



Advertising: Common Issues and Best Practices

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August 23, 2016



Before we get started...

- Today's presentation slides can be downloaded at www.wolfandco.com/webinars/2016
- The session will last about 45 minutes, and we'll then have time for Q & A.
- Our audience will be muted during the session.
- Please send your questions in using the "Questions Box" located on the webinar's control panel.

About Wolf & Company, P.C.

- Established in 1911
- Offer Audit, Tax, and Risk Management services to over 250 financial institutions
- Offices located in:
 - Boston, Massachusetts
 - Springfield, Massachusetts
 - Albany, New York
 - Livingston, NJ
- Over 200 professionals



As a leading regional firm founded in 1911, we provide our clients with specialized industry expertise and responsive service.

Financial Institution Expertise

- Over 60 Risk Management Professionals:
 - IT Assurance Services Group
 - Internal Audit Services Group
 - Regulatory Compliance Services Group
 - WolfPAC® Solutions Group
- Provide services to over 250 financial institutions:
 - Approximately 90 FIs with assets > \$1B
 - Approximately 25 publicly traded FIs
 - Constant regulatory review of our deliverables
- Provide Risk Management Services in 27 states and 2 U.S. territories

Today's Objectives

As part of today's session we will:

- Identify common audit issues and violations noted with respect to advertising
- Learn about the major types of advertising issues being raised by regulators
- Identify best practices that institutions utilize to help avoid or reduce issues

Outline

1. Advertising Requirement Basics
2. Regulatory Hot Buttons
3. Common Audit Issues
4. Best Practices
5. Questions?



Advertising Requirements

Applicable rules include but are not limited to:

- Truth in Savings Act (Regulation DD)
- Truth in Lending Act (Regulation Z)
- Fair Lending (ECOA, FHA)
- Real Estate Settlement Procedures Act (RESPA)
- Unfair, Deceptive and Abusive Acts and Practices (UDAAP)
- CAN SPAM, Do Not Call Rules
- FDIC Advertisement of Membership rules
- Interagency Statement on Retail Sales of NDIP
- State Laws and Regulations

What is an Advertisement?

- Regulation DD
 - A commercial message, appearing in any medium, that promotes directly or indirectly:
 - The availability or terms of, or a deposit in, a new account; and
 - For purposes of rules against misleading ads and overdrafts, the terms of, or a deposit in, a new or existing account
- Regulation Z
 - A commercial message in any medium that promotes, directly or indirectly, a credit transaction.

Methods of Advertising

“Any Medium” may include:

- Print Advertisements
- Internet Advertisements
 - Including Social Media
- Rate Sheets provided to customers
- Indoor Signs
- Brochures
- Billboards
- Radio
- Television

REGULATORY HOT BUTTONS

Regulatory Hot Buttons

UDAAP

- UDAAP violations have resulted in unsatisfactory CRA ratings, downgrades in consumer compliance ratings, restitution orders and civil money penalties.

Identified Deposit Issues include:

- Rewards Checking
- Student Checking
- Free Accounts
- Free Other Products (ex. add ons)

Regulatory Hot Buttons

Identified Loan issues include:

- Material interference with the ability of the consumer to understand a term or condition and takes advantage of the consumer's lack of understanding of material risks/costs/conditions of the product or service
- Bait and Switch (use fine print to correct other information in the advertisement)

Regulatory Hot Buttons

Other issues concerning advertisements

- Hiding costs, critical terms, and conditions within the fine print and burying it at the end of a long web page or print advertisement
- Using a fast-moving scroll in a website advertisement
- Advertisement suggests features and benefits that might not be available
- Key officers and staff responsible for reviewing marketing materials have no awareness of UDAAP issues/risks and applicability to departmental operations

Enforcement Actions

October 9, 2014 - CFPB fined M & T Bank in Buffalo, NY \$200,000 and ordered the Bank to pay \$2.9 million to over 59,000 customers for deceptively advertising free accounts



Enforcement Actions

February 10, 2015 – CFPB fines NewDay Financial \$2 million for illegal conduct. NewDay deceived consumers about a Veterans organization’s endorsement of NewDay’s lending products



Enforcement Actions

- April 9, 2015 – CFPB fines RMK Financial (Majestic Home Loan) Corporation \$250,000 for deceptive mortgage advertising practices including ads that led consumers to believe that the company was affiliated with the US Government.



Enforcement Actions

- July 28, 2015 – CFPB fines Paymap and Loan Care \$5 million and \$100,000, respectively, for deceiving consumers with advertisements for a mortgage payment program that promised tens of thousands of dollars in interest savings from more frequent mortgage payments. Paymap was also mandated to pay \$33.4 million in fees to affected consumers

LOANCARE

A SERVICELINK COMPANY



COMMON AUDIT ISSUES - DEPOSITS

Inconsistency in Terminology

- Product Titles
- Fee Titles
- Statement cycle
- Account Limitations
- Minimum balance requirements

Common Audit Issues

Rewards Checking Account

- Improper disclosure of Tiering Method B
- Transactions must “post and clear”
- Definition of a “qualification cycle”
- Consequences for not meeting the requirements of the account
- Requiring a specific service to qualify for the higher interest rate but missing specific requirements

Annual Percentage Yield Disclosures

- Properly disclosing tiered rate accounts
- Multi-page advertisements (including web ads)
- Proximity/Prominence
- Clear explanation of minimums
- Variable rate accounts

