



Compliance News...

Truth in Lending Final Rule Amendments to the Home Ownership and Equity Protection Act (HOEPA) . . .

The final rules regarding Regulation Z's HOEPA were released on July 14, 2008. Rest assured Bankers Compliance Consulting is here to help you and your bank understand and digest these new rules.

The ruling is primarily for the protection of the consumer and to aid in responsible lending for all mortgage and home equity loans. The rule prohibits unfair, abusive or deceptive home mortgage lending practices as stated in the Federal Reserve's [press release](#)¹.

Rather than reiterate all of new requirements, allow us to provide a link to the Federal Reserve's, [Highlights of Final Rule Amending Home Mortgage Provisions of Regulation Z \(Truth in Lending\)](#)² where a good summary is provided. If you would like to read all 218 pages of the Final Rule, you can do so by clicking [here](#)³.

Supposedly, these new rules will assist the consumer in making better financial decisions in the future. But be prepared, these new rules will take up more work time and possibly hinder increasing loan portfolios. Make sure your 2009 budget allows for system changes and training costs to incorporate these changes.

To help prepare you, we will be holding a seminar in the spring of 2009 to allow you time to train employees prior to the effective date of October 1, 2009. We will also be discussing these new rules briefly at our upcoming seminars in Grand Island, Nebraska (August 19-21), Sioux Falls, South Dakota (September 9-11) and Omaha, Nebraska (October 21-23). You can find more information on these upcoming seminars and download a [seminar brochure](#) by visiting our [website](#). You can also register for these seminars by visiting our [Products page](#).

¹<http://www.federalreserve.gov/newsevents/press/bcreg/20080714a.htm>

²<http://www.federalreserve.gov/newsevents/press/bcreg/regz20080714.htm>

³<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20080714a1.pdf>

HMDA Temporary Financing . . .

Many of you have read our [HMDA Temporary Financing article](#)¹ which outlines our position regarding temporary financing. Many of you share the same position and have used this article to defend yourself when examiners are questioning your HMDA reporting data. We have recently updated this article with a temporary financing flowchart. This may be a good tool to give to your lenders to help them determine if a loan is HMDA reportable.

¹<http://www.bankerscompliance.com/assets/files/articles/HMDA%20and%20Temporary%20Financing.pdf>

Bonus on Accounts . . .

We have referenced our article entitled, "[Bonus on Accounts](#)"¹, in previous newsletters. This article incorporates requirements from the Truth in Savings Act, Regulation Q and Regulation D that may apply when a bonus is offered on a deposit account. To assist you even further, we have designed a flowchart outlining these requirements and added it to the article.

¹http://www.bankerscompliance.com/assets/files/articles/Bonus_on_Acct_+_Flowchart.pdf

Banker's Compliance Consulting Q & A Forum...

The following Q & A's were generated by an Advertising Rules and Regulations Webinar presented by Banker's Online and taught by David Dickinson, President of Banker's Compliance Consulting. The following website has complete information regarding past and future Bankers Online webinars:

<http://www.bollearningconnect.com/advertising0708/sample/html/sample.html>.

Note: In some of the answers below we may refer you to look at a certain page in the manual. The manual we are referring to is Banker's Compliance Consulting's Advanced Lending Manual. If you do not have this manual and would like to purchase it, please contact our office.

This publication is not offered as legal advice. Readers should consult with legal counsel on specific fact situations.

What Is An Advertisement?

Question 1. Is sending a letter to handful of customers about our checking accounts considered advertising? Specifically, I have been sending letters to new businesses in the area to promote our business banking accounts and services. I think my answer is that I need to include the Member FDIC disclaimer.

Answer: *Yes, it is considered an advertisement because it is mailed to more than one person. This does not qualify as a direct, personal contact.*

Question 2. Do business cards qualify as forms of Advertisement when there is an application for credit in process?

Answer: *This may depend on how the business card is provided, but I've never heard of an examiner or official opinion indicating business cards are advertisements.*

Question 3. Are product brochures considered advertising?

