



Aldrich & Bonnefin, PLC
Counsel to Bankers' Compliance Group® presents

ADVERTISING DEPOSIT ACCOUNTS

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TRUTH IN SAVINGS (REGULATION DD)



Regulation DD (TISA) Advertising Disclosures

- Covers commercial message in
 - Visual,
 - Oral, or
 - Print media
- That invite, offer or otherwise announce to prospective customers availability of consumer accounts



Regulation DD (TISA) Advertising Disclosures

- Examples include:
 - Telephone solicitations
 - Messages on ATM screens
 - Messages on computer screen in institution's lobby
 - Messages in newspaper, magazine, or promotional flyer or on radio
 - Messages provided along with information about consumer's existing account that promotes another account at institution



Regulation DD (TISA) Advertising Disclosures

- Messages not covered
 - Rate sheets in newspaper, periodical, or trade journal (unless institution controls or pays)
 - In-person discussions with consumers about terms of specific account
 - Information given to consumers about existing accounts, such as current rates recorded on a voice-response machine or notices for automatically renewable time accounts sent before renewal; and



Regulation DD (TISA) Advertising Disclosures

- Messages not covered (cont.)
 - Information about particular transaction in existing account
 - Disclosures required by federal or other applicable law
 - Deposit account agreement



Misleading or Inaccurate Advertisement

- Regulation DD prohibits institution from distributing any advertisement that is misleading or inaccurate or that misrepresents institution's deposit contract



Misleading or Inaccurate Advertisement

- Use of the term “profit” prohibited
- Advertising “free” accounts
 - Cannot refer to or describe an account as “free” or “no cost” if any **maintenance or activity fee** may be imposed on account



Misleading or Inaccurate “Free” Advertisement

- Examples of maintenance & activity fees:
 - Imposed when minimum balance requirement not met, or when specified number of transactions exceeded
 - Transaction and service fees reasonably expected to be imposed on regular basis
 - Flat fee (e.g., monthly service fee)
 - Fees imposed to deposit, withdraw or transfers funds, including per-check or per-transaction charges



Misleading or Inaccurate “Free” Advertisement

- Examples of fees that do not qualify as maintenance or activity fees:
 - Fees not required to be disclosed under Section 1030.4(b)(4) (at acct opening)
 - Check printing fees
 - Balance inquiry fees
 - Stop payment fees & fees associated with checks returned unpaid
 - Fees assessed against dormant account; and
 - Fees for ATM or electronic transfer services not required to obtain account



Misleading or Inaccurate Advertisement

- Capital One “high interest” case
 - In January 2025, CFPB filed suit alleging the Bank’s interest payment practices on certain of its savings account products constituted TISA, Regulation DD, and UDAAP violations
 - Deceptively marketed the original 360 Savings account product as a top-tier interest-bearing account with the “top” and “best” and “highest” interest rates
 - By opening a 360 Savings account customers’ savings would “earn much more” in interest “than what it would in an average savings or money market account”
 - CFPB sought injunctive relief as well as customer restitution and civil money penalties



Misleading or Inaccurate Advertisement

- M&T Bank “free checking” case
 - In October 2019, CFPB ordered bank to pay \$2.9 million to consumers who were charged fees despite ads that promised “no strings attached” free checking
 - Advertisements failed to disclose fact that customer had to maintain minimum level of account activity, or (after 90 days) account would be automatically converted to standard checking account with fees



Advertising Rates

- If advertisement states rate return
 - It must state rate as an “annual percentage yield” using that term
- May include “interest rate” using that term
 - Cannot include any other rate
 - May be stated only in conjunction with but not more conspicuously than APY to which it relates



Advertising Rates

- Abbreviation of APY
 - Institutions are permitted to use abbreviation “APY” in advertisement provided term “annual percentage yield” is stated at least once in advertisement
 - (Distinguish account opening disclosures!)



