how payment is deferred is clear, easy to understand ◦ Check with legal counsel on required signatures (e.g., all borrowers, lender)
COMMERCIAL VS. CONSUMER ACCOUNTS	<ul style="list-style-type: none"> • There are no specific rules regarding advertising commercial deposit products • Commercial accounts are not subject to Regulation DD • Section 5 of the FTC Act, UDAP, does apply to both consumer and commercial products; best practice to follow TILA advertising rules to mitigate UDAP risk to extent practical
CONSULT TAX ADVISOR	<ul style="list-style-type: none"> • If reference to any tax savings or benefit, a statement to Consult your tax advisor should be included • Certain Regulation Z ads require it as noted in triggered terms
FOOTERS/FONTS	<ul style="list-style-type: none"> • Must be clearly legible • All should start on a new line to meet UDAP standard of prominence (should not have to dig for the information)
UDAP/UDAAP	<ul style="list-style-type: none"> • Always consider UDAP/UDAAP for advertisements • If the ad could be misleading or confusing, raise concern for potential UDAP/UDAAP • UDAP applies to both consumer and commercial; UDAAP applies only to consumer
CAN SPAM	If the advertisement is to be sent via email, must comply also with CAN SPAM requirements
SAFE ACT / NMLS ID#	<ul style="list-style-type: none"> • Although not expressly required for advertising, if the advertisement could be the first initial communication with a consumer, the MLO's NMLS ID# is required. • Industry best practice to include NMLS ID# on MLO specific advertisements; fast becoming best practice to also include institution's NMLS ID#
TRADEMARK/©	<i>TriComply does not advise on trademark or copyright law; institution should consult legal counsel</i>



FEDERAL TRADE COMMISSION ACT, SECTION 5 UNFAIR OR DECEPTIVE ACTS OR PRACTICES AND DODD FRANK

- Legal standards for unfairness and deception are independent of each other; depending on facts, a practice may be unfair, deceptive, or both
- Unfair or deceptive acts or practices that violate the FTC Act may also violate other federal or state laws, including the Truth-in-Lending and Truth-in-Savings Acts, the Equal Credit Opportunity and Fair Housing Acts, and the Fair Debt Collection Practices Act
- Certain practices may comply fully with consumer protection or other laws and yet still violate the FTC Act

UNFAIR ACTS OR PRACTICES

An act or practice is unfair where it:

- (1) Causes or is likely to cause substantial injury to consumers,
 - Substantial injury usually involves monetary harm
 - Small amount of harm to a large number of people substantial injury
 - Injury need not be actual, significant risk of concrete harm sufficient
 - (2) Cannot be reasonably avoided by consumers, and
 - Consumers cannot reasonably avoid injury if the act or practice interferes with their ability to effectively make decisions or to take action to avoid an injury
 - May include omission of information, coercion or undue influence
 - (3) The injury is not outweighed by countervailing benefit to consumers or to competition
 - The net effect must be injurious
 - Not outweighed by any offsetting benefits to consumers or competition
 - Offsetting benefits may include lower prices or a wider availability of products and services
 - Costs that would be incurred for remedies or measures to prevent the injury are also taken into account in determination, including costs to the institution in taking preventive measures and costs to society as a whole of any increased burden and similar matters
- Public policy may also be considered as a factor, but not sole decisioning, in the analysis of whether a particular act or practice is unfair

DECEPTIVE ACTS OR PRACTICES

A representation, omission, or practice is deceptive where it:

- (1) The representation, omission, or practice must mislead or be likely to mislead the consumer,
 - Representation may be express or implied and may be written or oral
 - Omission deceptive if disclosure of the omitted information necessary to prevent a consumer from being misled
 - Omission deceptive if disclosure of the omitted information necessary to prevent a consumer from being misled
- (2) Consumer's interpretation of the representation, omission, or practice must be reasonable under the circumstances, and
 - Representations targeted to a specific audience like the elderly or the financially unsophisticated, measured by understanding of reasonable member of that group
 - If representation conveys two or more meanings and one meaning is misleading, representation deceptive
 - Even if the consumer's interpretation is not shared by a majority of the consumers in the relevant class, so long as a significant minority of such consumers is misled, it is deceptive
 - Entire advertisement, transaction, or course of dealing is reviewed to determine how a reasonable consumer would respond
- (3) The misleading representation, omission, or practice must be material
 - Material if likely to affect a consumer's choice of the product or decision regarding the product or service
 - Information about costs, benefits, or restrictions on the use or availability of a product or service is presumed material
 - Express claims with respect to a financial product or service are presumed to be material; similarly, materiality of an implied claim will be presumed when it is demonstrated that the institution intended that the consumer draw certain conclusions based upon the claim
 - Knowingly providing false claims is presumed material; omissions presumed material if knew or should have known consumer needed omitted information to evaluate product or service