Answer: *Absolutely.*

Fair Housing

Question 4. In a deposit ad is it necessary to show the Equal Housing logo?

Answer: *No. Only if a home loan product is promoted.*

Question 5. When using the EHL logo on an ad and the words 'Equal Housing Lender' are too small to read, is it a violation to drop the words and have the house symbol only?

Answer: *Yes. The logo is both the words and the picture of the house.*

Lottery

Question 6. I recently saw an ad: “Would you like to have a bank that knows your name? If so, come in and open a checking or savings account with us. You will be entered in a drawing for \$50.00 in Chamber Bucks.”

Is this offer in compliance? Can they offer this opportunity for Chamber Bucks to only new customers or must it be offered to everyone?

Answer: *Since the customer has to advance money (open an account) to participate in the drawing, this would be considered a lottery. If the drawing was open to the public (not just bank customers) AND no money needed to be advanced to participate, then this would not meet the definition of a lottery.*

Question 7. Sweepstakes: If a California credit union with a closed field of membership conducted a trip giveaway to existing members and new members, would this be considered an illegal lottery? The only requirement for membership is a \$5 savings account and they must be employed by an eligible SEG group.

Answer: *To enter the giveaway, a person must open an account (which is an advancement of money). Therefore, this is an illegal lottery.*

Member FDIC

Question 8. Is the FDIC logo required on a sales solicitation letter from the bank?

Answer: *It depends on what you are soliciting. If you are promoting deposit products or non-specific banking products or services, it would require the FDIC logo.*

Question 9. Are there any restrictions or guidelines for supplementary insurance available at the bank above the FDIC 100K for placement or usage together or separately?

Answer: *I am not aware of any guidance on this topic.*

Question 10. Does listing 'Investment Services' on a depositor envelope trigger non-FDIC disclosure? In essence, can you co-mingle FDIC insured products and non-FDIC products on the same envelope?

Answer: *Yes you can. It would be best to clearly segregate this information with boxes and/or bold lines. I'm not going to say you can't but be careful.*

Question 11. Is it acceptable to advertise insured deposit products with non- insured products if you box out the non-insured products that include the safe harbor disclosure?

Answer: *Yes. Just be sure this information is clearly segregated and understood concerning what is FDIC insured and what is not.*

Question 12. We're considering an advertising campaign around our bank's soundness and FDIC insurance as an advantage/value proposition of our bank versus mutual fund options, etc. Are there any compliance red flags we should watch for?

Answer: *Make sure you don't infer that “all or every account is insured”. That would definitely be a red flag.*

Question 13. On a website, is the statement 'FDIC' acceptable, or does it need to state 'Member FDIC'?

Answer: *I don't see examiner's writing this up, but I would say it needs to say "Member FDIC".*

Question 14. We have an investments tab within our bank's website. As I understand it, we are required to have "Member FDIC" on every page of the website. How do we handle disclosing that investments are not FDIC insured on the web page?

Answer: *Do not list "Member FDIC" on this page. Also, be sure to list the Non-Deposit Investment advertising requirements.*

Truth In Lending

Question 15. On closed-end loan advertisements, can you state just the Annual Percentage Rate and not trigger any other terms? What does triggering term finance charge refer to?

Answer: *Yes. A triggering term would be a term used in the advertisement that notates a fee or a charge.*

Question 16. For existing Home Equity Lines of Credit, can a usage campaign (a written letter to a current HELOC customer designed to get the customer to use the line) be considered an 'advertisement' under Regulation Z?

Answer: *Yes. This is a commercial message to more than one person.*

Question 17. Is there a sample real estate rate sheet available?

Question 18. What disclosures are required for a loan rate sheet?