Advertising Rates

- Special rules for tiered-rate accounts
 - If institution states an annual percentage yield in an advertisement for tiered-rate account, must state all of APYs for each tier, including those required to be shown as range, as well as corresponding minimum balance requirements



APY is Triggering Term Requiring Additional Disclosures

- If annual percentage yield is stated in an advertisement, must include certain information to extent applicable in a clear and conspicuous manner



APY is Triggering Term Requiring Additional Disclosures

- Statement that the rate may vary
- Period APY is offered
- Minimum balance required to obtain advertised APY
- Minimum opening deposit if greater than minimum balance necessary to obtain the advertised APY



APY is Triggering Term Requiring Additional Disclosures

- Effect of fees
 - Statement that fees could reduce the earnings on account
- Features of time accounts
 - Time requirement
 - Early withdrawal penalty
 - Must contain statement that penalty will or may be imposed for early withdrawal of time accounts



APY is Triggering Term Requiring Additional Disclosures

- Required interest payouts
 - Noncompounding time accounts with stated maturity greater than one year that do not compound interest on an annual or more frequent basis
 - Require interest payouts at least annually and that disclose an APY as equal to the interest rate
 - Must contain statement that interest cannot remain on deposit and that payout of interest is mandatory



Bonus as **Triggering Term** Requiring Additional Disclosures

- Definition of “bonus”
 - Means “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”



Bonus as Triggering Term Requiring Additional Disclosures

- “Bonus” exclusions
 - Term “bonus” does not include interest, other consideration worth \$10 or less given during year, waiver or reduction of fee, or absorption of expenses



Bonus as Triggering Term Requiring Additional Disclosures

- *De minimis* items excluded
 - Institutions may rely on valuation standard used by IRS to determine if value of the item is *de minimis*
 - Examples of items of *de minimis* value
 - Coffee mugs,
 - T-shirts, or
 - Other merchandise with a market value of \$10 or less



Bonus as Triggering Term Requiring Additional Disclosures

- Bonus calculation
 - In determining whether item valued at \$10 or less is bonus, must aggregate per account, per calendar year items that may be given consumers
 - Aggregate per account only market value of items that may be given for specific promotion
 - Comment 2(f)-3 to Section 1030.2



Bonus as Triggering Term Requiring Additional Disclosures

- Example:
 - In January, institution offers to give consumers item valued at \$7 for EACH calendar quarter during year that average account balance in NOW account exceeds \$10,000
 - Bonus rules are triggered, since consumers are eligible under promotion to receive up to \$28 during year
 - \$7 times 4 equals \$28



Bonus as Triggering Term Requiring Additional Disclosures

- However, not a “bonus” if reward valued at \$7 is offered to consumers opening NOW account during month of January
- Even though in November institution introduces a new promotion that includes, for example, an offer to existing NOW account holders for reward valued at \$8 for maintaining average balances of \$5,000



Bonus as Triggering Term Requiring Additional Disclosures

- Required disclosures if bonus is stated in an advertisement:
 - “Annual percentage yield” using that term;
 - Time requirement to obtain bonus;
 - Minimum balance required to obtain bonus;
 - Minimum balance required to open account, if it is greater than minimum balance necessary to obtain bonus; and
 - When bonus will be paid or provided to consumer



“Limited” Exemption for Certain Advertisements

- Limited exemptions for certain forms of advertisements



“Limited” Exemption for Certain Advertisements

- Exempted ads do not need to disclose:
 - Statement that rate may vary
 - Period APY is offered
 - Minimum opening deposit
 - Effect of fees
 - Early withdrawal penalty
 - Minimum balance to open account, or
 - When bonus will be paid



“Limited” Exemption for Certain Advertisements

- Broadcast or electronic media, such as television or radio (Caution: this exemption does not apply to ads posted on Internet or sent by email)
- Outdoor media, such as bill boards
- Telephone response machines



“Limited” Exemption for Certain Advertisements

- Exempt ads must still disclose:
 - Minimum balance required to obtain advertised APY (for tiered-rate accounts, minimum balance required for each tier)
 - Term of a time account
 - For time accounts, statement that interest cannot remain on deposit and that payout of interest is mandatory, if:
 - Noncompounding with stated maturity greater than one year,
 - Requires interest payouts at least annually, and
 - Discloses APY as equal to interest rate; AND



“Limited” Exemption for Certain Advertisements

- Exempt ads must still disclose (cont.):
 - Annual percentage yield if bonus is advertised
 - Time requirement to obtain advertised bonus; and
 - Minimum balance requirement required to obtain bonus