ABUSIVE ACTS OR PRACTICES

An act or practice is abusive where it:

- Materially interferes with the consumer's ability to understand a term or condition of a consumer financial product or service; or
- Takes unreasonable advantage of a consumer's lack of understanding of the material risks, costs, or conditions of the product or service; or
- Takes unreasonable advantage of a consumer's inability to protect his or her own interests in selecting or using a consumer financial product or service; or
- Takes unreasonable advantage of the consumer when the consumer reasonably relies on a covered person to act in the consumer's interests

REGULATION **12 CFR 1022.54(c) PRE-SCREENED OFFERS OF CREDIT AND/OR INSURANCE**

Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), shall, with each written solicitation made to the consumer about the transaction, provide the consumer with a short form notice and a long form notice, which shall be in the same language as the offer of credit or insurance

- If only one page, both short and long form must appear on same page

SHORT FORM OPT OUT NOTICE	<ul style="list-style-type: none"> • Must appear on the front side of the first page of the <i>document designed to be seen first by the consumer</i> • For any electronic solicitations, the Short Notice must be included on the same page and in close proximity to the principal marketing text • Must state that the consumer has the right to opt-out of receiving prescreened solicitations and must provide the toll-free number the consumer can call to exercise that right • Must direct the consumer to the long notice and state the heading for the long notice • May not contain any other information • Must be in a type size that is larger than the type size of the principal text on the same page, but not smaller than 12-point type • For electronic notices, take “reasonable steps” to ensure that the Short Notice is in a type size that is larger than the principal text • Must be located on the page and in a format so that the statement is distinct from other text, such as inside a border • Must be in a type style that is distinct from the principal type style, such as bolded, italicized, underlined and/or in a different color
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Example provided in the Regulation

EXAMPLE SHORT FORM	<p>You can choose to stop receiving “prescreened” offers of credit from this or other companies by calling toll-free [toll free number]. See <u>PRESCREEN & OPT-OUT NOTICE</u> on other side [or other location] for more information about prescreened offers.</p>
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LONG FORM OPT OUT NOTICE	<ul style="list-style-type: none"> • Must be clear and conspicuous and begin with the heading: “PRESCREEN & OPT-OUT NOTICE” • Type size may not be smaller than the type size of the principal text. In electronic solicitations, the type size may not be smaller than 8-point type • Must be in a type style that is distinct from the principal type style, such as bolded, italicized, underlined and/or in a different color • Must be set apart from other text on the same page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page • Content must consist of the disclosure information currently required under FCRA (summarized here) <ul style="list-style-type: none"> ◦ A clear and conspicuous statement that: <ul style="list-style-type: none"> ◦ information contained in the consumer’s consumer report was used in connection with the transaction; ◦ the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; ◦ if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral; ◦ the consumer has a right to opt out of pre-screened offers of credit, and ◦ the consumer may exercise the opt out right referred to in subparagraph (D) by Notifying [give toll free opt out number 1-800-567-8688] and [website www.optoutprescreen.com] and the addresses of each credit reporting agency • May contain additional information, such as information about the benefits of prescreening, so long as it “does not interfere with, detract from, contradict, or undermine the purpose of the prescreen notices” • Long Notice may be placed in any location within the solicitation so long as that location is referenced in the Short Notice
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Example provided in the Regulation