Answer: *I'm sorry, but I don't have a sample to provide you.*

Truth In Savings Act

Question 19. I review ads for several affiliate banks. We have seen several Money Market Deposit Account advertisements where they have a large font and bold the highest APY in the tier. Then they list each tier as required below that. This is in much smaller and not bolded font. Is this considered unfair and deceptive since they want to draw the attention to the highest APY which can be misleading?

Answer: *I don't believe so. Regulation DD does not have an "equal prominence" requirement similar to TIL. Regulation DD requires that the APY and minimum balance for each tier be disclosed. As long as the minimum balance is in close proximity to the applicable APY, this is sufficient.*

Question 20. If a bank advertises a minimum to open an account (to avoid service charge), but pays interest down to the penny, is it accurate to say that 'minimum to open' is higher than the 'minimum to obtain the APY' so the bank should disclose the minimum opening amount in its ads?

Answer: *Yes, that would be correct.*

Question 21. Is it permissible to advertise that a monthly maintenance fee will be "waived" for an account provided certain conditions are met? (This may include signing up for internet banking and bill pay) Or would this be the same as advertising an account as "free" when it could incur a fee?

Answer: Advertising an account with a waived fee is not the same as stating the account is “free”. TISA prohibits stating an account is “free” when certain fees can still be incurred. There is no prohibition for advertising fees as waived upon meeting certain requirements.

Question 22. Is a fee charged to the customer to return their checks written with their monthly statement considered a maintenance or activity fee?

Answer: If I have the option of not getting my checks back and not having a fee then that account is free. If it's the only option of getting my checks back then it is considered a maintenance fee and you cannot call that account free.

Question 23. If you are advertising an interest bearing checking account on TV and you say the rate is 4.00%, what content can be excluded for disclosure?

Answer: You can exclude those things in D2, page 13, of your handout. You must include the items in D3.

Question 24. Blended APY: We see competitors advertising 4 month promotional APY at XX.XX% and then it changes to a lesser rate. This seems incorrect according to the Regulation (appendix A - how to calculate APY). The APY must be stated or calculated based upon 365 days so the 4 month rate is an interest rate and not the APY? Must the bank also disclose the blended APY as prominently as the promotional rate/APY?

Answer: If you know the rate will change, then you have a blended rate. You must “weigh it” in the APY formula and then have a statement that says “the rate may be as high as”.

Question 25. If we offer a \$10 gift card to open a checking and savings account package, would the \$3 fee that is charged to us to print the card by the vendor trigger the IRS/bonus?

Answer: Since the value of the card is \$10, I don't believe this will trigger the Truth In Savings Act bonus rules. I'm not an IRS expert, so I hesitate to answer this part of the question.

Question 26. Regarding the effective date in the disclosure, what if the rate was established on February 11 and it's still effective – is it incorrect to state the February date on an advertisement that is running in July?

Answer: No. Even if the rate is still effective, the date stated must be recent.

Question 27. On our telephone banking system, APYs are being stated with more than two decimal places. Is this a violation?

Answer: For advertisements, §230.8(b) limits the APY to be expressed to the one-hundredth of one percent (.01%). For non-advertisements, §230.3(f)(1) states:

“Rounding. The Annual Percentage Yield, the Annual Percentage Yield earned, and the interest rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For account disclosures, the interest rate may be expressed to more than two decimal places.”

Question 28. Please cover the 'offer may expire without notice' information on the last two ads.

Question 29. Is it ok to say “rates subject to change without notice” on a CD ad?

Answer: *Making these statements does not meet any regulatory requirement. It is OK to say these, but it doesn't satisfy anything. The effective date must be a recent (past) date or a future date until which you are willing to offer the rate.*

Miscellaneous

Question 30. Is there a minimum size font we have to use in disclosures at the bottom of an ad? I use 9 pt.

Answer: *The FACT Act pre-screen notices must be 10 pt. and credit card disclosures have to be a certain font other than that, there are no other font requirements. They say it must be clear and conspicuous. General answer is no.*

Question 31. If we are promoting a new account with an overdraft protection line of credit (up to \$500), with no fee except for interest only on the amount drawn on the line, how do we disclose?