“Limited” Exemption for Certain Advertisements

- Other restrictions continue to apply:
 - Rate information must be disclosed as annual percentage yield
 - Ad remains subject to rules against misleading or inaccurate advertisements
 - Restriction against description of accounts as free if maintenance or activity fee is imposed



Indoor Signs

- Indoor signs
 - If rate is displayed, need only include APY and statement advising consumers to ask employee about fees and terms applicable to advertised account
 - Not necessary for signs to provide other Regulation DD advertising disclosures



Indoor Signs

- Indoor signs include:
 - Computer screens
 - Banners
 - Preprinted posters
 - Chalk/Peg boards
- An ad that can be retained by a consumer is not an “indoor sign”



Indoor Signs

- Other restrictions continue to apply
 - Indoor signs remain subject to rules against misleading or inaccurate advertisements and
 - Against description of accounts as “free” if maintenance or activity fee is imposed



Indoor Signs

- Advertising rates on indoor signs
 - Must state rate of return (if rate stated) as annual percentage yield using term or the term “APY”
 - Cannot state any other rate, except interest rate may be stated in conjunction with related APY
 - If a rate is stated, sign must also contain statement advising consumers to contact employees for further information about applicable fees and terms



Electronic Advertisement

- Exemption exclusions for ads made through broadcasts or electronic media do NOT extend to advertisements made by electronic communication
 - Such as advertisements posted on an institution's websites or sent by email



Electronic Advertisement

- If electronic ad (e.g., Internet or email) displays triggering term, such as bonus or APY, must clearly refer consumer to location where additional required information begins
- Example: Advertisement may be accompanied by link that takes consumer directly to additional information



Electronic Advertisement

- Rule that simple interest rate may be stated only if it provided in conjunction with and not more conspicuously than related APY applies to electronic advertisements as well



Electronic Advertisement

- E-Sign Act compliance NOT required for:
 - General advertising disclosures under Reg DD
 - Overdraft advertising disclosures under Reg DD



Advertising Disclosures for Overdraft Services

- Mandatory disclosures for overdraft advertisements:
 - OD fees
 - Types of transactions that trigger OD fee
 - Time period of repayment
 - When institution will not pay OD; and
 - Certain communications exempt from the above OD disclosures (e.g., Reg Z line of credit)



TISA Advertising Checklists

- Regulation DD advertisement compliance checklists:
- Exhibit A



MEMBER FDIC ADVERTISING STATEMENT



Official Advertising Statement Requirements

- Continues to require FDIC advertising statement when:
 - Promote deposit products & services; or
 - Promote non-specific banking products and services offered by institution
 - Example: “Anytown Bank, offering a full range of banking services”



Official Advertising Statement

- Optional short title & symbol
 - Current regulation allows IDIs to use short title “*Member of FDIC*,” “*Member FDIC*,” or reproduction of symbol of FDIC
 - In addition to these options, final rule allows use of “*FDIC-Insured*”



Exclusions

- Types of advertisements that do NOT require use of official advertising :
 - Call Reports
 - Supplies such as stationery, envelopes, deposit slips, checks, drafts, signature cards, deposit passbooks, certificates of deposit, etc.
 - Signs or plates in IDI offices or attached to building or buildings in which such offices are located
 - Listings in directories
 - Advertisements without name of IDI
 - (Cont.)



Exclusions

- Directory, provided name of IDI is listed on any page in directory with symbol or other descriptive matter indicating it is FDIC member
- Joint or group advertisements of depository institution services where names of IDIs and noninsured institutions are listed and form part of such advertisements
- Advertisements by radio or television, other than display advertisements, which do not exceed 30 seconds in time
- (Cont.)



Exclusions

- Ads when impractical to include official advertising statement (e.g, calendars, matchbooks, pens, pencils, and key chains)
- Ads that already say FDIC insured



Restrictions on Using Official Advertising Statement When Advertising Non-Deposit Products

- Non-deposit product advertisements
 - Cannot imply NDIPs FDIC insured
 - Mixed ads:
 - Segregate official advertising statement or any similar statement from that portion of advertisement that relates to NDIPs; and
 - Clearly and disclose that non-deposit products are not insured by FDIC, are not deposits, and may lose value



Official Advertising Statement in Non-English Language

- Non-English equivalent of official advertising statement may be used in any advertisement, provided that translation has had FDIC's prior written approval