EXAMPLE LONG FORM	<p>PRESCREEN & OPT-OUT NOTICE: This “prescreened” offer of [credit or insurance] is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria [including providing acceptable property as collateral]. If you do not want to receive prescreened offers of [credit or insurance] from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll free, [toll-free number]; or write: [consumer reporting agency name and mailing address].</p>
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REGULATION	15 USC 7701 CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003 (CAN SPAM)
GENERAL	<ul style="list-style-type: none"> • The CAN-SPAM Act sets forth the rules for commercial email, establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations • If the message contains only commercial content, its primary purpose is commercial and it must comply with the requirements of CAM-SPAM • If it contains only transactional or relationship content, its primary purpose is transactional or relationship, and may not contain false or misleading routing information but is otherwise exempt from most provisions of the CAN-SPAM Act • Despite its name, CAN-SPAM does not apply just to bulk email; it covers all commercial messages <ul style="list-style-type: none"> ○ No exception for business-to-business email or email to former customers announcing a new product line • Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to \$16,000
DEFINITIONS	<p>Commercial messages: Any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service, including email that promotes content on commercial websites (e.g., link to or state website address)</p> <p>Commercial content: Advertises or promotes a commercial product or service, including content on a website operated for a commercial purpose</p> <p>Transactional or relationship content: Facilitates an already agreed-upon transaction or updates a customer about an ongoing transaction</p> <p>Other content: Neither commercial nor transactional or relationship</p>
MAIN REQUIREMENTS	<ul style="list-style-type: none"> • Don't use false or misleading header information. Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message. • Don't use deceptive subject lines. The subject line must accurately reflect the content of the message. • Identify the message as an ad. The law gives you a lot of leeway in how to do this, but you must disclose clearly and conspicuously that your message is an advertisement. • Tell recipients where you're located. Your message must include your valid physical postal address. This can be your current street address, a post office box you've registered with the U.S. Postal Service, or a private mailbox you've registered with a commercial mail receiving agency established under Postal Service regulations. • Tell recipients how to opt out of receiving future email from you. Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting email from you in the future. Craft the notice in a way that's easy for an ordinary person to recognize, read, and understand. Creative use of type size, color, and location can improve clarity. Give a return email address or another easy Internet-based way to allow people to communicate their choice to you. You may create a menu to allow a recipient to opt out of certain types of messages, but you must include the option to stop all commercial messages from you. Make sure your spam filter doesn't block these opt-out requests. • Honor opt-out requests promptly. Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. You must honor a recipient's opt-out request within 10 business days. You can't charge a fee, require the recipient to give you any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for honoring an opt-out request. Once people have told you they don't want to receive more messages from you, you can't sell or transfer their email addresses, even in the form of a mailing list. The only exception is that you may transfer the addresses to a company you've hired to help you comply with the CAN-SPAM Act. • Monitor what others are doing on your behalf. The law makes clear that even if you hire another company to handle your email marketing, you can't contract away your legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that actually sends the message may be held legally responsible.