Common Audit Issues

Use of the word “Free”

- Free Account References
- Additional products and services
- Special conditions

Overdraft Ads

- Wide range of possible overdraft ads
- Necessary disclosures

Common Audit Issues

Sweepstakes/Drawings/Lotteries

- Available to all customers and non-customers
- The individual must be able to enter without opening an account and this fact must be disclosed
- “No purchase necessary” disclosure
- Specific qualifications for the sweepstakes
 - Specific branch locations
 - Specific time frames

COMMON AUDIT ISSUES - LENDING

Common Audit Issues

Closed-End Loans – Fixed Rate

- Internet or multi-page advertisements contain trigger terms but do not instruct the consumer where to find additional disclosures
- First lien advertisements not stating that the payment does not include taxes and insurance and that the actual payment may be greater
- Mortgage advertisements missing required NMLS number when required by state law

Common Audit Issues

Closed-End Loans – Fixed Rate

- Period of repayment disclosed however no additional disclosures provided
- Interest rate shown more prominently than APR
- Advertisement references mortgage and home equity loans but does not contain EHL/EHO logo

Common Audit Issues

Closed-End Loans – Adjustable Rate

- Advertisements missing the statement rate may increase after consummation
- Adjustable Rate Mortgage advertisement not including the loan term
- Inappropriate usage of the word “fixed”

Common Audit Issues

Closed-End Loans – Adjustable Rate

- The advertisement does not include the fully indexed rate, which should be included in equal prominence and close proximity to the initial rate.
- The advertisement does not discuss the payment amounts at the fully indexed rate, which should be included in equal prominence and close proximity to the payment at the initial rate.

Common Audit Issues

Open-End Loans – Home Equity Lines of Credit

- Initially discounted rates not including all required disclosures or not in proper prominence/proximity
- The advertisement states “no application fee, no closing costs and no points” which are trigger terms, however the following disclosures are not provided:
 - Any minimum, fixed, transaction, activity or similar change that may be imposed;
 - Any periodic rate that may be applied, expressed as an annual percentage rate;
 - A statement that the plan is variable;

Common Audit Issues

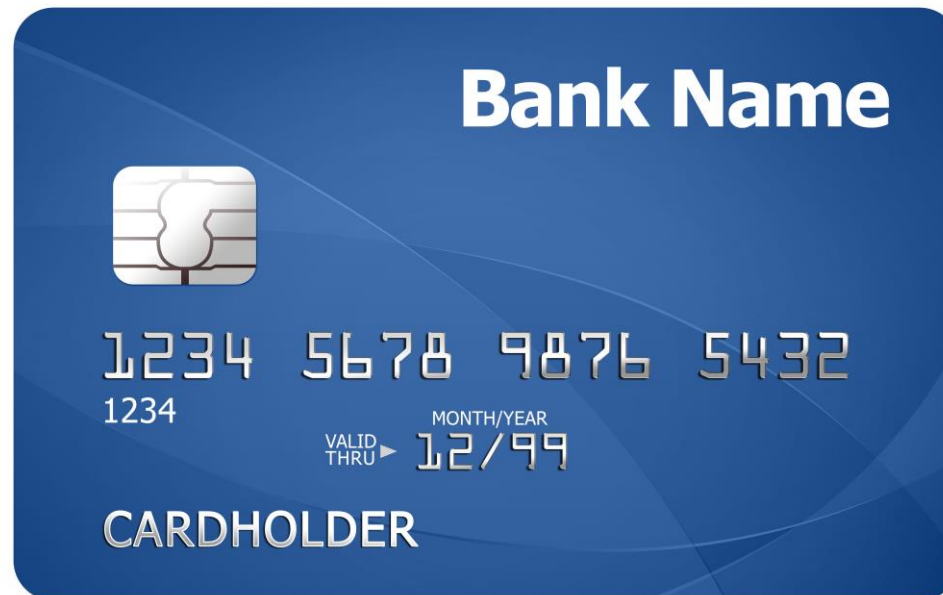
Open-End Loans – Home Equity Lines of Credit

- Any membership or participation fees that may be imposed;
- The maximum annual percentage rate that may be imposed;
- Any other fees imposed for opening the plan

Common Audit Issues

Open-End Loans – Credit Cards

- Advertisement does not include either an insert showing the current rate or a rate as of a specified date



COMMON AUDIT ISSUES - NDIP

Common Audit Issues

NDIP

- Failure to include required NDIP disclosures on all applicable advertisements (especially web pages)
- Including insured deposits and non-insured NDIP in the same ad, but not segregating them
- Failing to properly disclose third party broker dealer

BEST PRACTICES

Best Practices

- Be responsive and cognizant of consumer complaints regarding advertisements
- Ensure font size, equal prominence and close proximity requirements are met
- Be careful when using asterisks and symbols*
- Be consistent with account terminology and features between disclosures and advertisements
- Disclose good and bad terms of the account

*

Don't bury information in the footnote

* Don't bury information in the footnote

Best Practices

- Compliance review of advertisements
 - Checklists
 - Multiple reviews if needed
 - Consider UDAAP in the review
 - Ensure all terms, names, etc... are consistent with disclosures and other material
 - Monitor compliance with applicable laws and regulations
- Educate employees creating the advertisements
 - Importance of disclosures
 - Avoid misleading statements

Questions?

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