Misrepresenting Insured Status

- Statement made by person other than IDI that:
 - Suggests product FDIC insured but fails to clearly and conspicuously identify IDI(s) representing party has relationship with for placing deposits and into which consumer's deposits may be placed; or
 - Fails to clearly and conspicuously disclose that the person is not FDIC insured and that FDIC insurance only covers failure of FDIC-insured depository institution



IRS REPORTING



Threshold Question

- Giveaways may be reportable as deposit interest income as miscellaneous income on Form 1099-MISC
- IRS provides that “amounts, whether or not designated as interest” will be deemed interest if paid or credited “in respect of deposits”



1099 INT

- IRS Form 1099-INT has \$10 reporting threshold for income paid on deposit accounts (report \$10 or more)
- Example:
 - Institution that provides \$100 cash bonus (or Amazon gift card) when new one year CD is opened



Exception for “*de minimis*” Premium

- Institution that provides “*de minimis*” premium will not have to treat it as interest for information reporting purposes



Exception for “*de minimis*” Premium

- Calculation
 - *De minimis* premium is non-cash inducement provided by institution to depositor to open or add to accounts that do not have value in excess of:
 - \$10 for deposit of less than \$5,000 or
 - \$20 for deposit of \$5,000 or more



Exception for “*de minimis*” Premium

- Cost to the institution
 - Cost of premium is used in determining whether dollar limitations are met



Exception for “*de minimis*” Premium

- Exemption based on customer type
 - Certain depositors are exempt from 1099-INT reporting, such as corporations and non-resident aliens



1099-MISC

- Alternatively, a promotion may trigger 1099-MISC reporting (reporting threshold is \$600 or more)



1099-MISC

- “Refer-a-friend” example:
 - Institution provides reward to third party for referring friend to open new account
 - Reward is not provided to new depositor
 - So not 1099-INT reportable as paid to depositor
 - Reward may be subject to 1099-MISC reporting as paid to referring third party



QUESTION & ANSWER SESSION #1



UNFAIR, DECEPTIVE OR ABUSIVE ACTS OR PRACTICES



UDAP/UDAAP

- Under federal law, as well as California to engage in practice that is unfair, deceptive, or an abusive act or practice



FDIC's Compliance Examination Questions

- FDIC's Financial Institution Letter FIL-26-2004 "*Unfair or Deceptive Acts of Practices by State-Chartered Bank*"
- Sets forth questions examiners are expected to resolve in reviewing a bank's advertising
- Refer to detail in outline, beginning at page 18



SUBSTANTIATION OF ADVERTISING CLAIMS



SUBSTANTIATION OF ADVERTISING CLAIMS



Substantiation of Advertising Claims

- Proof of Facts
 - Certain state and local government agencies are authorized to require an advertiser to provide evidence of supporting facts
 - Advertisers who make purportedly factual or objectively verifiable assertions must be prepared to submit supporting evidence



Substantiation of Advertising Claims

- Requesting agencies
 - Request for substantiation can be made by
 - California attorney general
 - Any district attorney
 - Any city attorney, and
 - California Department of Consumer Affairs



Substantiation of Advertising Claims

- Enforcement
 - Agencies can seek immediate termination or modification of advertising claim if claim appears to be false
 - Penalties may also be imposed by court



UDAP/UDAAP ENFORCEMENT ACTION EXAMPLES



Comerica Bank

- December 2024 CFPB files suit alleging Bank of UDAAP and Reg E violations
 - Direct Express prepaid card
 - Intentional long wait times for customer service calls
 - Junk ATM withdrawal fees
 - Junk stop payment related fees
- Oversight and management of third-party vendors



Navy Federal Credit Union

- November 2024 CFPB entered consent order with Navy Federal
 - UDAAPs with its overdraft fee practices
 - Generated nearly \$1 billion in fees
 - Paid an \$80 million restitution order
 - \$15 million civil money penalty



Navy Federal Credit Union

- CFPB alleged Navy Federal's overdraft fee practices were unfair
 - APSNs
 - Misleading peer-to-peer payment processing
- CFPB's action was the first significant enforcement against a credit union for overdraft fee related practices



CERTIFICATE OF DEPOSIT (CD) PROMOTIONS



“Bump Rate” CDs

- The term “bump rate” here refers to a CD product that allows for an interest rate increase during CD term



“Bump Rate” CDs

- FDIC interest rate cap rule for less than well-capitalized institutions
 - Less than well-capitalized institutions are permitted to offer FDIC’s posted “national” rate plus 75 basis points
 - Any rate over this amount will be in violation of FDIC’s rules



“Bump Rate” CDs

- Institution could have a conflict between the FDIC’s rate cap rule and its “bump rate” promise if its capital status drops to less than well capitalized during the term of the CD
 - Did institution reserve right to refuse bump-rate if regulatory restrictions apply?
 - Are there UDAAP risks based on promises/representations already made?