[Follow-up: We are designing a brand new checking account that will be advertised and offers an overdraft protection line of credit up to \$500.00. Instead of a fee-driven 'bounce-protection' program, we are offering a No-Fee Line of Credit that may be used to cover overdrafts (up to \$500) while the client is only being charged interest on the funds drawn on the line of credit. How do we advertise this feature for this account within compliance?]

Answer: *It depends on how you promote it. If you simply state you offer this, you don't trigger anything. If you state:*

The periodic rate used to compute the finance charge or the Annual Percentage Rate;

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

The method of determining the balance on which a finance charge must be imposed;

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

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

Then you trigger further information. If you don't state any of these items, nothing further is needed.

Question 32. Indoor sign: Please repeat the exact size required for the indoor CRA and Federal Fair Lending Laws signs within the bank.

Answer: *There is no exact size for the CRA Notice. It must be clearly and conspicuously displayed. The Fair Housing poster must be 11" x 14" (and also clearly and conspicuously displayed).*

Question 33. Is there a ratio size requirement between the Equal Housing Logo and the words Member FDIC? Does Member FDIC have to be larger than the EHL?

Answer: *There is no such requirement. Both must be clearly and conspicuously displayed in an advertisement.*

Question 34. Do you have any sample checklists that are specific to each type of banking product to ensure that our advertisements and websites are compliant?

Answer: *Banker's Online "Tools" has checklists for advertisements but nothing for websites.*

<http://www.bankersonline.com/tools/compliance/advertisingchecklist.html>

Question 35. Regarding the FACTA Rules regarding affiliate marketing - where can I find a definition of 'affiliate'?

Answer: *This is not specific to our webinar.*

UDAP

Question 36. We offer an overdraft protection whereby customers can attach their personal HELOC to their personal checking. Our ATM network does not have the capability of excluding the HELOC balance from the checking available balance. It sounds like this is a violation, so how can we continue to provide this OD protection service and be compliant?

Answer: *You have to somehow get the capabilities to get this done. The regulators have cited banks for this. You need to be able to shut this feature off within your ATM network. Further information regarding this issue can be accessed by clicking on the following links:*

http://www.bankerscompliance.com/assets/files/newsletters/2008/January_2008.pdf
<http://www.bankerscompliance.com/blog/udap-unfair-and-deceptive-acts-or-practices.htm>

Question 37. Second part to HELOC balance included in checking balance. Does this also pertain to a regular overdraft line of credit product? Again, our ATM network does not have the ability to exclude this balance from the customer's checking account available balance. Is this also a violation?

Answer: *Yes it is a violation because it doesn't matter whether it's a HELOC, Overdraft Line or any other kind of line of credit. If there is a fee or service charge it doesn't matter how the customer contacts the bank, the result of the inquiry has to be very clear. If it's not, you need to shut the feature off within the network. I would encourage you to talk to your regulators on this subject.*

Website Advertising

Question 38. Banks typically place the 'Member FDIC' statement and the EHL logo at the bottom of the home page; the logos are usually static and appear on each subsequent page. Is it okay if the reader has to "scroll" to the bottom to see them, or should they appear in closer proximity to deposit or home loan information?

Answer: *At the bottom of the page is fine.*

Question 39. How recent is 'recent' when referring to rates on web pages?

Answer: *It says "reasonableness" in the commentary and I have always seen that interpreted as weekly.*

Question 40. If we have a banner on our website home page that advertises a deposit product and an APY, can we put a button that says to click here for details which will then take them to another page with the disclosures triggered by advertising the APY?

Answer: *As long as it says "click here" and I immediately go to those triggered terms, then it is okay.*

Question 41. Our material does not include the answers on the ads. How can we acquire these?

Answer: *There were two PDF files in the "handouts". One was a materials document and the second was the slides shown during the presentation. The answers to what is wrong are in the "slides" PDF document.*