REGULATION	TRUTH-IN-SAVINGS; REGULATION DD (12 CFR 1030.8, 1030.11)
DEFINITIONS	<p>Advertisement: A commercial message, appearing in any medium, that promotes directly or indirectly the availability or terms of, or a deposit in, a new or existing account</p> <p>Bonus: A premium, gift, award, or other consideration worth more than \$10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer during a year in exchange for opening, maintaining, renewing, or increasing an account balance</p> <ul style="list-style-type: none"> Does not include interest, other consideration worth \$10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses
	<p>Annual Percentage Yield (APY): A percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period.</p> <ul style="list-style-type: none"> For promotional period rates, the APY must be based on an <i>annualized</i> rate. For example, checking account with first 6 months @ 2.0%; APY is calculated with 6 months interest @ 2.0% plus 6 months at current interest rate to result in a blended APY; for new product, may assume interest rate for one year For Method A tiered rate products, the APY will correspond with the rate advertised for that tier For Method B tiered rate products, <i>generally</i>, the first and last tiers will have a single APY, but the in between tiers will have a range of APYs
ALL DEPOSIT ADS	<p>An advertisement shall not be misleading or inaccurate or misrepresent a depository institution's deposit contract</p> <ul style="list-style-type: none"> FDIC Membership <ul style="list-style-type: none"> All advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the institution <ul style="list-style-type: none"> Member of the Federal Deposit Insurance Corporation; Member of FDIC; Member FDIC or the logo under 12 CFR 328.3 Must be clearly legible
	<p>Interest Rate, APY, or Bonus</p>
TRIGGERED TERMS	<p><i>The following APY disclosures are required (as applicable):</i></p> <ul style="list-style-type: none"> The annual percentage yield, using that term spelled out at least once in the ad; Any interest rates stated must appear in conjunction with the applicable APY, including for each tier; <ul style="list-style-type: none"> For a tiered-rate account that states an APY, must also state the APY for each tier, along with corresponding minimum balance requirements; If the interest rate is a variable rate, must state that the rate may change <u>after the account is opened (or after promotional period)</u> (<i>rate subject to change is not sufficient as that typically refers to the offer itself</i>); The effective as of or through date of the APY; The minimum balance required to obtain the advertised APY; <ul style="list-style-type: none"> For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield; The minimum deposit required to open the account, if it is greater than the minimum balance necessary to obtain the advertised APY; and A statement that fees could reduce the earnings on the account. <p>Time Accounts: In addition to the APY disclosures, ads for time accounts must also include:</p> <ul style="list-style-type: none"> The term of the account; A statement that a penalty will or may be imposed for early withdrawal; and For non-compounding time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, that require interest payouts at least annually, and that disclose an APY, a statement that interest cannot remain on deposit and that payout of interest is mandatory.
	<p>IF THERE IS A BONUS, MUST INCLUDE</p>
	<ul style="list-style-type: none"> The annual percentage yield, using that term spelled out at least once in the ad; All of the triggered terms for APY, if it is an interest bearing account; The time requirement to obtain the bonus; The minimum balance required to obtain the bonus; The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and When the bonus will be provided. <p>Applies to interest and non-interest bearing: If the bonus applies to more than one deposit product type, a representative example may be provided. If bonus applies to both interest bearing and non-interest bearing, the example should reflect interest bearing to ensure APY disclosures are provided.</p> <p>Aggregation: In determining if an item valued at \$10 or less is a bonus, you must aggregate per account per calendar year items that may be given to consumers per promotion (not all promotions added together). Aggregate per account only the market value of items that may be given for <u>a</u> specific promotion; also, aggregate total possible amount.</p>



EXEMPTIONS: RADIO, TV, BILLBOARD ADS	The following are the APY disclosures required (as applicable) for broadcast or electronic media, such as television or radio; outdoor media, such as billboards; or telephone response machines:
	<ul style="list-style-type: none"> The annual percentage yield, using that term spelled out/stated at least once in the ad; Any interest rates stated must appear in conjunction with the applicable APY, including for each tier; The minimum balance required to obtain the advertised APY; For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield; For <i>time accounts</i>, the term of the account.
EXEMPTIONS: INDOOR ADS	The following disclosures are required for in-bank ads:
	<ul style="list-style-type: none"> The annual percentage yield, using that term spelled out or may use "APY" Any interest rates stated must appear in conjunction with the applicable APY, including for each tier; and A statement advising consumers to contact an employee for further information about applicable fees and terms. For time accounts, the term of the account must also be stated.
USING "FREE"	Shall not refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account <i>under any circumstance</i>
	<ul style="list-style-type: none"> Any time advertising free online, bill pay, mobile banking, free alert services, and similar services where institution may not charge a fee but a third party service provider may, industry best practice is to state that 3rd party message, data and/or internet service provider rates may apply, as applicable <ul style="list-style-type: none"> Avoids misleading customer that there are no fees involved in using the service when such fees are reasonably expected Consistent with FTC guidelines and Regulation DD requirements on advertising a service on 'free' accounts Where Section 5 of the FTC Act (UDAP) applies to commercial customers, best practice is to include it for business accounts
	<p>Fees affecting "free" accounts. For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:</p> <ul style="list-style-type: none"> Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions; Transaction and service fees that consumers reasonably expect to be imposed on a regular basis; A flat fee, such as a monthly service fee; or Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges (for example, \$.25 for each withdrawal, whether by check or in person)
	<p>Fees that are <u>not</u> maintenance or activity fees include:</p> <ul style="list-style-type: none"> Fees for services offered to account and non-account holders alike, e.g., travelers checks and wire fees (even if different amounts are charged to account and non-account holders); Incidental fees, such as fees associated with state escheat laws, garnishment or attorney's fees, and fees for photocopying; Check printing fees; Balance inquiry fees; Stop-payment fees and fees associated with checks returned unpaid; Fees assessed against a dormant account; or Fees for ATM or electronic transfer services (such as preauthorized transfers or home banking services) not required to obtain an account. <i>But see transfer funds fees that are maintenance or activity fee</i>
	<p>Similar terms. May not use the term "fees waived" if a maintenance or activity fee may be imposed because it is similar to the terms "free" or "no cost"</p>
	<p>Specific account services. May advertise a specific account service or feature as free if no fee is imposed for that service or feature. For example, institutions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead consumers by implying that the account is free and that no other fee (a monthly service fee, for example) may be charged by the institution. <i>See 3rd party rates disclosure above.</i></p>
	<p>Free for limited time. If an account (or a specific account service) is free only for a limited period of time, may be advertised as free if the time period is also stated</p>
	<p>Conditions not related to deposit accounts. May advertise accounts as "free" for consumers meeting conditions not related to deposit accounts, such as the consumer's age. For example, may advertise a NOW account as "free for persons over 65 years old," even though a maintenance or activity fee is assessed on accounts held by consumers 65 or younger.</p>
	<p>Examiner Feedback. If using free, FDIC wants to see *Overdraft/Returned Item fees may apply if such fees may apply</p>