“Flexible” or “Liquid” CDs and Mandatory Early Withdrawal Penalties

- The terms “flexible” and “liquid” here refers to a CD that allows deposits and/or withdrawals during the term



“Flexible” or “Liquid” CDs and Mandatory Early Withdrawal Penalties

- Deposits during term (each “deposit” restarts the potential “mandatory” penalty period)
- Regulation D defines time deposit in part as follows:
 - *A deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days’ simple interest on amounts withdrawn within the first six days after deposit*



“Flexible” or “Liquid” CDs and Mandatory Early Withdrawal Penalties

- Partial withdrawals during the term
 - Another event that restarts the clock for potential penalties
 - Regulation D: A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal



“Flexible” or “Liquid” CDs and Mandatory Early Withdrawal Penalties

- If mandatory early withdrawal penalties are not imposed
 - Account ceases to be time deposit
 - Account may become savings deposit if meets requirements for saving deposit
 - Otherwise, it becomes transaction account
 - Account type may impact reserve and reporting requirements

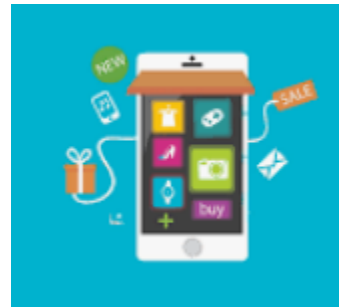


MODE OF ADVERTISING CONSIDERATIONS



Telemarketing, Text Message and Email Marketing Solicitations

- All with high compliance penalties and ever changing ambiguous rules
 - Seek confidential legal counsel before embarking!



Social Media Solicitation

- FFIEC's 2013 "Social Media: Consumer Compliance Risk Management"
- Bottomline: Social media ads must comply with laws and regulations to same extent as with other media outlets



Social Media Solicitation

- Example:
 - Social media post that includes a deposit APY or bonus would be subject to Regulation DD “triggering term” additional disclosures mandate



Social Media Solicitation

- Third-party site terms and conditions
 - Institutions intending to leverage third party platforms (e.g., Facebook/Twitter)
 - Need to be aware of third party's terms and conditions applicable to promotions and advertisements



PRIVACY IMPLICATIONS



Refer-A-Friend Example

- Example:
 - “Refer a friend” promotions that result in disclosing existence of new account to “referring” party
 - Has new deposit customer consented to this information sharing?
 - How has institution documented this consent?



- Federal Gramm-Leach-Bliley Act (GLBA) has an opt-out requirement for certain information sharing under joint marketing arrangements



— California Financial Information Privacy Act (CFIPA)

- Requires that consumers be given initial & annual opt-out notice
- Before institution may share nonpublic personal information with nonaffiliated financial institutions for joint marketing purposes



- CCPA
 - Possible opt-out or consent requirements
 - Sharing individual information with vendors may be deemed “selling” and trigger additional opt-out rights
 - Sharing “sensitive personal information” for marketing purposes may trigger “Right to Limit Use” rights



- Information sharing could also lead to an institution being deemed a consumer reporting agency under Fair Credit Reporting Act



- FTC's Children's Online Privacy Protection Act ("COPPA")
 - Imposes strict obligations on operators of commercial websites and
 - Online services directed to children younger than 13 that
 - Collect
 - Use, or
 - Disclose personal information from children



DOT COM DISCLOSURES



FTC's Dot Com Guidance

- FTC guidance for online and mobile advertisers that explains how to make disclosures clear and conspicuous and avoid deception
- Refer to details in outline, beginning at page 29



QUESTION & ANSWER SESSION #2



CONCLUSION



We're adjourned!

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