ADVERTISING DEPOSITS, OVERDRAFT AND OTHER DEPOSIT CONSIDERATIONS

Quick Compliance Guide

"COMPLETELY" OR "TOTALLY" FREE	<ul style="list-style-type: none"> Regulation DD permits certain fees charged on a consumer deposit account and still refer to the account as 'free.' However, when add 'totally' or 'completely' to 'free', the meaning changes significantly. From a UDAP perspective, saying totally or completely free, means there are never any kind of fees associated with the account, whether it is for check printing, statement copies, returned items, overdraft, etc. There is no regulatory definition of 'totally free', but definition of totally or completely means 'absolute.' If add such adverbs to free, no fees should be charged under any circumstance.
USING "PROFIT"	The word "profit" shall not be used in referring to interest paid on an account
EXCESS TRANSACTIONS	Indicating that there is a fee for excess transactions is misleading if the accounts are subject to closure and/or transaction capability suspension, e.g., Savings and Money Market accounts
OVERDRAFT	Any advertisement promoting the payment of overdrafts must disclose in a clear and conspicuous manner:
	<ul style="list-style-type: none"> The fee or fees for the payment of each overdraft; The categories of transactions for which a fee for paying an overdraft may be imposed; The time period by which the consumer must repay or cover any overdraft; and The circumstances under which the institution will not pay an overdraft
	Promoting overdrafts: For the most part, mentioning overdrafts is promoting
	<ul style="list-style-type: none"> Unless meets one of the exceptions or is stating that an OD fee may apply for 'free' accounts, consider it promoting
	<p>Exceptions: Generally, if the overdraft service is subject to Regulation Z disclosures (e.g., line of credit) or is a transfer from another deposit account, OD disclosures are not triggered</p> <ul style="list-style-type: none"> Refer to 12 CFR 1030.11(b)(2) for additional exceptions

OTHER CONSIDERATIONS

Additional considerations for deposit advertisements:	
COMMERCIAL VS. CONSUMER ACCOUNTS	<ul style="list-style-type: none"> There are no specific rules regarding advertising commercial deposit products; commercial accounts are not subject to TISA Section 5 of the FTC Act, UDAP, does apply to both consumer and commercial products Best practice to follow TISA advertising rules to mitigate UDAP risk
EHL	The Equal Housing Logo (EHL) is not required in a deposit only ad but may be included provided it is clearly legible, including the words under the house
FDIC INSURED STATEMENTS	If statement that the account is insured by the FDIC, it is misleading without reference to the limitations – e.g., FDIC insurance is limited to the standard maximum deposit insurance amount of up to \$250,000 per depositor category
CONSULT TAX ADVISOR	If reference to any tax savings or benefit, a statement to consult a tax advisor should be included
PRIVACY WAIVERS	<ul style="list-style-type: none"> When actual customers are being used in advertising, in addition to endorsement rules, if the advertisement with an actual customer involves giving nonpublic personal information to the public, for example, that the consumer is a customer of the bank, the consumer must waive their privacy rights and consent to giving out this non-public information Also, applies to refer a friend programs where referrer gets a fee; need consent from referred customer
FOOTERS/FONTS	<ul style="list-style-type: none"> Must be clearly legible All should start on a new line to meet UDAP standard of prominence (should not have to dig for the information)
CURRENCY	Use of pictures of currency is subject to specific rules set forth in 31 CFR 411.1
UDAP/UDAAP	<ul style="list-style-type: none"> Always consider UDAP/UDAAP for advertisements If the ad could be misleading or confusing, raise concern for potential UDAP/UDAAP UDAP applies to both consumer and commercial; UDAAP applies only to consumer
CAN SPAM	If the advertisement is to be sent via email, must comply also with CAN SPAM requirements
TRADEMARK/©	TriComply does not advise on trademark or copyright law; institution should consult legal counsel
SAFE DEPOSIT BOXES	<p>Safe Deposit boxes are not FDICinsured. As such, they also must be separate and distinct and include the appropriate NDIPs:</p> <ul style="list-style-type: none"> NOT A DEPOSIT NOT FDIC-INSURED NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY NOT GUARANTEED BY THE BANK OR AN AFFILIATE OF THE BANK

NON-DEPOSIT INVESTMENT PRODUCTS & INSURANCE (NDIPs)

REGULATION	<ul style="list-style-type: none"> Interagency Statement on the Sales on Non-Deposit Investment Products 12 CFR 343 Sales of Insurance
NON-DEPOSIT INVESTMENT PRODUCTS & INSURANCE (NDIPs)	<ul style="list-style-type: none"> Any advertisement for non-deposit investment products, e.g., Insurance, mutual funds, securities, annuities, etc., must include the NDIPs Generic ads for insurance trigger NDIPs; generic ads for the term wealth management do not.
	<p>Non deposit investment products and services must be separate and distinct from insured deposit products.</p> <ul style="list-style-type: none"> Must ensure that the NDIPs are applicable to them and not Member FDIC Separation can be done by shading, boxing, etc. NDIP disclosures must be <i>prominent/conspicuous</i>
	Required disclosures:
	For insurance and annuities
	<ul style="list-style-type: none"> Not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank; Not insured by FDIC or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; and May lose value (if product involves an investment risk)
	For other non-deposit investment products (may be used for both other NDIPs and insurance)
	<ul style="list-style-type: none"> NOT A DEPOSIT NOT FDIC-INSURED NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY NOT GUARANTEED BY THE BANK OR AN AFFILIATE OF THE BANK MAY GO DOWN IN VALUE (if applicable)
<p>Advertisements and other promotional and sales material, written or otherwise, about non-deposit investment products sold to retail customers should conspicuously include at least the minimum disclosures discussed above and must not suggest or convey any inaccurate or misleading impression about the nature of the product or its lack of FDIC insurance.</p> <p>Any third party advertising or promotional material should clearly identify the company selling the non-deposit investment product and should not suggest that the depository institution is the seller</p> <p>Because of the possibility of customer confusion, a non-deposit investment product must not have a name that is identical to the name of the depository institution. Recommending or selling a non-deposit investment product with a name similar to that of the depository institution should only occur pursuant to a sales program designed to minimize the risk of customer confusion. The institution should take appropriate steps to assure that the issuer of the product has complied with any applicable requirements established by the Securities and Exchange Commission regarding the use of similar names.</p>	
NDIP EXCEPTIONS	<p>NDIP disclosures are <i>not</i> required for:</p> <ul style="list-style-type: none"> Radio broadcasts of 30 seconds or less; Electronic signs; or Signs, such as banners and posters, when used only as location indicators. <ul style="list-style-type: none"> "Electronic signs" may include billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. Electronic signs would not include such media as television, on line services, or ATM's.
ALTERNATIVES FOR VISUAL MEDIA	<ul style="list-style-type: none"> A shorter, logo format disclosures may be used in visual media, such as television broadcasts, ATM screens, billboards, signs, posters, and in written advertisements and promotional materials, such as brochures <ul style="list-style-type: none"> Logo format disclosures would be boxed, set in bold face type, and displayed in a conspicuous manner

